

American Postal Workers Union, AFL-CIO

GRIEVANCE
STATUS LETTER
(CENTRAL REGION)

| | | |
|--|-----------------|------------------------------|
| GRIEVANT-PERSON OR UNION FROM LINE 8 (LAST NAME FIRST) | | APWU-USPS NATIONAL GRIEVANCE |
| CLASS ACTION | | |
| WORK LOCATION CITY AND ZIP CODE FROM LINE 10 | | USPS REGIONAL GRIEVANCE |
| Des Moines, IA | | I90C-11-C95046971 |
| CONTRACT ISSUE | CRAFT | APWU REGIONAL GRIEVANCE |
| ART. 19 - Handbooks and Manuals | Clerk | 13090 |
| | DATE | APWU LOCAL GRIEVANCE |
| | October 8, 1996 | 77-95-10475 |

TO
 DIRECTOR, INDUSTRIAL RELATIONS
 AMERICAN POSTAL WORKERS UNION, AFL-CIO
 1300 L STREET, N.W.
 WASHINGTON, D.C. 20005

D/A: 9/28/96 - Reg.
 SUSTAINED
 ADVOCATE:
 Robert D. Kessler

PYMT. # 0504438

- WITHDRAW FROM STEP 4 OR ARBITRATION
- SETTLEMENT
- ABITRATION AWARD
 - NATL. CERTIFICATION
 - LOCAL CERTIFICATION

Arbitrator's Statement - John C. Fletcher
 \$700.26 -- D/H: September 6, 1996

ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED.

The arbitrator stated, "The grievance is sustained. Managment violated Article 19 of the Agreement, and Handbook RE-13, when it did not install full-height lockers in the newly remodeled men's locker room in the Des Moines, Iowa Postal Facility. Managment within 90 days of the date of this award, is directed to remodel or replace all existing half-size lockers with "individual full-height lockers" as required by Section 327.3 of Handbook RE-13.

cc: NBA St. Louis Div. Office, APWU
 President, Des Moines, IA A/L (0044), APWU

LFP:rmt

COURTESY OF:
 LEO F. PERSAILS, COORDINATOR
 CENTRAL REGION
 AMERICAN POSTAL WORKERS UNION, AFL-
 330 SOUTH WELLS STREET RM 1402

REGULAR REGIONAL ARBITRATION PANEL

| | | |
|----------------------------------|---|-------------------------------|
| In the Matter of the Arbitration |) | |
| |) | |
| between |) | Grievant: Class Action |
| |) | |
| United States Postal Service |) | Post Office: Des Moines, Iowa |
| |) | |
| and |) | Case No: I90C-II-C 95046971 |
| |) | |
| American Postal Workers Union |) | |

Before: John C. FLETCHER, Arbitrator

Appearances:

For the Postal Service: Marcia G. Grant
Labor Relations Specialist - Hawkeye District
Post Office Box 189994
Des Moines, Iowa 50318-9401

For the Union: Robert D. Kessler
National Business Agent - Clerk Division
1001 East 101st Terrace, Room 390
Kansas City, Missouri 64131

Place of Hearing: Des Moines, Iowa

Date of Hearing: September 6, 1996

Date of Award: September 28, 1996

Relevant Contract Provisions: Article 19 - Handbook RE-13

Contract Year: 1990 - 1994

Type of Grievance: Contract

Award Summary

The grievance is sustained. Management violated Article 19 of the Agreement, and Handbook RE-13, when it did not install full-height lockers in the newly remodeled men's locker room in the Des Moines, Iowa Postal Facility. Management, within 90 days of the date of this award, is directed to remodel or replace all existing half-size lockers with "individual full-height lockers" as required by Section 327.3 of Handbook RE-13.



John C. FLETCHER, Arbitrator

607 -
A.P.W.U.

OPINION AND AWARD

190C-11-C 95046971 - Des Moines, Iowa
Class Action

Background:

In December 1994, APWU's Steward noticed that in the process of relocating existing employee locker rooms in the Des Moines, Iowa main Post Office, Management was installing full-size lockers in the women's areas, but only half-size lockers in the men's areas. The failure to provide full-size lockers for male employees generated discussions and E-mail transmissions between APWU and Management, which eventually resulted in the filing of the instant grievance, contending that Handbook RE-13 was not being followed, when only half-size lockers were installed in the men's locker room.

APWU's grievance was denied on both procedural and substantive grounds. Management argued that earlier, in 1991, half-size lockers were installed in a remodeled men's locker room without complaint, therefore, APWU was now precluded from filing a grievance when the locker rooms were relocated in 1994 remodeling program.

On the merits, Management took the position that Chapter 3 of Handbook RE-13, relied upon by APWU in support of a requirement for full-size lockers, was inapplicable. Chapter 3, Management says, is applicable only to "owned facilities." The Des Moines installation is a "leased facility." And while Handbook RE-13 discusses requirements for lockers in "owned facilities," it does not mention or deal with locker room requirements in leased facilities. Therefore, the handbook relied upon by APWU in support of its grievance is not applicable, it is argued.

Further, the Service argued, that it is clearly articulated in Handbook RE-13 that managers are encouraged to use their best judgment and may deviate from suggested criteria that are not in the best interests of the Postal Service. In this matter there simply was not sufficient space to provide full-size lockers in the Men's area, and it was in the best interests to use half-size lockers.

APWU responds that a failure to include mention on locker requirements in the Chapter 4 of Handbook RE-13, the chapter dealing with leased facilities, does not excuse Management from its obligations in this area. For example, while Chapter 4 does not mention sanitary requirements, etc., no one would sanely argue that these accommodations are not necessary in a leased facility, in the same manner as they would be required in an owned facility.

With respect to space considerations, APWU contends that the men's locker room could easily be expanded into an area that is now just being used as an equipment storage area, without too much difficulty.

And on the time limit contention, APWU contends that it should not be penalized because it did not grieve the installation of half-lockers when an earlier remodeling project was undertaken in 1991. At that time, physically, there simply was no way that the locker room could be expanded to accommodate enough full-size lockers for all employees, therefore it overlooked the installation of some half-size lockers, which is not the case now. All of the lockers in the men's locker room are half-size, there exist more lockers than are needed to accommodate the full-time staff, and the room could easily be expanded to accommodate additional full-size lockers, it is argued.

DISCUSSION

The Arbitrator is not persuaded that the Service's arguments on timeliness are persuasive. In 1994, extensive remodeling and relocation of locker rooms occurred in the Des Moines facility. The effect of this remodeling and relocation project upon employees considerations and entitlements is a new and separate incident from any others that may have preceded it. That APWU may not have filed a grievance over concerns it may or may not have had with any earlier locker room remodeling projects, occurring in 1991 and earlier, does not forever foreclose it from the timely filing of grievances on other remodeling projects that occur subsequently.

To embrace Management's arguments on this point would be akin to holding that in all instances when a perceived contract violation occurred and no grievance was filed that APWU would be foreclosed in the future from filing a grievance on a similar but new occurrence of the same type situation. For example, an employee is deprived of an overtime opportunity but fails to file a grievance. This failure does not foreclose the filing of a grievance the next time he is deprived of an overtime opportunity. The Service's timeliness arguments must be rejected. They not only lack merit, but seem to be frivolous.

With regard to the merits, APWU has argued that when a Postal facility is being remodeled, Section 327.3, of Handbook RE-13, obligates Management to provide full-height employee lockers if the facility is not in a warm climate. Des Moines, Iowa is not in a warm climate, employees wear overcoats and other outer-garments to work in winter months and have a need for full-height lockers. APWU has offered testimony that many employees simply are not able to stow their winter outer-garments, overcoats, parkas, snowsuits, and boots, in the half-size lockers now provided in the men's locker room.

Section 327.3 of Handbook RE-13 provides:

327.3 Locker Rooms

An individual full-height locker is to be provided for each employee, except in warm climates where overcoats are not worn, where half-size lockers may be used. All lockers are anchored according to safety standards. Kickplates are installed at the bottom to prevent dust and litter from going under lockers. Enough benches or stools are provided to handle the largest tour (Handbook AS-504).

This language seems pretty straight forward. It states that an individual full-height locker is to be provided each employee, except in warm climates. Management responds that while this language may be straight forward, it is only applicable in remodeling projects in USPS-owned buildings. Section 327.3 is found in Chapter 3 of Handbook RE-13. That chapter pertains to owned buildings. The Des Moines facility is a leased facility. Leased facilities are covered by Chapter 4, and no similar language to 327.3 can be found in Chapter 4. Thus, Handbook RE-13 cannot be read as requiring Management to provide full-height lockers when the Des Moines locker rooms were relocated in 1994, it is argued.

In reviewing the complete text of Handbook RE-13, the Arbitrator concludes that the absence of mention of lockers in Chapter 4 does not excuse Management from its obligation to provide full-height lockers for each employee in the Des Moines facility, upon remodeling and relocating locker room facilities. One of the stated objectives of Handbook RE-13, as indicated in part 121.1 a., is to provide:

- a. Environmental conditions that meet or exceed minimum levels of heating, ventilating, cooling, lighting, and aesthetics necessary for employee welfare and productivity.

This objective, most certainly, is contemplated as appropriate in both owned facilities (Chapter 3) and leased facilities (Chapter 4). Any other conclusion would be nonsensical. With respect to environment and aesthetics Chapter 1 does not distinguish

between owned and leased facilities. The objective is applicable to both. And, when the first sentence of text in Chapter 4 is considered this conclusion becomes even more obvious. This sentence deals with objectives and states:

411 Objectives

The repair and alteration program in leased buildings has two of the same objectives as those in owned buildings: to provide a suitable environment and to reduce operation and maintenance costs.

A "suitable environment" in two Postal Service facilities had ought not be different simply because one building may be leased and another may be owned. This too would be nonsensical. Accordingly, if it was appropriate, in an owned facility (Chapter 3), to require a colder-climate suitable locker-room environment, by providing employees with full-height lockers, then it must be concluded that this same environmental requirement exists in a leased facility (Chapter 4). Any other conclusion would produce absurd results. Now it would not be the climate that dictated locker size

The reliance of the Postal Service on a distinction between Chapter 3 and Chapter 4, as to its obligations with respect to locker room requirements is baffling, to say the least. In substance what has been argued is that if it is not mentioned in Chapter 4, it is not a requirement in a remodeling project. The defect in this logic is found in Section 328.2, Provisions for the Handicapped. That Section requires that all renovations must comply with requirements making the building accessible to the physically handicapped. Like locker room requirements, no similar provision is found in Chapter 4. Would Management argue that because Chapter 4 deals with leased facilities it would be appropriate to renovate and ignore requirements of Chapter 3 to make the facility accessible to the physically handicapped? The Arbitrator does not believe that this would occur. (Other examples with respect to other requirements could be cited.)

The Service has also argued that space constraints dictated the use of smaller lockers in the men's locker room. APWU, for the very outset of this matter, has argued that space immediately adjacent to the area of the relocated men's locker room could be utilized for enlargement of the area and full-height lockers could be installed. The Arbitrator was given a tour of this area and noted that space immediately adjacent to the locker room was merely being used as a storage area, with equipment and carts being shoved helter-skelter just to get them temporarily out of the way, it seemed. The Service responded to APWU's arguments about using this space to expand the locker room with generalized comments that it was Management's right to manage, the Union was unaware of any long-term plans to utilize this area, etc. And APWU is not privileged to tell Management how to best utilize its space.

The Arbitrator does not dispute that Management has the right to manage its space requirements, and perhaps the Union is unaware of long-term plans on needs and utilization of certain space. However, if it was not feasible to expand the locker room into the area suggested by APWU then Management should have shared with APWU just why it was not feasible to do so. In view of the fact that Handbook RE-13 placed an obligation upon Management to provide full-height lockers for all employees, if space constraints made this impossible to achieve, then Management should have made this known then and there, rather than dismiss suggestions from APWU as to space utilization and accommodations as being outside the scope of Union responsibility.

The Arbitrator finds that the grievance has merit. It will be sustained.

AWARD

The grievance is sustained. Management violated Article 19 of the Agreement, and Handbook RE-13, when it did not install full-height lockers in the newly remodeled men's locker room in the Des Moines, Iowa Postal Facility. Management, within 90 days of the date of this award, is directed to remodel or replace all existing half-size lockers with "individual full-height lockers" as required by Section 327.3 of Handbook RE-13.



John C. FLETCHER, Arbitrator

Mt. Prospect, Illinois
September 28, 1996

