REGIONAL LEVEL ARBITRATION

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 :

UNITED STATES POSTAL SERVICE, :

 :

 - And - : Arbitration No.

 : G16N-4G-C 20139761

NATIONAL ASSOCIATION OF LETTER :

CARRIERS (AFL-CIO). :

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 NALC’s REMEDY HEARING BRIEF

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 NALC’s REMEDY-HEARING BRIEF

The above referenced remedy hearing was presented to the Arbitrator on August 31, 2021 before Regular Regional Panel Arbitrator Glenda August. The USPS was represented by Mr. Michael Suman, Mississippi Labor Relations Manager, USPS. The NALC was represented by Corey L. Walton, LBA, NALC, AFL-CIO.

This document shall serve as the NALC’s summary of evidence and argument in the matter(s) before the arbitrator, as it pertains to the Remedy-Hearing on August 31, 2021.

I certify that a complete copy of this post hearing brief was prepared for mailing to the employer’s advocate and mailed in concert with the Arbitrator’s copy.

Respectfully Submitted,

Corey L. Walton

LBA/NALC AFL-CIO

 cc: Steve Lassan, NBA, Region 8 file

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 **II. SYNOPSIS**

The initial Arbitration, which led to the remedy hearing, was February 5, 2021. The Arbitrator issued her award on April 21, 2021. She retained jurisdiction for a period of 120 days. It was during that 120-day period that the Union became aware that Mr. Ragsdale was moved to a position, outside of the city carrier craft, which still, however, required him to supervise employees. This, in the Union’s mind, was a clear violation of the Arbitrator’s decision.

During this time period the Union’s designated Shop Steward, Mr. Cliff Stoddard, requested very specific information to see if Management was in compliance with all of the Arbitrator’s award. Management refused to furnish the Union with its requested information and in turn stonewalled the Union by sending numerous ‘relevancy’ letters. The Union then requested a remedy hearing. The remedy hearing took place on August 31, 2021 at the postal facility located at 406 E. South St., Jackson, MS.

At the hearing it was stipulated that the only two issues of the award that were in contention would be #6 and #7 as found on page 31 of the Arbitrator’s decision

 **III. ARBITRATOR’S AWARD #6**

6. Management shall cease and desist violating Articles 15.3, 17, 31 and M-01517 via Article 19, by failing to meet and failing to comply with grievance settlements, as well as failing to provide relevant requested information to the Union in violation of the National Agreement.

On July 30, 2021 Shop Steward Cliff Stoddard submitted a request for

Information to District Labor Manager Michael Suman. The email reads as

follows:

 Pursuant to Article 17 & 31 of the National Agreement the Union is requesting the following information;

 Interview Bill Farrior

 Interview all bargaining unit employees at the Madison MS Post Office

 Copy of any and all grievances Postmaster of Madison, Kirby Ragsdale has met on, resolved, or conducted with any union.

 Copy of any discipline and any investigative interviews conducted by Kirby Ragsdale at the Madison MS Post office

 These requests are for determining compliance with Arbitration award. (Emphasis added)

Mr. Suman’s response was to provide the Union with several relevancy letters.

On August 3, 2021 Shop Steward Cliff Stoddard sent another information

request to District Labor Manager Michael Suman, which read as follows:

 The relevancy as stated originally is for compliance per Arbitration award G16N-4G-C 20139761

 The Union requested where Kirby Ragsdale is assigned USPS answer, Madison MS

 The relevance of requesting to interview the employees in Madison is compliance with #1-5 and 7 of award

 The relevancy of requesting any grievance/discipline is compliance with #7 of award.

The Union requested who is the higher-level Manager assigned to monitor Kirby Ragsdale per #7. USPS response was Bill Farrior.

The Union requests to interview him in regards to compliance with #7 of award

To avoid any further confusion included is a copy of the remedy portion of said Arbitration award. (Emphasis added by advocate)

On August 5, 2021 Mr. Suman replied to Mr. Stoddard’s information request with the following:

 Please see attached

Attached were the identical relevancy letters that were sent on July 30, 2021.

The Union will address the relevancy letters as almost the entire letter is a

Violation of Articles 17 and 31. One of the ‘relevancy’ letters reads as follows:

 July 30th, 2021

 To: Cliff Stoddard, NALC Steward

 Subject: Interview Bill Farrior

 Ref: Grievance: ***(Compliance with award 20139761)?***

 Dear Mr. Stoddard:

 This is in response to the union’s request for information # (NO NUMBER) that includes a general request to interview MPOO Bill Farrior. As you probably know, ***your request to interview a member of management is not considered a presumptively relevant request. As such, the Postal Service is within its rights to request relevancy from the Union in order to further process your request.*** That is the purpose of this communication

 Specifically, you have requested to interview MPOO Bill Farrior; however***, you have provided no additional information regarding why you wish to do so or what specific information you are seeking by interviewing him. In order to establish relevancy*** to interview MPOO Bill Farrior, you will have ***to give us specific reasons for doing so***. In order for us to further process your request, you must articulate to us ***two specific criteria***:

 1) you must provide the union’s ***specific reason*** for requesting the interviews; and

 2) You ***must articulate*** and ***state the specific information you are seeking through the interview***

The Union ***must respond to those two specific relevancy requests*** in order for us to further process your request for the interview with MPOO Farrior. ***You must set forth the specific reason*** that you want to interview Mr. Farrior, and ***you must state with specificity the information you are seeking in this interview with him***

***As soon as you provide us with your reponses to those specific questions, we will further respond to your request to interview MPOO Farrior***

Thank you for your assistance in this matter.

Michael Suman

The Union has added emphasis to the above letter and will address the letter. The Arbitrator has already ruled against the letter in her initial decision. This is the exact formed letter the Union received when initially investigating a grievance concerning Postmaster Kirby Ragsdale. The Arbitrator has also ruled against this same form letter in her Hattiesburg decision dated February 4, 2019 for case # G16N-4G-C 18316064, in which she issued Management a cease-and-desist violating Articles 17 & 31 of the National Agreement.

On page 17-4 of the Joint Contract Administration Manual (JCAM) both parties agreed to the following language:

Steward Rights—Activities Included.

A steward may conduct a broad range of activities related to the investigation and adjustment of grievances and of problems that may become grievances. These activities include the right to review relevant documents, files and records, as well as interviewing a potential grievant, supervisors, and witnesses. Specific settlements and arbitration decisions have established that a steward has the right to do (among other things) the following:

• Complete grievance forms and write appeals on the clock (see below);

• Interview witnesses, including postal patrons who are off postal premises (National Arbitrator Aaron, N8-NA-0219, November 10, 1980, C-03219; Step 4, H1N-3U-C 13115, March 4, 1983, M-01001; Step 4, H8N-4J-C 22660, May 15, 1981, M-00164);

• Interview supervisors (Step 4, H7N-3Q-C 31599, May 20, 1991, M-00988);

• Interview postal inspectors (Management Letter, N8-N-0224, March 10, 1981, M-00225);

• Review relevant documents (Step 4, H4N-3W-C 27743, May 1, 1987, M-00837);

• Review an employee’s Official Personnel Folder when relevant (Step 4, NC-E 2263, August 18, 1976, M-00104);

• Write the union statement of corrections and additions to the Formal Step A decision (Step 4, A8-S-0309, December 7, 1979, M-01145).

• Interview Office of Inspector General [OIG] Agents. A steward has the right to conduct all such activities on the clock (see below)

On page 31-2, 31-3 of the JCAM both parties have agreed to the following language:

Information. Article 31.3 provides that the Postal Service will make available to the union all relevant information necessary for collective bargaining or the enforcement, administration, or interpretation of the Agreement, including information necessary to determine whether to file or to continue the processing of a grievance. It also recognizes the union’s legal right to employer information under the National Labor Relations Act. Examples of the types of information covered by this provision include:

• attendance records

• payroll records

• documents in an employee’s official personnel file

• internal USPS instructions and memorandums

• disciplinary records

• route inspection records

• customer complaints

• handbooks and manuals

• photographs

• reports and studies

• seniority lists

• overtime desired and work assignment lists

• bidding records

• wage and salary records

• training manuals

• Postal Inspection Service Investigative Memoranda (IM)

• Office of Inspector General Reports of Investigation (ROI)

To obtain employer information, the union need only give a reasonable description of what it needs and make a reasonable claim that the information is needed to enforce or administer the contract. The union must have a reason for seeking the information—it cannot conduct a fishing expedition into Postal Service records

M-00012 reads in relevant part:

Article XVII, Section 3 of the National Agreement states that interviews with aggrieved employees, supervisors and witnesses shall not be unreasonably denied. It is anticipated that supervisors will respond to reasonable and germane questions during the investigation of a grievance. In this instance the specific nature of the questions and or reasons for the response or lack thereof is not known

M-00988 reads in relevant part:

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The subject matter of interviews with supervisors has been previously settled in Case NC-S-8463 ("It is anticipated that supervisors will respond to reasonable and germane questions during the investigation of a grievance.") There is no negotiated requirement that questions be submitted in writing in advance, by either party.

Madam Arbitrator, both parties have made it abundantly clear that we have the right to interview members of Management and we do not have to jump through hoops to do so. Management’s entire relevancy letter is a violation of Articles 17 & 31. There are no set criteria we must meet to request information. As Mr. Stoddard stated in the remedy hearing, there is no criteria we must meet outlined in Articles 17 and 31. Again, the Union cannot overstate the fact that Management’s entire letter is a clear violation of our National Agreement.

Another one of the ‘relevancy’ letters sent to Mr. Stoddard, on July 30th and again on August 5th reads as follows:

 July 30th, 2021

 To: Cliff Stoddard, NALC Steward

Subject: Copy of any discipline and any investigative interviews conducted by Kirby Ragsdale at the Madison MS Post Office

 Ref: Grievance: (Compliance with award 20139761)?

 Dear Mr. Stoddard,

This letter is in response to your request for information dated July 30th, 2021 for “4. Copy of any discipline and any investigative interviews conducted by Kirby Ragsdale at the Madison MS Post Office”. ***Because your request is for information*** ***outside your bargaining unit and is not presumptively relevant, we are seeking to know the relevancy of your request.*** Be advised that your request has not been denied, rather, we are seeking to know the relevancy of the information sought.

Because the information sought is not presumptively relevant, ***the Postal Service requests that you state with specificity how the information is relevant and necessary to the performance of the union’s collective bargaining duties***. This would be necessary to know because NRLCA and APWU bargaining employees are not covered by the NALC contract.

For clarity, I will reiterate that management is not refusing to provide you with information which is relevant and necessary to the performance of your collective bargaining duties. At this time, we are requesting that you ***communicate the specific relevancy*** of the request so we may continue to process it.

Thank you for your anticipated cooperation.

Sincerely Michael Suman

Madam Arbitrator, the Union is extremely fortunate here because National Arbitrator Richard Mittenthal has already addressed this very issue in case # H4T-2A-C 36687, dated November 16, 1990 (Union Exhibit 6). He opines, in relevant part, as follows:

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The Step 2 answer, prepared on November 20 by someone on Traugott's staff, read in part:

A review of the facts indicates that the APWU Local 7048 has no contractual right to access to the minutes of the quality of work life meeting. The record indicates that the APWU declined during contract negotiations to participate in the QWL process. Therefore, their elimination from the program was by choice. Management has no obligation (and since another craft union is a primary participant), and no right to make this information available to the APWU.

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The relevant provisions of the 1984 National Agreement read in part:

 Article 17, Section 3

 The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied. (Emphasis added)

 Article 31, Section 2

The Employer will make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information. (Emphasis added)

Pg. 8-9.

On the basis of NALC's claim that such information was "necessary" for collective bargaining, Bernstein had held and I expressly agreed:

 ...This is a sufficient showing to comply with the [Article 31, Section 2] mandate that the data sought must be "relevant information necessary for collective bargaining."

 …[T]he arbitrator [cannot be made] the judge of the Union's bargaining needs. The decision as to what data is needed to prepare the Union's bargaining proposals is one that only the Union can make. If it asserts that it needs this data for that purpose, and there is no reason to conclude that the assertion is not truthful, that is enough to satisfy the mandate of [Article 31, Section 2]…

These findings should be kept in mind in evaluating the "relevancy" arguments made in the instant case.

Pg. 10.

 No doubt some type of investigation precedes the submission of a grievance. Information is developed and a decision is made by APWU as to whether or not a grievance is warranted. If there seems to be no merit in a particular complaint, presumably no grievance would be filed. It is for the APWU alone to "determin[e]...if a grievance exists...", to "determine whether to file...a grievance..." If the information it seeks has any "relevancy" to that determination, however slight, its request for this information should be granted. Assume for the moment that the EI/QWL minutes were not "relevant" to the work jurisdiction grievance filed five weeks after APWU initially requested these minutes. That assumption cannot control the disposition of the present case. Whether a piece of information is "relevant" to the merits of a given claim is one thing; whether such information is "relevant" to APWU's determination to pursue (or not pursue) that claim through the filing of a grievance is quite another. The latter question allows "relevancy" a far broader reach and should have permitted the APWU, for the reasons already expressed, to receive the appropriate EI/QWL minutes. The Postal Service view that APWU's request for these minutes was a mere "fishing expedition" is not persuasive.

Pg. 11.

 This argument has in part already been answered. Surely, the restrictions on permissible subject matter for EI/QWL groups could be ignored in a given meeting and work jurisdiction could become a matter of group discussion and perhaps even tacit agreement. That may not be what happened. But the only way APWU could discover what was actually said in these meetings was to examine the minutes. Management refused to allow APWU to do so. It thus prevented APWU from making an informed and measured "determin[ation]" as to whether "a grievance exists" or whether "to file...a grievance." That was improper under Articles 17 and 31.

 Even if Management was correct in rejecting APWU's request in September 1986, the fact is that a grievance was filed on October 24, 1986, protesting an alleged incursion on APWU's work jurisdiction. The APWU request for the minutes was still pending as of October 24. By then, however. Management had rearranged the dispatch function and perhaps reassigned work. Management had acted but nevertheless continued to refuse APWU's request for the minutes. What the minutes contained I do not know. They could possibly have revealed the kind of considerations which prompted the reassignment of the dispatch function; they could possibly have revealed some conflict between what Management told the Mail Handlers and what Management later told APWU in processing the work jurisdiction grievance; and so on. They could very well have proven "relevant" to APWU's case on the merits. APWU had a right under Article 17 to "review... records necessary for processing a grievance..."; APWU had a right under Article 31 to "relevant information...necessary to determine whether...to continue the processing of a grievance ..." These rights were simply not honored.

National Arbitrator Mittenthal’s decision makes it crystal clear that the Union can obtain relevant information from *outside* of our craft and collective bargaining unit. He also makes it clear, as you have in previous decisions, that the Union determines the relevancy of our information request as to whether to file or to continue the processing of a grievance. This is a matter already settled Madam Arbitrator. Not only by National Arbitrator Mittenthal but by you as well. The Union asks that you find in its favor that Management did indeed violate your decision as it pertains to Remedy # 6.

 **IIII. ARBITRATOR’S AWARD #7**

7. By request of the Union, Postmaster Ragsdale shall be immediately removed from his position as Postmaster at the Clinton Post Office. Management may immediately assign Mr. Ragsdale in any other position which does not require him to supervise employees, nor have interaction with employees over which he has responsibility for disciplinary decisions or may affect their continued employment with the Postal Service. He also shall not be allowed to supervise/manage city letter carriers directly or indirectly for a period of two (2) years, over which time the Service is ordered to provide training and basic human resources assistance to prepare Mr. Ragsdale for future Management positions which will require him to supervise employees. Over the same two-year period, Postmaster Ragsdale shall be personally and directly monitored by a manager of higher level, whenever Mr. Ragsdale is required to have contact with bargaining unit employees. This condition is based on a history of ineffective employee communication, and a pattern of bullying and intimidation to accomplish his own work goals. Caution should be used in the placement of this Manager to ensure that the position meets with Mr. Ragsdale's knowledge, skills and abilities, or lack thereof, so that he is not allowed to adversely affect the working conditions of employees and membership of the NALC.

The Union feels that Management violated the above remedy when they

assigned Kirby Ragsdale to the Madison Ms. Post Office, which requires him to

supervise employees. The Union feels the Arbitrator’s decision is clear when

she differentiates employees and city letter carriers. The Union also feels that

the Arbitrator has the authority to grant such a remedy and will explain our

reasoning below.

On page 15-1 of the JCAM both parties agreed to the following language:

 • Alleged violations of other enforceable agreements between NALC and the Postal Service, such as Building Our Future by Working Together, and the Joint Statement on Violence and Behavior in the Workplace. In his award in national case Q90N-4F-C 94024977, August 16, 1996 (C-15697), Arbitrator Snow found that the Joint Statement constitutes a contractually enforceable agreement between the parties and that the union has access to the grievance procedure to resolve disputes arising under it. Additionally, in his discussion of the case, Snow writes that ***arbitrators have the flexibility in formulating remedies to consider removing a supervisor from his or her administrative duties***, if a violation is found. (Note: ***The National parties disagree over the meaning of administrative duties.);***

The definition of Administrative is as follows:

 Managerial, supervisory

In his award in national case Q90N-4F-C 94024977, August 16, 1996 (C-

15697), Arbitrator Snow opined in relevant part as follows:

 The problem of a party making what was believed to be a nonbinding proposal but, in reality, was a binding promise is an old one. (See, e. g., Embry v. Hargadine, McKittrick Dry Goods Co., 105 S. W. 777 (1907)). The context, of course, cannot be ignored in determining whether or not a statement constituted a gratuitous "pledge" or a binding promise. As Restatement (Second) observed:

 The meaning given to words or other conduct depends to a varying extent on the context and the prior experience of the parties. Almost never are all the connotations of a bargain exactly identical for both parties; it is enough that there is a core of common meaning sufficient to determine their performances with reasonable certainty or to give a reasonably certain basis for an appropriate legal remedy. (See, § 20, comment b, p. 59 (1981), emphasis added).

 As the U. S. Supreme Court has made clear, an arbitrator is a "creature of contract;" and an arbitration award is enforceable "only so long as it draws its essence from the collective bargaining agreement." (See, United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U. S. 593 (1960)). Contractual language is the best evidence of the parties' promissory intent. One arbitrator concluded:

 It is a basic and fundamental concept in the arbitration process that an arbitrator's function in interpreting and applying contract language is to first ascertain and then enforce the intention of the parties as reflected by the language of the and pertinent essential provisions involved. As a necessary corollary is the principle that if the language being construed is clear and unambiguous such language is ii-se f the best evidence of the intention of the parties. And when language 13 so selected by the parties leaves no doubt as to the intention, this should end the arbitrator's inquiry. (See, Ohio Chemical & Surgical Equipment Company, 49 LA 377, 380 - 381 (1967), emphasis added).

 The Employer asserted that it intended to make a "pledge" in the Joint Statement according to which it pledged itself to help eliminate violent behavior in the workplace. Management did not intend its " pledge" to constitute an enforceable promise because " there was no intent to alter, amend, or modify the National Agreement." (See, Tr. 58). The Union responded that its intent was to enter into an enforceable promise with management.

 An examination of the purpose for the Joint Statement, the actual verbiage itself, and dispute resolution processes used by the parties provide objective manifestations of their intent. It is unrebutted that the principal purpose of the parties in publishing the Joint Statement was to lend their mutual weight to an anti -violence campaign in the workplace. Words used by the parties expressed their concern that combating violence in the workplace was such a high priority it was necessary to take an unprecedented step of jointly issuing a credo against violence. To convey the intensity of their commitment to reducing violence in the workplace, the parties stated:

 The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.

 ….

 But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated. (See, Joint Exhibit No. 4, emphasis added).

 ***A representative of each party signed the document***. Without regard to the unexpressed

 intentions of the parties, the document makes clear that the parties made promises to each

 other to take action. The parties addressed their statements to every member of the postal

 organization. They stated that:

'Making the numbers' is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. ***Those whose unacceptable behavior continues will be removed from their positions.*** (See, Joint Exhibit No. 4), emphasis added).

 On one hand, the Employer argued that management was completely serious about an intent to take action in order to end violence in the workplace. On the other hand, the Employer asserted that it lacked the requisite intent to be contractually bound by the language of the Joint Statement. The Employer contended that, as expressed in the Joint Statement, the parties made a "pledge " of their efforts to accomplish objectives set forth in the document. The reference to the understanding between the parties as a "pledge" indicated to the Employer that the parties merely were communicating their disdain for violence in the workplace and were pledging themselves to end such misconduct. As the Employer viewed it, the Joint Statement definitely was not a contract but, rather, an effort to "send a message to stop the violence." (See, Employer ' s Post-hearing Brief, 13).

 The Employer supported its theory of the case with testimonies from representatives present at discussions that led to the Joint Statement. As Mr. David C. Cybulski, Manager of Management Association Relations, testified:

Following an exploration, again, of the circumstances leading to the tragedy [ at Royal Oaks], the thought developed at the table that we should perhaps communicate what it is that we are doing. We are working collegally. We are trying to jointly approach these issues, as complex as they are. There has been a recognition here that there is something about the postal culture and perhaps something about the postal climate that we need to address and address in a more universal way than management exclusively issuing a statement or the labor union exclusively issuing a statement. (See, Tr. 90-91, emphasis added).

According to the Employer, it sought, in the aftermath of the "Royal Oaks" incident, to quell anxieties of **employees** by reaffirming an intent to end violence.

 While it might be possible to interpret the word "pledge" in the Joint Statement as a nonpromissory commitment, the Statement must be interpreted as a whole document in order to assess its effect. It is a deeply rooted rule in aid of contract interpretation that a document should be interpreted so that its provisions make sense when read together. As Restatement (Second) observed, " since an agreement is interpreted as a whole, it is assumed in the first instance that no part of it is superfluous." ((§ 203, comment b, 93 (1981). The objective of reading a whole document is to give significance to each part and an interpretation is preferred that produces such a result.

 Words in the last sentence of the Joint Statement such as "pledge " and "efforts" must be read in conjunction with strong language throughout the prior six paragraphs which referred to "time to take action to show that we mean what we say," or "we will enforce our commitment," and "no tolerance of violence." Such statements indicated that the parties' past efforts had been less than successful and that the "Royal Oaks" tragedy signaled to the parties their need to make a drastic change in postal culture. The Joint Statement marked a departure from the past and pointed the way to organizational change. This was a document that evidenced an intent to take action rather than a mere statement of opinions and predictions. It was a "manifestation of intention to act " which justified a conclusion that a commitment had been made. After making strong promissory statements, ***the parties signed the document, signaling more than a gratuitous pledge.***

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 The bargain theory of consideration supports a conclusion that the mutual exchange of promises in this case constituted consideration. The mutual exchange of promises involved a commitment from each party " to make the workroom floor a safer, more harmonious, as well as a more productive workplace." (See, Joint Exhibit No. 4). Use of the negotiated grievance procedure was an incidental result of the promissory exchange between the parties. Moreover, there was unrebutted evidence that the Employer, in fact, has benefited from the exchange between the parties and has used the Joint Statement in regional arbitrations against workers who exhibited behavior inconsistent with the Joint Statement. There, in fact, was consideration in the bargained - for exchange between the parties. The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including ***removing a supervisor from his or her administrative duties***. As the U. S. Supreme Court instructed:

There [formulating remedies] the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. (See, United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U. S. 593 (1960)).

Madam Arbitrator, the decision by national Arbitrator Snow makes it quite clear that the Joint Statement on Violence and Behavior was a contract between all the parties. Each party was a signatory to the agreement and each party exchanged a commitment to make the workroom floor safer, more harmonious, as well as a more productive workplace. The decision also made it clear that the Arbitrator has the authority to remove the Supervisor from his/her administrative duties. It does not say nor does it distinguish between which crafts the Arbitrator can remove the Supervisor from their administrative duties as all the parties signed off on the contract. Hence the Supreme Court decision cited at the bottom of page 22 of his decision.

The Union included in its cites to the Arbitrator two post hearing briefs. These post hearing briefs were turned in by the parties to National Arbitrator Snow before he made his land mark decision. The Union would like to point out that the exact same argument the parties are making in this remedy hearing are the same arguments already considered and decided upon by National Arbitrator Snow. Management will have you believe that your authority is relegated to crafts. The U.S. Supreme Court and National Arbitrator Snow disagree.

Management’s post hearing brief reads in relevant part as follows:

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As a result of the Royal Oak murders top Postal management sought to establish joint leadership committees comprised of management associations and ***labor unions***. These joint leadership committees were in no way intended to be an extension of labor negotiations, rather they were intended to dispel the autocratic militaristic management style that many have come to associate with the Postal Service. The Joint Committee on Workplace Violence led the way with the seminal Joint Statement of Violence and Behavior in the Workplace. This positive statement was followed up by an unprecedented joint telecast ***by the nine signatories*** on the Postal Satellite Television Network (PSTN) heralding a new unified front against violence in the workplace. (See USPS Ex. 44)

The Joint Statement of Violence and Behavior in the Workplace ushered in a new spirit of cooperation. The ***parties pledged to work together*** to end the senseless violence in the workplace. Unfortunately for every single Postal employee, the NALC has chosen to walk away from the spirit of the Joint Statement and now has decided, albeit through the post hearing brief of a field advocate at the Area level, that the Joint Statement was nothing more than extended contract negotiations for the NALC. They somehow have convinced themselves that all nine signatories to the Joint Statement were meeting on the NALC’s behalf when they met to sign the Joint Statement. Any global understandings within the Postal Service concerning cooperation and jointness to end the violence have ben conveniently forgotten

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 The legal realities of the situation were that none of the parties had the authority to give away individual statutory or constitutional due process rights. ***The notion that these nine (9) diverse groups came together to devise a system that creates such a result strains credibility***.

Madam Arbitrator, it is clear that, in Management’s post hearing brief, the nine

signatories were as one pledging to work together to end senseless violence in

the workplace. Management even acknowledges, backhandedly, that it was the

NALC that took the Joint Statement to hearing to make it an enforceable

agreement between the nine signatories and not just a statement.

The Union’s post hearing brief reads in relevant part as follows:

Pg. 9-12

 But, on March 18, 1992, immediately after the signing of the Joint Statement, Deputy Postmaster General Michael Coughlin, in a Memorandum to Headquarters Officers, stated:

 I am pleased to announce that ***we*** have signed a joint statement ***committing the Postal Service and eight of its labor and management organizations*** to ***eliminate violence and other inappropriate behavior from our workplace.*** [emphasis added]

That is hardly the language of “nothing more” than a pledge. Mr. Coughlin is the second highest official of the Postal Service and a member of its Board of Governors. He is generally not given to frivolous, meaningless, empty rhetoric.

 Indeed, before the Joint Statement was signed, Mr. Coughlin had signaled the determination to go beyond mere words and to enter into the give and take of agreement necessary to effect real change.

 USPS Exhibit 46 is a report by Kenneth Vliestra, the Executive Director of one of the participating management associations (the National Association of Postmasters of The United States) regarding a January 21, 1992 ***meeting of the organizations that ultimately signed the Joint Statement.***

 The report noted that:

One of the major topics of discussion was the position paper drafted by Vince Sombrotto, President of NALC…the final wording of this statement was not yet agreed to ***by all parties***.

 The report went on to quote Deputy Postmaster Coughlin’s remarks at the meeting:

…in order for us to get where we have to be, ***each group***, ***each organization***, has to be willing to give a little. We have to work together, finding areas of agreement to build on our relationships. I can admit that we have to change here at headquarters. I, and other postal officials here will sign that statement being drafted. We will acknowledge that mistakes were made. We will agree that numbers are not an excuse for abuse…

Even earlier in the process that led to the signing of the Joint Statement, senior representatives of USPS and the other signatory organizations were talking the talk of change, commitment, and the give and take of agreements. USPS Exhibit 16 is a contemporaneous report by Vincent Palladino, then Executive Vice-President of the National Association of Postal Supervisors, of a meeting the senior representatives of USPS and the involves organizations on December 3, 1991, just weeks after the Royal Oaks tragedy.

 The report noted:

Our discussion included a lot of talk of the USPS’ goal of treating everyone with dignity and respect and implementing a participative style of management at all levels. All of the organization officials agreed that this was still not the case in many of our divisions, MSCs and post offices.

Another point of agreement . . .was that the Postal Service has repeatedly rewarded (through promotions and bonuses) those who make the ‘numbers,’ regardless of how they make them. This fault was placed on all levels of management – all the way to USPS Headquarters.

All present acknowledged that in some places there is an unacceptable level of stress on the workroom floor and that an authoritative style of management too often prevails. . .

\* \* \*

. . . it is the one point on which we all fully agreed, the Postal Service does nothing to discourage the authoritarians. On the contrary, those who make the numbers are rewarded. . .

 \* \* \*

The meeting ended with an agreement to draft and sign a joint statement that will denounce all forms of violence or threats of violence, and that ***we will eliminate all form of intimidation, harassment and disrespect usually associated with authoritarian managers***.

 Mr. Palladino then editorialized a bit:

. . . Top management has to give up some of their power in exchange for the employees’ commitment to resolving our differences. It sounds simple, but it won’t be easy to implement.

 Madam Arbitrator, it is quite obvious that the Joint Statement on Violence and Behavior was not designed solely for the NALC. This is a concerted effort between all the parties to extinguish authoritarian managers from their administrative duties. There need not be an intervention, in this arbitration, by any of the other unions as the parties were already signatories to the JSOV. They had all agreed to its intent, which was to remove those managers who refused to treat employees with dignity and respect from their positions.

 The APWU (Ex. U-5) has filed a grievance supporting the Arbitrators decision. Management will have you believe that the grievance is nonexistent. As my grandfather used to say “if it looks like a duck, walks like a duck and quacks like a duck..it must be a duck. Madam Arbitrator it looks like a grievance, it has a GATS number like a grievance and Management slammed his books on the table in revolt when I produced the grievance, so it must be a grievance.

 As for your authority to issue the remedy as the Union interprets it, the collective bargaining agreement states that “all decisions of an arbitrator will be final and binding” and that “all decisions of an arbitrator shall be limited to the terms and provisions of this agreement, and in no event may the terms and provisions of this agreement be altered, mended, or modified by an arbitrator.” It is silent on the remedies available.

 But the Supreme Court has made it clear that “the labor arbitrator’s source of law is not confined to the express provisions of the contract, as the industrial common law-the practices of the industry and the shop-is equally part of the collective bargaining agreement although not expressed in it” *United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581-82*

The Union asks that you find in its favor that Management did indeed violate your decision as it pertains to Remedy # 7.

 **V. REMEDY**

1. Management shall fully and completely abide by Arbitrator Glenda August’s decision for grievance G16N-4G-C 20139761 dated 04/21/2021.
2. Management is once again issued a cease and desist from violating Articles 15.3, 17, 31 and M-01517 via Article 19 of the National Agreement, by failing to properly comply with settlement agreements, DRT decisions, Pre-Arbitration settlements and Arbitration awards; as well s failing to provide relevant requested information to the Union.
3. Management shall pay ALL City Letter Carriers (including CCAs/PTFs) in the Clinton, MS Post Office $10.00 a calendar day beginning 06/23/2021 until management fully complies with Arbitration award G16N-4G-C 20139761.
4. The two-year period mentioned in remedy #7 for Arbitration Award G16N-4G-C 20139761 shall begin anew with the issuance (date) of the instant award.