

December 5, 2012

To: State and Local Presidents
National Business Agents
Regional Coordinators
Resident Officers
National Advocates

From: Mike Morris, Director
Industrial Relations

RE: Das Award on Ergonomic Issues with DBCS

Attached you will find a copy of a recent national arbitration award by Arbitrator Shyam Das. The issues in this case were whether the Postal Service violated Article 14 or Section 8(a) (5) of the National Labor Relations Act (NLRA) by failing to bargain with the APWU regarding ergonomic issues with the Data Bar Code Sorter (DBCS), and whether management violated Article 14 by demanding that the APWU pay for information the union requested about the DBCS. Das ruled that since the union's "right under Article 14 to be heard on ... DBCS ergonomic issues it presented to the National Ergonomics Committee" and "to have the Postal Service respond substantively to the Union's proposals, including any proposals for joint studies, etc." hadn't been "fully accomplished," "the parties are directed to reactivate that process ... to the extent the Union's DBCS ergonomics agenda items remain outstanding." In addition, he determined that "charging the Union for information it reasonably requests in good faith to fulfill its joint role and obligations under Article 14 in relation to issues before the National Ergonomics Committee is not consistent with the overall structure and tenor of Article 14." (USPS #Q06C-4Q-C 10191368)

This case arose after an Occupational Safety and Health Administration (OSHA) team in October 2007 conducted an on-site "verification" at the Denver P&DC under the terms of the Ergonomic Strategic Partnership between OSHA, the Postal Service and the unions, and it issued a report addressing ergonomic issues relating to operation of the DBCS machines at the Denver P&DC. During an October 14, 2008 meeting between the Postal Service and the APWU, management indicated that Article 14 wasn't "a joint process" and it didn't have an obligation to bargain over ergonomic issues raised by the union. Management also responded subsequently that it would notify the APWU whether costs would be assessed for copying and processing information sought about the DBCS. Thereafter, the union filed an unfair labor practice charge against the Postal Service for refusing to bargain in good faith about ergonomics issues revealed in the OSHA report. Management later sought payment from the union of \$1216.00 for furnishing information it requested. About six months later, the NLRB issued a complaint against the Postal Service for refusing to bargain in accordance with Section 8(d) of the NLRA and refusing to provide requested information. The National Ergonomics Committee met again two additional times without achieving a resolution. On May 3, 2010, the union initiated a Step 4 grievance and the NLRB deferred the failure and refusal to bargain charges to arbitration.

At the arbitration hearing, the APWU argued that the Postal Service failed to bargain with us over ergonomics issues relating to the DBCS and this conduct violated Article 14 and Section 8(d) of the

NLRA which requires good faith bargaining. We asserted that despite the Postal Service's participation in National Ergonomics Committee meetings, the Postal Service never engaged in negotiations with the union with intent of trying to reach agreement on DBCS ergonomic issues. The APWU also contended that management's demand that the union pay for information requested about the DBCS violated Article 14 which requires a joint process with an open exchange of information and ideas between the parties on safety and health issues. Management countered that it wasn't obligated to engage in "mid-term bargaining" and it complied with Article 14 by engaging in discussions on the DBCS issues during National Ergonomics Committee meetings. It further maintained that it could request payment by the APWU of costs reasonably incurred in obtaining information requested by the union in accordance with Article 31.3 of the National Agreement.

After considering the evidence, Arbitrator Das stressed that "Article 14 provides for the Union to play a major role and ... establishes a joint process for addressing safety and ergonomic issues." He credited the parties' testimony that during two National Ergonomics Committee meetings the Postal Service and APWU discussed some items and acknowledged union testimony that the Postal Service didn't present anything substantive in the first of the meetings and there was no resolution of the issues in the second meeting. Das indicated that the second meeting seemed to indicate "there was a reasonable chance the Article 14 process would get back on track," but "ultimately, that did not occur ... following what seems to have been a confusing and unhelpful meeting between various Union and Postal Service representatives on March 30, 2010" preceding the filing of the present dispute. The arbitration concluded that since the union's right to be heard and to have substantive responses from management on DBCS issues during the National Ergonomics Committee had not been "fully accomplished" in accordance with Article 14, the parties were ordered to reactivate the process on any outstanding DBCS ergonomics agenda items. He noted, however, that "the evidence does not establish that the Postal Service acted in bad faith or otherwise violated Article 14 of the National Agreement or Section 8(a)(5) of the NLRA."

In addition, Arbitrator Das determined that though Article 31.3 allows the Postal Service to charge the union as reimbursement costs incurred in obtaining information the union requests and "does not carve out an exception relating to safety and health and Article 14 issues" and Article 14 doesn't "expressly address payment for information requested by the Union", management's requirement that the APWU pay for information "it reasonably requests in good faith to fulfill its joint role and obligations under Article 14 in relation to issues before the National Ergonomics Committee is not consistent with the overall structure and tenor of Article 14." Moreover, he noted that the Postal Service didn't rebut union testimony that the APWU historically has not been charged for such information. Accordingly, he ordered that management provide information reasonably requested by the union "in good faith to fulfill its role and obligations under Article 14 in relation to issues before the National Ergonomics Committee without exacting payment therefor."

The significance of Arbitrator Das' award as it relates to Article 14 should not be understated; he provided a clear and unambiguous interpretation of the Joint Labor-Management Safety and Health Committees at all levels as well as the National Joint Labor-Management Ergonomic Committee. Arbitrator Das' interpretation of Article 14 regarding the role of the Joint Committees is insightful and instructive. He acknowledged the Union plays a major role and establishes a joint process for addressing safety and ergonomic issues. His analysis regarding the union's right to be heard and to have substantive responses to its agenda items is crucial and critical to all Joint Safety and Health Committees. Many Local unions have voiced frustration with the Postal Service's representative(s) refusal or failure to respond and/or cooperate to agenda items which address unsafe working conditions

and/or hazards. This uncooperative environment normally results in the Local union withdrawing from the Local Joint Labor-Management Safety and Health Committee. In other words management at the local level has often been able to prevent the union from taking advantage of its contractual right to cooperate and assist the Postal Service in living up to its safety responsibilities. Also of significance to Area and Local Safety Committees was Arbitrator Das' order that that management must provide information reasonably requested by the union "in good faith to fulfill its role and obligations under Article 14 in relation to issues before the National Ergonomics Committee without exacting payment therefor." Arbitrator Das' award restores the equality of representation between the Postal Service and the Union within the respective Joint Area and Local Safety and Health Committees.

Arbitrator Das' interpretation of Article 14 is not limited to ergonomic issues; rather the broad scope of his award encompasses safety and health as well as ergonomic issues. This is a strong tool for Local unions; one that must be used wisely so the workplace will be kept free of unsafe working conditions and hazards. Safety Committees are a joint endeavor; as such local unions must not forfeit its contractual commitment to safety and health. Rather locals should actively pursue all potential unsafe working conditions and/or hazards with management. The National Union has appointed and trained Safety and Health Representatives in each Region; their names and contact information can be found on the APWU's webpage at: <http://www.apwu.org/dept/ind-rel/sh/irshreps.htm>. The role of these regional representatives is to provide assistance and advice so that the Local Safety Committee will be able to resolve all safety issues at the lowest possible level.

The National Union recognizes that many Musculoskeletal Disorders (MSD) that our members suffer from are caused by the repetitive motions, e.g. bending, stooping, grasping, lack of working space, etc. that occur while working on postal equipment such as the DBCS. Negotiations regarding the ergonomic issues that led to this dispute will be renewed with remediation of the potential and known ergonomic hazards as our continuing goal.