

-Vice-President's Report-

Two for Our Side

-Gloria Belarde-

Through the grievance process, the Union has been successful on both the cell phone policy, as well as the policy that prohibited Carriers from bringing personal items onto the workroom floor. The Dispute Resolution Team has recently resolved these issues at the Step B level.

The Seattle District Policy on cell phones came out in 2003. This policy prohibited Carriers from having their cell phones on the workroom floor. Calls on your personal cell phone would only be allowed during authorized break and lunch periods. This policy was grieved at different stations, as well as a class action for the entire Branch.

The Dispute Resolution Team on 1/28/05 resolved the grievances. The decision states: *"In accordance with Seattle District policies, personal cellular telephones are not prohibited but cell phone usage should not negatively impact or disrupt the productivity of the operation. Cell phones shall only be used when it is safe and reasonable to do so."*

This allows the Carriers to have their cell phones with them if a family member needs to be in contact or in other cases when it's essential to be contacted by the schools, doctors or other such important contacts. Keep in mind this decision does not allow for Carriers to use cell phones just to chit-chat.

Another policy that was implemented last year throughout Branch 79 instructed Carriers that they would no longer be allowed to have personal items on the workroom floor. This was grieved at a few installations, citing that management violated a well-established past practice.

The Dispute Resolution Team resolved the grievance. The decision stated: *"Management violated Article 5 of the National Agreement by unilaterally terminating an es-*

tablished past practice which allowed City Letter Carriers to bring personal items onto the workroom floor. Upon receipt of a copy of this decision, Management is directed to immediately reinstate and continue the established past practice of allowing Carriers to bring personal items onto the workroom floor. The Carriers are reminded to observe good housekeeping practices."

Before the decision was reached, the B Team contacted the Western Area and the National Business Agent's office. It was mutually agreed that JCAM pages 5-1 through 5-4 were controlling in this type of dispute. The decision was reached on January 14, 2005.

The National parties have agreed that Article 15 of the National Agreement gives the Step B Teams the *"responsibility for issuing decisions that are fair and consistent with the contract and the Joint Contract Administration Manual (JCAM), and written in a manner that is both educational and informative."* This was agreed to in the "Memorandum of Understanding" between the USPS and the NALC on April 25, 2002. We now have management in one of our installations who has refused to abide by the Step B decision. Their argument is that the B Team does not have the authority to change or rescind a policy that was issued by the Chief Operating Officer and Executive Vice President of the Postal Service.

The Union has again had to take the issue forward through the grievance process. It's our position that, in this installation, management has violated Article 15 of the contract when they refused to abide by a Step B decision that was jointly reached by the parties. This included a member from management's side. When a resolution is reached on this issue, I'll inform you of the decision that was made by the parties. So for the time being, remember to follow the supervisor's instructions.

SEATTLE DISTRICT
DISPUTE RESOLUTION TEAM



DECISION
NALC/USPS STEP B
DISPUTE RESOLUTION TEAM
NALC: Steve Wooding
USPS: Vicki Johnson

Decision:	RESOLVED
USPS Number:	E01N-4E-C 03093211
Grievant:	Class Action
Branch Grievance #:	78-C-03SE
Branch:	79
Installation:	All Nine Installations¹
Delivery Unit:	All Units
State:	Washington
Date Step A Initiated:	February 13, 2003
Step A Meeting Date:	March 12, 2003
Date Received at Step B:	March 24, 2003
Remanded to Step A:	May 14, 2003
Re-appealed to Step B:	July 24, 2003
Held in Abeyance:	August 12, 2003
Step B Decision Date:	January 28, 2005
USPS Issue Code:	05.0000
NALC Issue Code:	00803

ISSUE

Did Management violate an established past practice and/or the National Agreement when implementing a "Seattle District Policy Statement" concerning "Cellular Phone/Beeper Usage" dated "FY 2003"? If so, are the appropriate remedies?

DECISION

The Dispute Resolution Team has **RESOLVED** this grievance. In accordance with Seattle District policies, personal cellular telephones are not prohibited but cell phone usage should not negatively impact or disrupt the productivity of the operation. Cell phones shall only be used when it is safe and reasonable to do so.

EXPLANATION

This case was received at Step B on 03/24/03. In a Step B decision dated 08/12/03 the Team agreed to hold this case in abeyance "...pending resolution of grievance # E01N-4E-C 03072670 (03-315-CM) which was appealed to regional arbitration." Grievance number E01N-4E-C 03072670 was resolved by a pre-arbitration settlement dated 04/01/04.

¹ In accordance with the Ricks/Pyle Agreement, the Union may file a single grievance covering all nine installations represented by NALC Branch 79. These installations are Auburn, Bellevue, Bothell, Issaquah, Kirkland, Mercer Island, Redmond, Renton, and Seattle.

The 04/01/04 "Pre-Arbitration Agreement" for grievance number E01N-4E-C 03072670 stated in part that "This issue was previously settled and is not new at the Area/Regional level. The parties agree to comply with language in grievance #E94N-4E-C 97046907 dated 1-13-1998 (Step 3). This language dictates that '...use of cell phones should not negatively impact the productivity of the operation.' Cell phones are not prohibited, and because of local practice, a policy should be locally formulated and agreed upon." USPS Western Area Labor Relations Representative Mark D. Moreland and NALC National Business Agent Paul Price signed off on the pre-arbitration settlement for grievance number E01N-4E-C 03072670.

Following resolution of the lead case, the Team discussed the possible resolution of the remaining similar cases which we had held in abeyance. We continued to hold those cases pending further discussions with the District Manager and NALC National Business Agent. We have now received sufficient information to resolve these cases.

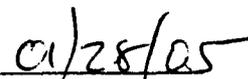
The Team has resolved this grievance. In accordance with Seattle District policies, personal cellular telephones are not prohibited but cell phone usage should not negatively impact or disrupt the productivity of the operation. Cell phones shall only be used when it is safe and reasonable to do so.



Steve Wooding
NALC Step B Representative



Vicki Johnson
USPS Step B Representative



Date



Date

cc: USPS Step A Representative, Robert Morneau
NALC Step A Representative, Dave Reeves
USPS Western Area
National Business Agent, NALC
District Manager
Postmaster, Seattle
Manager, Human Resources
Seattle District Labor Relations
Data Input
Dispute Resolution Team File

SEATTLE DISTRICT
DISPUTE RESOLUTION TEAM



DECISION
NALC/USPS STEP B
DISPUTE RESOLUTION TEAM
NALC: Steve Wooding
USPS: Rick Nuetzmann

Decision: RESOLVED
Case Number: E01N-4E-C 02190207
Local Union # 399-C-02 AN
Installation: Auburn (Main)
NALC Branch: 79
Step A Filing Date: April 10, 2002
Step A Meeting Date: July 2, 2002
Received at Step B: July 9, 2002
Step B Decision Date: September 4, 2002
USPS Issue Code: 05.0000
NALC Issue Code: 00803

Grievant: Class Action

ISSUE

Did Management violate Article 5 of the National Agreement, an established past practice, and a prior grievance settlement by announcing on or about March 28, 2002 that carriers were prohibited from any use of cell phones in the office? If so, what is the appropriate remedy?

DECISION

The Dispute Resolution Team has **RESOLVED** this grievance. Management violated Article 5 of the National Agreement, an established past practice, and the 06/01/99 full and final settlement of grievance number 965-C-96 AN by unilaterally terminating the established cell phone policy which allowed City Letter Carriers to use their cell phones during breaks, lunches, and on office time in the event of an emergency. Local Management is directed by the Team to reinstate and continue the established practice of allowing carriers to use personal cell phones in the office while the carriers are on breaks, at lunch, and to be contacted or to call out in the event of an emergency. The carriers are reminded to avoid abusing the practice.

EXPLANATION

There was no dispute that a local practice had been established that allowed carriers to use their cell phones during their breaks, their lunches, and during office time in the event of an emergency. On or about March 28, 2002 the carriers were instructed that any use of cell phones in the office was prohibited.

A previous unilateral termination of the practice was protested by grievance number 965-C-96 AN (E94N-4E-C 97046907). Following a discussion of the issue on 01/13/98, the parties reached a pre-arbitration settlement of grievance number 965-C-96 AN (965-C-95 AN) which stated in part that *"The parties agree that the use of cell phones is not prohibited. The grievance is remanded to the local parties to jointly establish reasonable guidelines for the use of cell phones in the station. Further, the parties agree that the use of cell phones should not negatively impact the productivity of the operation."*

On 06/01/99 Auburn Customer Service Manager Al Mark and NALC Branch 79 Vice President Mary Martinez reached a "full and final settlement" of grievance number 965-C-96 AN. The 06/01/99 settlement stated that *"The use of cell phones is not prohibited, as they provide employees with a means of contact with family in the event of emergency. Employees on break or lunch are not restricted from use of their cell phones. However, except in the event of emergency, cell phones will not be used in the office unless the employee is on break or lunch. The parties agree that the use of cell phones should not negatively impact the productivity of the operation."*

The Union argued in part that *"...management has twice in the past attempted the same changes. Once in 1996 and again in 1999. Each time a grievance resulted and the new policy was rescinded ... management call carriers on their cell phones on a frequent basis ... Additionally, Management has been made aware that carriers families in the event of an emergency, have had trouble getting through on the existing post office phone lines."*

Management argued in part that *"...the prohibition of the use of private cell phones by employees is within their rights to manage. Management has authorized the use of private cell phones in an emergency situation only. While in the office, cell phones are expected to be turned off because employees have the use of the office phones and have been provided with phone numbers to give to family members in the event of emergencies ... Employees have been witnessed to abuse the use of cell phones by taking or making personal phone calls at their carrier case while not on scheduled breaks ... These individuals have been addressed on these incidents when discovered ... The mere fact of approaching employees by management would cause or may contribute to a confrontational atmosphere and perhaps a hostile work environment. The phone policy has been set forth to address time wasting practices observed by management."*

JCAM pages 5-1 through 5-4 provide the following contractual clarifications:

Defining Past Practice

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:

- First, there should be clarity and consistency. A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.
- Second, there should be longevity and repetition. A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.
- Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.
- One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.
- Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment.

Functions of Past Practice

In the same paper, Arbitrator Mittenthal notes that there are three distinct functions of past practice:

To Implement Contract Language: Contract language may not be sufficiently

specific to resolve all issues that arise. In such cases, the past practice of the parties provides evidence of how the provision at issue should be applied. For example, Article 15, Section 2, Step 3 of the 1978 National Agreement (and successor agreements through the 2000 National Agreement) required the parties to hold Step 3 meetings. The contract language, however, did not specify where the meetings were to be held.

Arbitrator Mittenthal held that in the absence of any specific controlling contract language, the Postal Service did not violate the National Agreement by insisting that Step 3 meetings be held at locations consistent with past practice. (N8-NAT-0006, July 10, 1979, C-03241)

To Clarify Ambiguous Language: Past practice is used to assess the intent of the parties when the contract language is ambiguous, that is, when a contract provision could plausibly be interpreted in one of several different ways. A practice is used in such circumstances because it is an indicator of how the parties have mutually interpreted and applied the ambiguous language. For example, in a dispute concerning the meaning of an LMOU provision, evidence showing how the provision has been applied in the past provides insight into how the parties interpreted the language. If a clear past practice has developed, it is generally found that the past practice has established the meaning of the disputed provision.

To Implement Separate Conditions of Employment: Past practice can establish a separate enforceable condition of employment concerning issues where the contract is “silent.” This is referred to by a variety of terms, but the one most frequently used is *the silent contract*. For example, a past practice of providing the local union with a file cabinet may become a binding past practice, even though there are no contract of LMOU provisions concerning the issue.

Changing Past Practices

The manner by which a past practice can be changed depends on its purpose and how it arose. Past practices that implement or clarify existing contract language are treated differently than those concerning the “silent contract:”

Changing Past Practices that Implement or Clarify Contract

Language: If a binding past practice clarifies or implements a contract provision, it becomes, in effect, an unwritten part of that provision. Generally, it can only be changed by changing the underlying contract language, or through bargaining.

Changing Past Practices that Implement Separate Conditions of Employment: If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the union appropriate notice. Prior to making such a

change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change. Management changes in such "silent" contracts are generally not considered violations if 1) the company changes owners or bargaining unit, 2) the nature of the business changes or, 3) the practice is no longer efficient or economical. The first of these has rarely arisen in Postal Service cases involving its numerous bargaining units.

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

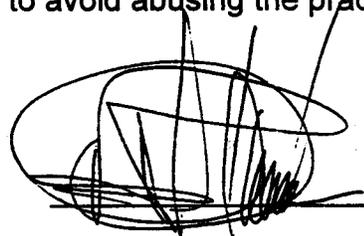
The local parties jointly established a written local cell phone policy through the 06/01/99 full and final settlement of grievance number 965-C-96 AN in accordance with the pre-arbitration settlement directive "to the local parties to jointly establish reasonable guidelines for the use of cell phones in the station".

The Team found no basis to overturn the 06/01/99 mutually agreed upon resolution of this issue.

The Team has resolved this grievance. Management violated Article 5 of the National Agreement, an established past practice, and the 06/01/99 full and final settlement of grievance number 965-C-96 AN by unilaterally terminating the established cell phone policy which allowed City Letter Carriers to use their personal cell phones during breaks, lunches, and on office time in the event of an emergency. Local Management is directed by the Team to reinstate and continue the established practice of allowing carriers to use their personal cell phones in the office while the carriers are on breaks, at lunch, and to be contacted or call out in the event of an emergency. Carriers are reminded to avoid abusing the practice.



NALC Step B Representative
Steve Wooding



USPS Step B Representative
Rick Nuetzmann

09/05/02
Date

RECEIVED
SEP 09 2002

9-5-02
Date

cc: USPS Step A Representative, Lou Kush
NALC Step A Representative, Mary Martinez
USPS Western Area
National Business Agent, NALC
District Manager
Postmaster, Auburn
Manager, Human Resources
Seattle District Labor Relations
Data Input
Dispute Resolution Team File

SEATTLE DISTRICT
DISPUTE RESOLUTION TEAM



DECISION
NALC/USPS STEP B
DISPUTE RESOLUTION TEAM
NALC: Steve Wooding
USPS: Bob Morneau

Decision:	RESOLVED
USPS Number:	E01N-4E-C 05062619
Grievant:	Class Action
Branch Grievance #:	760-C-04AN
Branch:	79
Installation:	All Nine Installations¹
Delivery Unit:	All Units
State:	Washington
Date Step A Initiated:	October 13, 2004
Step A Meeting Date:	November 23, 2004
Date Received at Step B:	February 4, 2005
Step B Decision Date:	March 31, 2005
USPS Issue Code:	05.0000
NALC Issue Code:	00803

ISSUE

Did Management violate Article 5 of the National Agreement and/or an established past practice by announcing on or about 10/07/04 that carriers were prohibited from bringing personal items onto the workroom floor? If so, what are the appropriate remedies?

DECISION

The Dispute Resolution Team has **RESOLVED** this grievance. Auburn Management violated Article 5 of the National Agreement, and a prior Step B decision, by unilaterally terminating an established past practice which allowed City Letter Carriers to bring personal items onto the workroom floor. Upon receipt of a copy of this decision Management at units under the Ricks/Pyle Agreement will reinstate the practices that existed at their individual units, which were in place prior to the issuance of any recent local directives, barring any subsequent mutual agreements. The carriers are reminded to observe good housekeeping practices.

EXPLANATION

The Team contacted the Western Area and the National Business Agent's office regarding this issue. The Team was informed that although this issue had been discussed at National level that no formal decision was reached and that it was decided that any issues arising from this directive would be discussed and resolved

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at local levels. It was mutually agreed among the parties that JCAM pages 5-1 through 5-4 are controlling in this type of dispute.

It was undisputed in part at Formal Step A that:

Time limits mutually extended.

On 10/7/04 management informed the carriers that they could no longer have backpacks, purses or other personal items on the workroom floor, effective 10/14/04...

In accordance with the 11-96 Ricks/Pyle Agreement, this is a class action grievance for the nine installations represented by NALC Branch 79.

The Union contended in part that "...the new policy effective on 10/14/04 violates a past practice at the Auburn P.O. where individuals have been allowed to bring their coats, purses, and backpacks to their carrier cases for years ... there has been no change in the nature of the business ... The past practice has been clear and consistent and accepted by management for years". Management did not rebut these contentions.

In our 10/30/03 Step B decision for Auburn case number E01N-4E-C 03218821 (local Union number 160-C-03AN) the Team previously decided that "Management violated Article 5 of the National Agreement, and an established past practice, by unilaterally announcing on or about March 11, 2003 that carriers were to remove all items ... from their cases. Local Management is directed by the Team to reinstate and continue the established practice of allowing carriers to keep work/business related items ... at their cases immediately upon receipt of a copy of this decision. This practice should not be abused."

The Team has resolved this grievance. Auburn Management violated Article 5 of the National Agreement, and a prior Step B decision, by unilaterally terminating an established past practice which allowed City Letter Carriers to bring personal items onto the workroom floor. Upon receipt of a copy of this decision Management at units under the Ricks/Pyle Agreement will reinstate the practices that existed at their individual units which were in place prior to the issuance of any recent local directives, barring any subsequent mutual agreements. The carriers are reminded to observe good housekeeping practices.



NALC Step B Representative

Steve Wooding

03/31/05

Date



USPS Step B Representative

Bob Morneau

3/31/05

Date

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