

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
between)
UNITED STATES POSTAL SERVICE)
and)
NATIONAL ASSOCIATION OF) Case No. Q11N-4Q-C 16398841
LETTER CARRIERS, AFL-CIO)
and)
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO - INTERVENOR)
and)
NATIONAL POSTAL MAIL HANDLERS)
UNION, AFL-CIO - INTERVENOR)

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Katherine S. Attridge, Esq. Brian M. Reimer, Esq.
For the NALC:	Peter D. DeChiara, Esq.
For the APWU:	Melinda K. Holmes, Esq. Jeremiah C. Fugit
For the NPMHU:	Andrew D. Roth, Esq.
Place of Hearing:	Washington, D.C.
Date of Hearing:	December 5, 2016
Date of Award:	June 21, 2017
Relevant Contract Provisions:	Article 19 and ELM Section 519.32
Contract Year:	2011-2016
Type of Grievance:	Contract Interpretation

Award Summary:

The grievance is granted on the basis set forth in the above Findings.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator

BACKGROUND

Q11N-4Q-C 16398841

The National Association of Letter Carriers (NALC) filed this grievance on March 26, 2016, alleging that the Postal Service improperly denied administrative leave to letter carriers at the Westridge Station in Las Vegas who requested leave to attend the Nevada Democratic Caucuses on February 20, 2016. After the grievance was impassed through Step B, the NALC requested arbitration. On May 24, 2016 the Postal Service notified the NALC that the case involved an interpretive issue. Ultimately, the case was appealed to National Arbitration. The American Postal Workers Union (APWU) and the National Postal Mail Handlers Union (NPMHU) are intervening parties in this matter.

Section 519 of the ELM governs administrative leave, which is defined as an authorized absence without loss of pay. Section 519.32 sets forth the conditions for administrative leave for "Voting or Registering to Vote" as follows:

519.321 Policy

Employees are encouraged to exercise their voting rights. So far as is practicable without seriously interfering with service, postal employees, excluding casual and temporary employees, who desire to vote or register in any election or in any referendum on a civic matter in their community are excused for a reasonable time for that purpose on a day they are scheduled to work. Casual and temporary workers are encouraged to vote but are not eligible for administrative leave for this purpose.

519.322 Administrative Determination

Postal officials in charge of installations obtain necessary information concerning the hours during which the polls are open in the political subdivisions in which their employees reside. They then make an administrative determination regarding the amount of excused absence necessary (and limits in accordance with 519.323). Employees are notified of this determination and of the procedures to be followed in obtaining advance approval for the absence.

519.323 Voting

The following provisions concern time allowed for voting:

- a. *Three-Hour Rule.* As a general rule, if the polls are not open at least 3 hours either before or after an employee's

scheduled hours of work, the employees may be excused for the length of time that permits them to report for work 3 hours after the polls open or to leave work 3 hours before the polls close, whichever requires the lesser amount of time off.

- b. *Exception to Three-Hour Rule.* Under exceptional circumstances, if the general rule in 519.323a does not permit sufficient time, an employee may be excused for the additional time needed to vote. However, time off must not exceed a full day.
- c. *Charge to Annual Leave or LWOP.* If an employee's voting place is beyond normal commuting distance and if voting by absentee ballot is not permitted, employees may be granted sufficient time off to be able to make the trip to the voting place to cast their ballots. When more than 1 day is required to make the trip to the voting place, postal officials observe a liberal policy in granting necessary time off for this purpose. Time off in excess of 1 day is charged to annual leave or, if annual leave is exhausted or the employee so requests, it is charged to LWOP.

* * *

Each year that there is a general election, the major political parties in each voting precinct in Nevada hold a precinct meeting of the party's registered voters. Precinct caucuses are the first step in Nevada's Democratic delegate selection process. Caucuses are the only way to participate in the presidential nomination process in Nevada. The state has no secret ballot primary elections for the presidential nomination process.¹

Tracy Griffin, a city letter carrier at the Westridge Station, testified that she attended a Nevada Democratic precinct caucus meeting in February 2016. The meeting was held in an elementary school near her house and lasted a couple of hours during the middle of her tour. Griffin said that those in attendance -- over 100 persons -- expressed their preference for Hillary Clinton or Bernie Sanders by sitting in certain areas in the cafeteria. Each group was

¹ According to the Postal Service, 15 states and several U.S. territories held political party caucuses, rather than primary elections, for presidential nominations in 2016.

counted to determine the number of delegates for that candidate to be sent to the county convention.² Griffin said that no other party business took place at her local caucus.³

In 2004, certain employees evidently were granted administrative leave to attend the Iowa caucuses. The Postal Service insists that was a mistake by local managers. In 2008, the Postal Service denied the request made by some letter carriers to attend the Nevada caucuses. The NALC grieved the Postal Service's refusal to grant the requested administrative leave and the grievance later was resolved in a non-citable settlement.⁴ In 2012, the Nevada Democrats held no caucuses. In 2016, the Postal Service denied the request of Griffin and other letter carriers at the Westridge station in Las Vegas for administrative leave to attend the February 2016 caucuses. Letter carriers who attended the caucuses took annual leave or leave without pay.

In the 2012 and 2016 election years, Headquarters Postal officers issued instructions to the field noting that:

...[T]he provisions of ELM 519.32, Voting or Registering to Vote, do not apply to employee participation in caucuses. At your discretion, you may approve annual leave or leave without pay for employees who wish to participate in a caucus.

In its Article 15.3.F position letter, the Postal Service asserted that ELM 519.32 does not extend to participation in caucuses, but only to secret-ballot, government-run elections. The Postal Service said its position rested on both the ELM language and past practice. In its position letter, the NALC asserted that the broad language of ELM Section 519.32 covers party caucuses and that management's assertion that caucus voting is to be distinguished from ballot voting is unavailing. The NALC stated that ELM Section 519.32 expressly applies to "any

² Delegates at the county convention select delegates to the state convention, where delegates to the national convention are selected.

³ The APWU presented a witness, Robert Moyer, who described his participation in the 2016 Iowa Democratic caucus, which occurred outside his scheduled tour.

⁴ A similar grievance filed by the APWU in Iowa also was resolved on that basis.

election" and that in caucus states, participation in the caucus is the only way employees can vote for party nominees.

The NALC defines the issue in this case as whether the Postal Service violated ELM Section 519.321 by denying the request of city letter carriers for administrative leave to vote at the Nevada Democratic caucus meetings on February 20, 2016. The Postal Service states the issue as whether ELM Section 519.32 applies to participation in political party caucuses.

NALC POSITION

The language in Section 519.32 broadly provides employees administrative leave to "vote" in any "election" on a civic matter in their community. The NALC argues that the provision clearly applies to the Nevada Democratic precinct caucus meetings because participants "vote" in an "election" on a civic matter in their community at those meetings. Caucuses are part of an election because they are part of the process by which a political party selects the person to occupy the position of presidential nominee. The Nevada legislature mandated that political parties issue a public notice stating that "[d]elegates to your party's county convention will be elected at the meeting by those in attendance.

The NALC asserts that the Postal Service does not dispute that caucus participants are participating in an election. Some of the Postal Service's exhibits that explain caucuses even refer to a caucus as an election. However, the Postal Service argues that ELM 519.32 does not apply to precinct caucus meetings because they are elections run by the Democratic Party, not the government, and because they do not employ a secret ballot. The NALC points out that Section 519.321 draws no distinction between party-run versus state-run elections nor between elections that use a secret ballot versus elections conducted in open meetings. Section 519.321 refers to "any" election. The language is not infinitely broad. It applies only to any election (or referendum) "on a civic matter" in the employee's "community." Therefore, the NALC contends that it excludes internal union elections or any other elections that do not relate to a civic matter in the employee's community. It undoubtedly includes

precinct caucus meetings, because the selection of the next President of the United States is a civic matter and the precinct meetings concern matters of community interest and are held in the employee's community.

Moreover, the NALC argues that those who participate in the caucuses participate in a "vote." There is evidence that some who attend caucuses raise their hands to show support for one candidate and others sit in designated areas, but whatever the means of communicating their preference, the caucus participants are casting a "vote."

The Postal Service acknowledges that participants are voting, but contends that Section 519.32 only provides administrative leave for secret-ballot voting. The Postal Service points to ELM provisions in Section 519.322 and 519.323 which reference "polls," but the NALC asserts that these provisions are subordinate provisions that concern the determination of the amount of leave to be allowed in certain circumstances and in no way derogate from the scope of the overarching policy set forth in Section 519.321. The reference to the word "polls" in these other sections cannot be taken to mean the ELM's administrative leave voting rule applies only to secret-ballot elections. The NALC further points out that the term "poll" does not signify secret-ballot election. Rather, the word "poll," according to various dictionaries, is, among other things, simply "the place where votes are taken."

The Postal Service also argues that Section 519.323 cannot apply to caucuses because, it asserts, caucuses occur mid-day and this section "envisions employees taking leave either at the beginning or end of their scheduled workday." The NALC contends that Section 519.323, in its current form, does not restrict leave to the beginning or end of the scheduled workday. Additionally, the NALC argues that the specific reference to "ballot" in Section 519.323(c) is only applicable in a very specific situation: when voting is by ballot, when absentee ballots are not permitted, and when the voting place is beyond normal commuting distance. It in no way limits the general application of the policy set out in Section 519.321.

The Postal Service's position runs contrary to the language of the provision and to its express purpose -- to "encourage[]" employees to "exercise their voting rights." The NALC

contends that the Postal Service's interpretation would discourage employees who live in caucus states that hold their meetings during work hours from voting in their party's presidential nomination process. The Postal Service is distinguishing between primaries and caucuses when the two election methods serve the same function, determining which candidates the voters prefer for the party's presidential nominee. Primaries and caucuses operate within the same framework set by state law, with the political parties administering the nominee selection process in caucus states.

Participants in primary elections and caucuses must be registered voters. Both primaries and caucuses are subject to federal regulation and the Voting Rights Act's regulation of elections applies to party caucuses. The NALC points out that the method of voting is similar in some states too. In Iowa, for example, caucuses may have secret ballot voting.

The NALC asserts that there are two regional arbitration awards which, while not binding, offer guidance regarding the Postal Service's claim that the ELM language limits administrative leave to secret-ballot elections. Both awards reject the Postal Service's position that the ELM's administrative leave rule for voting only applies to secret-ballot elections. In the first case, the Postal Service refused a Mail Handler employee administrative leave to participate in an annual Rhode Island town meeting. In sustaining the grievance, the arbitrator stated:

I am not persuaded that Sec. 519.241 [now, Section 519.321] of the E&LRM was intended to favor certain voting rights and to disfavor others or that its application was intended to turn upon the method by which a vote is cast. In fact, the initial statement in Sec. 519.241 is an unqualified one, namely, that "(e)mployees are encouraged to exercise their voting rights." *USPS and Nat'l Post Office Mail Handlers* (Holden, 1986).

In a subsequent APWU regional award, Case No. N7C-1E-C 24418 (Zack, 1990), the arbitrator concurred with the 1986 award, sustaining a grievance that the Postal Service violated the ELM by denying an employee's request for administrative leave to vote at a town meeting. According to the NALC, the two regional cases provide persuasive guidance showing that a reading of the ELM as applicable only to secret-ballot voting should be rejected.

The NALC argues that there is no operational justification for the Postal Service's position. The Postal Service has an obligation to comply with the ELM whatever the impact on its costs and operations. Here, the Postal Service has not even offered any operational justification for its refusal to grant administrative leave to employees to vote in a caucus. Caucuses are infrequent events, with only two days of Democratic caucuses in Nevada since 2008. Many states hold their caucus meetings in the evening, after employees typically have finished their work day. The administrative leave issue only applies to the subset of states that hold their caucuses during employee work hours. The NALC points out that some employees, like Griffin, may attend the caucuses whether they are denied administrative leave or not. Therefore, whether the Postal Service grants administrative leave or not may make no difference to operations.

The NALC contends that there is no evidence that granting administrative leave for caucuses rather than primaries would create a bigger impact on operations. The Postal Service's claims that caucuses can be time-consuming affairs, filled with business other than voting is not supported by the record. Union witnesses provided testimony that the caucuses they attended last only a couple of hours, or not more than two hours.

Finally, the NALC argues that there is no past practice to support the Postal Service's position. There is no consistency or acceptance to the Postal Service's alleged past practice. In 2008, the Postal Service's denial of administrative leave to letter carriers to attend Nevada caucuses was grieved, resulting in a non-citable settlement. A similar settlement resulted from an APWU grievance protesting denial of administrative leave to clerks to attend Iowa caucuses.

NPMHU POSITION

The NPMHU makes similar arguments in support of the NALC's position. It argues that the language in ELM 519.321, which establishes Postal Service policy and the scope of 519.32's application, is broad and encourages employees to exercise their voting

rights without any words of limitation indicative of an intent to limit that encouragement of voting to "traditional" election settings.⁵ The language also indicates that paid leave will be provided in "any election," without any words of limitation. The NPMHU stresses that the item of business at all Democratic and Republican caucuses is the election of delegates supportive of a candidate seeking the Party's nomination for President.

The NPMHU contends that the Postal Service's attempt to rely on subsections 519.322 and 519.323's use of the words "the polls" as a limiting reference is dubious at best. The commonly accepted definition of the word "polls," per the Oxford Online Dictionary, is a broad one encompassing any and all "places" where voting in an election occurs. The Postal Service's reliance on these two subsections also ignores the specific context in which they appear in ELM Section 519.32. They deal with the separate issue of how "Postal officials in charge of installations" are to "make an administrative determination" concerning the "time allowed for voting." Even if the repeated reference to "the polls" in 519.322 and 519.323 was intended as a limiting reference to voting that occurs in elections held in traditional government-run polling locations, that does not justify outright denial of paid leave to employees who wish to vote in political party caucuses, which would be contrary to the broad policy in 519.321 which includes no limiting reference to "the polls." At most, it means that the general "Three-Hour Rule" -- applicable in the most common voting-in-an-election situation -- does not apply in the context of caucuses, thus requiring Postal officials to use other criteria in determining what constitutes "a reasonable time" for voting in the caucus context.

APWU POSITION

The APWU joins the arguments put forth by the NALC and NPMHU that the broad language of ELM 519.321 granting administrative leave to participate in civic votes includes presidential caucuses.

⁵ The NPMHU notes that while a 1954 Postal Bulletin policy provision that was a predecessor of ELM 519.321 provided for paid leave to enable employees "to vote during the hours the polls are open," that reference to the polls was removed in the 1958 policy, which also expanded the policy to cover referendums, as well as elections.

The APWU further contends that there is no evidence that ELM Sections 519.322 and 519.323 (a)-(c) were meant to be an exhaustive list of situations where administrative leave would be granted to vote under 519.321, and stresses that the exclusion of caucuses is not supported by the common meaning of the words vote and poll. It points out that according to *Merriam's New World College Dictionary* and *Black's Law Dictionary*, the most ordinary definitions of the word "poll" do not describe a secret ballot election, but simply a location where individuals go to vote, and common definitions of the word "vote" do not imply secret ballot voting. Additionally, the APWU argues that caucuses do not create more of an administrative burden on local managers than secret ballot elections. They are not necessarily more time intensive than primaries and they are regulated by state governments, even though they are run by the political parties.

Although caucus votes are often in public and slightly more involved, the APWU contends that these distinctions do not make participation in a caucus any less of a civic "vote" contemplated by ELM 519.321 or meaningfully different from a secret ballot primary election. The result of primary and caucus voting is the same. Voters vote, their votes are tallied, and delegates are selected to represent candidates at party conventions.

The APWU argues that caucus voting does not usually interfere with postal operations. It points out that the Postal Service already allows the use of leave without pay or annual leave to vote in caucuses, which suggests that the length of time of a caucus does not interfere with postal operations. If the Postal Service believes that granting an employee any sort of leave for voting in a primary or caucus would severely disrupt operations, then it has the authority to deny leave under 519.321.

The APWU also stresses that there is no evidence that the ELM requires a certain level of government sanction of the voting process described in Section 519.32. Even if that were a requirement of the ELM, state and federal law sufficiently governs the caucus process to make caucuses valid state-mandated methods of voting.

POSTAL SERVICE POSITION

The Postal Service stresses that caucuses are significantly different to primary elections at the polls. Primaries are state-level elections run by state governments. Their format is similar to that of the general election. Caucuses are run by political parties at the state level. Typically caucuses are lengthy events held at a specific set time of the day. Caucus participants are not able to cast a quick vote and leave, and generally must stay for the duration of the caucus which could involve multiple rounds of voting and the conduct of other party business.

The Postal Service argues that the language of Section 519.32 supports its position because it clearly envisions leave for voting in the traditional sense. It does not mention caucus participation and specifically describes voting at the polls by casting a ballot. The specific language qualifies the general term "voting," and indicates the ELM applies to this type of voting only.⁶

Furthermore, the Postal Service stresses that its interpretation is correct because it gives meaning to all relevant sections of ELM 519.32. The Postal Service stresses that the ELM contains general voting leave policy in ELM 519.321, and language that refers explicitly to voting in ballot elections at polling places in Section 519.322. Section 519.323(a) sets forth the Three-Hour Rule, which applies "if the polls are not open at least 3 hours either before or after an employee's scheduled hours of work. Section 519.323(c) refers to what happens when employees must travel long distances "to the voting place to cast their ballots."

The Postal Service argues that in contract interpretation more specific provisions should be read to restrict the meaning of a general provision. In the ELM provisions at issue, the general term "voting" is followed by more specific references to "polls" and "ballots," with an

⁶ The Postal Service argues that the Unions' position that 519.32 does not distinguish between various means of voting and types of elections, if carried to its logical extreme, would entitle employees to paid leave to vote in any election whatsoever -- a show of hands to elect the secretary of one's book club, for example, or a Union convention vote.

emphasis on voting at the beginning or end of a tour. The specific type of voting that is covered by the voting leave provisions does not encompass caucus participation.

The Postal Service also relies on the canon of contract interpretation *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another), meaning that when a party lists specific items, they intend to exclude unlisted items, even if they are similar to those listed. While the ELM includes specific instructions related to polls and casting of ballots, there is no reference to caucuses. Thus, the ELM excludes caucus participation from coverage under the voting leave provisions.

The Postal Service asserts that its interpretation gives meaning to all parts of ELM 519.32, including the provisions related to time allowed for voting. The general policy statement providing for excused absence to vote in an election must be read in conjunction with the more specific provisions, such as time allowed for voting. The Postal Service stresses that the Three-Hour Rule makes no sense in the context of caucuses. The rule envisions employees taking time to vote at the beginning or end of their tour, whereas caucuses typically are scheduled in the middle of the day -- where the impact on service is greater -- and do not tend to involve polls that open and close, which would allow employees to drop in and cast a ballot.⁷ The Postal Service stresses that the Unions' interpretation of the voting leave policy should be rejected because it ignores the Three-Hour Rule.

The Postal Service contends that the Unions must bargain for additional coverage for caucus participation, rather than seek additional coverage through arbitration. The voting leave provisions at issue here date back to the 1950s policy of the former Post Office Department, which predates the bargaining relationship between the Postal Service and the Unions. According to the Postal Service, this policy has been regularly interpreted by the Postal Service as not including leave for caucuses. If the Unions want to change the provisions related to voting leave they must gain those benefits through bargaining.

⁷ The Postal Service points out that because polling places typically are open for extended periods of time, the use of voting leave in the Postal Service is rare.

FINDINGS

The policy expressed in ELM 519.321 encourages Postal employees to exercise their voting rights. It provides that -- consistent with the needs of the service -- employees are to receive a reasonable amount of paid time off (administrative leave) so as to permit them "to vote...in any election or in any referendum on a civic matter in their community." It is clear from 519.323 that administrative leave will only be granted when necessary to make it possible for an employee to vote. If the employees can exercise voting rights on their own time, they are not entitled to administrative leave. And even when entitled to such leave, which must be approved in advance, it is only for a reasonable time for the purpose of voting and the granting of such leave is subject to operational needs.⁸

The issue in this case is whether the policy expressed in 519.321 and the provision for paid leave therein extends to participation in local party caucuses in which registered voters express their preference for a candidate to receive the party's nomination for President of the United States. The results of such caucuses play a direct role in the selection of delegates who ultimately determine the party's nominee. Participation in such caucuses constitutes "voting" in an "election" and equates to voting in a primary secret ballot election in terms of an employee's "exercise [of] their voting rights."⁹ From the standpoint of the policy expressed in 519.321 there is no meaningful basis for distinguishing between voting in a Presidential nomination caucus and in a Presidential primary election for which administrative leave is granted in accordance with the provisions of 519.32.

While the administrative provisions in 519.322 and 519.323 address the most common form of civic elections and may be relevant in determining what is a reasonable amount of time to be granted paid leave to enable an employee to vote in a caucus, I do not

⁸ There is no claim that operational needs preclude granting leave to participate in caucuses, other than on a case-by-case basis.

⁹ The reference "to exercise their voting rights," in the context of the rest of 519.321, is a reference to civic voting, not to voting in private elections, such as the Union or book club elections hypothetically cited by the Postal Service.

read those provisions as intended to limit the scope of the policy set forth in 519.321 insofar as election format is concerned.¹⁰

The Postal Service asserts that it has a consistent policy of not granting administrative leave for caucuses. The only evidence of that are two letters from headquarters to the field. One relates to the 2016 elections, where the denial of paid leave resulted in the NALC filing the underlying grievance in this case. The other was issued prior to the 2012 elections, when the Democrats did not hold caucuses. Moreover, in the preceding 2008 elections, two of the Unions filed grievances in different states protesting the denial of paid leave to vote in caucuses, and both grievances were settled on a non-citable basis. The only other evidence of employees requesting administrative leave to attend caucuses is a reference in one of the 2008 grievances to such leave having been granted to certain employees in 2004 to attend Iowa caucuses. The evidence in this record is insufficient to establish the existence of any sort of practice or of a consistent policy known to and acquiesced in by the Unions.

Accordingly, the Unions' position that the policy set forth in ELM-519.321 applies to Presidential caucuses is upheld. The NALC's grievance that the Postal Service violated the ELM by denying administrative leave to letter carriers to attend the 2016 Nevada Democratic caucuses is granted.

AWARD

The grievance is granted on the basis set forth in the above Findings.



Shyam Das, Arbitrator

¹⁰ To the extent other party business is conducted at a particular caucus, ELM 519.321 does not require the Postal Service to grant paid leave for that purpose.