

REGULAR REGIONAL ARBITRATION PANEL
In the Matter of the Arbitration Between:
UNITED STATES POSTAL SERVICE

Caru Thompson

Class Action Grievance
Dust and Noise from
Air-Cleaning Equipment
As Unsafe Practices
Raleigh, NC P&DC
USPS D98C-1D-C 00109382
APWU 0055CK

and

AMERICAN POSTAL WORKERS UNION

OPINION AND AWARD

Before: M. David Vaughn
Regular Regional Arbitration Panel

Appearances: For USPS For APWU
Michelle E. Parker Adjamu Dillahunt
Labor Relations Specialist Local President

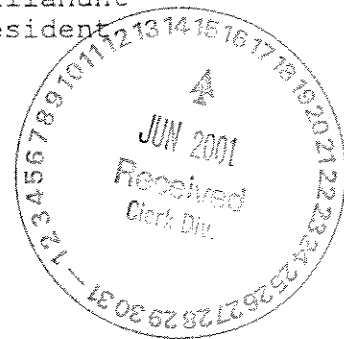
Place of Hearing: Raleigh, NC P&DC

Date of Hearing: April 10, 2001

Date of Award: May 7, 2001

Relevant Contract Provisions: Articles 3, 14, 19

Contract Years: 1998-2000



A W A R D

The grievance is sustained in part. The Postal Service violated Article 14 of the Agreement by failing to provide safe working conditions by the manner in which it dealt with dust generated by the maintenance procedures used to clean mail processing equipment. There is insufficient evidence to establish a contract violation in management's handling of noise generated by such procedures. Management shall cease and desist from using compressed air in excess of 30 psi to clean the OCR, BCS and DBCS machines at the facility, shall provide working vacuum cleaners to all technicians cleaning such machines, shall direct and monitor technicians to ensure maximum use of vacuums and minimum use of compressed air and shall provide Technicians with sufficient time to utilize such cleaning techniques, shall clean floors, trays and other accessible, non-vertical surfaces in proximity to the machines on the same or more frequent basis than the machines, shall develop a mechanism to clean other surfaces in proximity to the machines which accumulate dust on a periodic basis, shall provide dust masks to employees and shall warn employees in advance of cleaning and shall not require employees to reenter work areas while levels of dust hazardous to health and/or safety remain. Management shall make diligent efforts to alleviate the problem of dust aggravated by the cleaning, shall report to the Union at least once quarterly as to its efforts, and respond promptly and substantively to Union complaints and inquiries on this issue, in writing, if requested. However, management shall not be required to purchase and install air filtration or other mechanisms to alleviate the dust problem which are not established to be effective.

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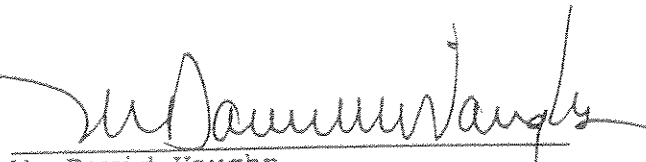
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BACKGROUND

This proceeding takes place pursuant to Article 15 of the 1998-2000 National Agreement between the United States Postal Service and the American Postal Workers Union to resolve a class action grievance filed to protest the failure of the Postal Service to abate dust and noise created by the air cleaning of mail processing machinery and to require USPS to purchase and install an air filtering system. The Postal Service denied the grievance, and the Union appealed it to arbitration. I was selected by the Parties to hear and decide the dispute.

A hearing was convened at which each Party was afforded full opportunity to present testimony and documentary evidence and to cross-examine witnesses and challenge documents offered by the other. For the Union testified Steward and Safety Committee Member Marcia Hinton, Mail Handler and Safety Committee Member Sal Pilo, workplace safety educator Alyce Gowdy-Wright and bargaining unit members Harmon Bailey, Al Falzone, Steve Stark and Bob Perry. For the Employer testified Supervisor of Maintenance Operations and Roy A. Dickerson and Human Resources Specialist Ann Dunlap. Witnesses were sworn. At the conclusion of the hearing the evidentiary records closed. The Parties made oral concluding statements and the record of proceeding closed.

There is no dispute as to the arbitrability of the grievance; and I find it to be properly before me, ready for decision. This Opinion and Award is issued upon consideration of the record and the arguments of the Parties. It interprets and applies the National Agreement.

ISSUES FOR DETERMINATION

The Parties were in disagreement as to the phrasing of the issues. The Union asserted that the issues are whether the Postal Service violated the Agreement by the noise and dust generated through the maintenance procedures on the mail processing equipment; and if not, what shall be the remedy? The Employer asserted that the issues are whether the Postal Service violated the Agreement when it failed to install an air filtration system at the Raleigh P&DC; and, if not, what shall be the remedy?

Based on a review of the record and the arguments of the Parties, I find the issues to be whether the Postal Service violated the Agreement in the manner in which it dealt with dust and noise generated by the maintenance procedures used to clean mail processing equipment; and, if not, what shall be the remedy? The installation of an air filtration is requested as a remedy for the grievance but, based on the language of the grievance is not itself the issue.

FACTUAL BACKGROUND AND FINDINGS

The Raleigh P&DC Operation

The Raleigh P&DC operates, among other equipment, large automated bar code sorters, which sort mail at a high rate of speed. Mail is fed into the machines on a belt system; once inside the machines, mail passes through various belts. The machines optically read zip codes on mail and print bar codes which allows high speed machine sorting. The machines process many thousands of letters per hour. The sorter machines are approximately 40 feet long and are located in a large open-bay type room. There are aisles between the various machines.

The Cleaning Process and its Consequences

Because large amounts of dirt and debris from the mail accumulate in the sorters, they are cleaned each day. Various witnesses testified that although the Postal Service instructs maintenance employees to "vacuum" as much of the dirt and debris from the machines as possible, they testified that vacuuming is only infrequently employed. Instead, as observed during an agreed site visit, the sorters are cleaned by taking a hose with compressed air and "blowing" the dust, dirt and debris out of the machine.

Prior to the cleaning, Mail Processing employees are supposed to be warned and removed from the area. However, the Union elicited testimony indicating that often employees are neither warned or removed to adjacent sorters, or must report back to the work area immediately after the cleaning is performed while high concentrations of dust are still in the air. In addition, although

the blowing is supposed to be performed at a specific, relatively low pressure (30 pounds per square inch, or "psi"), the Union introduced evidence that the cleaning occurs at a much higher pressure, as much as 50 to 90 psi.

Steve Stark testified that he has worked as an MPE 6 and 7, and now works as an ET9. He currently works on Tour 2 and, as part of Postal Maintenance, he cleans the automated equipment. He testified that the cleaning is performed between 7 a.m. and 3:30 p.m. DBCSSs are cleaned anytime during the tour; OCRs are generally cleaned before Noon. He testified that if he only uses a vacuum to clean, he cannot get all of the dirt and dust. As such, blowing the equipment is "part of the protocol." He testified that the blowing generates dust. He acknowledges that employees are instructed to wear are instructed to wear goggles and a face mask when cleaning. He testified that dust particles remain airborne for a considerable time after the cleaning has been performed.

According to Mr. Stark, the air pressure of the equipment is supposed to be 30 psi, but that there are no gauges to ascertain the pressure. He stated that the pressure is established by the regulator to which all automation equipment is attached. He testified that 50 - 60 psi is used for the printers. He testified that he believes that more than 30 psi of pressure is used. He acknowledged that employees are instructed to utilize vacuuming as much as possible and to let the supervisors know when cleaning was to occur so that clerks could be moved to manual operations during the cleaning. He further testified that signs warning employees of the cleaning are placed in the aisles.

Bob Perry testified that he has been employed by the Postal Service since December 1990, and has been an ET since 1996. He has worked on Tour 2 for years. During that time, he has been responsible for PMS on the automatic equipment. Mr. Perry testified that when the machines are blown out with compressed air, mail, paper and dust are blown out. He testified that heavy matter falls down but that light dirt and dust floats in the air. He testified that the air pressure runs off of the house compressor and regulator; the air pressure is not regulated at the machine. He testified that the air pressure for cleaning is about 50 to 60 psi. He also testified that he sometimes has been instructed to

vacuum out the machines. Before he cleans he informs employees that he is about to clean, he testified.

Al Falzone testified that he was a mail processor approximately twelve years ago. Since that time he runs BCS #4. He testified there is a lot of dust that cannot be effectively removed and that dust constantly falls off of overhead equipment. Mr. Falzone testified that, to his knowledge, no vacuuming is performed; all cleaning is performed by blowing. He stated that when blowing is conducted, dust comes down afterward and settles on people.

Mr. Falzone testified that employees are instructed to return to machines immediately after the blowing is performed. He testified that there used to be a filter system which hung above machines at the old facility which was somewhat helpful. He testified that he works on Tour 2 from 7:00 a.m. until 3:30 p.m. He testified that he has had some respiratory problems the last few years and that everyone has the same problems. He testified that employees "take part of the belt home with them everyday."

Ms. Hinton testified that no time is given for dirt and dust to settle before employees must resume working. As such, employees return to the work area which has been cleaned while dust is still in the air. She acknowledged that there have been some improvements made to move employees away from the area while cleaning was performed. She testified that there is no time between the cleaning and returning to work.

Sal Pilo, a Mailhandler on Tour 2, Safety Captain, and member of the Safety Committee, testified that the problem with blowing is that it "never leaves the building"; it just hangs in the air, is kicked up from the floor and blown into adjacent areas. He testified that the Postal Service has made efforts to "clear out" employees who are working on the machines which are cleaned, but not those working on adjacent machines. He testified the Union has raised the issue quarterly but the Postal Service merely responds that it will "investigate" the situation.

The Alleged Adverse Health Effects in the Workplace

The Union elicited evidence from several employees that the cleaning method utilized has caused adverse health effects to employees. Ms. Hinton testified that employees have experienced the following adverse health effects: headaches; sinus conditions; tinged mucus from blowing nose; and running eyes from dust and dirt particles. She testified that she herself has had eye, ears, nose and throat problems and has had nosebleeds which have required cauterization.

Ms. Harmon Bailey, a 17 year Postal employee and mail processor, Bar Code Sorter testified that while working in that area she experienced breathing problems. She testified he had nasal congestion and nosebleed problems. She testified that upon complaining, she was told that the facility was "within specifications." Ms. Bailey testified that she filed complaints while on Tour 3, but her supervisor got tired of reading them, and would throw them away. She testified that all employees complained and that the response to her complaints was that she was a "worry wort." She testified that the general rule on Tour 2 was that if there was blowing within two machines employees could leave the area; prior to that time, management stated that there was no problem. Ms. Bailey acknowledged that she has not filed an on-job injury claim.

The Union's Efforts to Have the Situation Rectified

Ms. Hinton testified that she was a Mail Processor for 8 years, and has also served as Tour 2 Union Steward and on the Raleigh P&DC Safety Committee for nearly 3 years. She has also served as a Safety Captain while a Mail Processor. She testified that the "dust problem" at the facility has evolved since 1994. In 1996, it became a major problem as fellow employees complained of headaches and runny noses. According to Ms, Hinton, during the cleaning process, dust and dirt would fly in the air, employees were not always warned that cleaning was about to occur and they were exposed.

Ms. Hinton testified that she filed several reports of hazard, unsafe condition or practice complaining of the dust condition from

1996 to March, 2000. (U. Ex. 1). The problem continually was dirt and dust and sediment in trays. She said the complaints from employees have been continual since 1996. She testified that the issue was also raised in Safety Committee meetings on February 22, 2000, (U. Ex. 2), January 9, 2001, (U. Ex. 3); and on March 27, 2001. (U. Ex. 4).

In that regard, the Safety Committee Meeting minutes reflect that on February 22, 2000, Ms. Hinton "expressed concern" about dust on the workroom floor; and that the Plant manager stated in response that ET's vacuum the machines to the extent possible before blowing, "but the only way to properly clean the machines is to use the blowers." (U. Ex. 2). The January 9, 2001, safety Committee Meeting minutes reflect that a Union representative reported that "Maintenance employees continue to blow instead of vacuum the DECS in the 185 operation area while mail Processing employees are working in the area" and that an Employer representative would "investigate" the situation. (U. Ex. 3). The minutes of the march 27, 2001, Safety & Health Committee Meeting reflect that the Union again raised the issue of employees getting hit with a lot of dust from the blowing; and management again stated that it would "investigate this." (U. Ex. 4).

The Site Inspection of the Workplace

During a site visit of the area conducted during the hearing and with the participation of Party representatives, the air appeared reasonably clear except that when the machines were cleaned using air nozzles, dust flew everywhere and hung in the air. It was also observed that dust had accumulated thick on many surfaces, like light fixtures and ventilators. The letter trays were also observed to be in a dusty condition on the bottom. The nozzle blew dust up from the floor and adjacent areas as it was over sprayed. No attempt was made by the technician observed to use a vacuum; indeed there did no appear to be any vacuum in the area.

The 1997 Grievance

In or about May 1997, the Union filed a class action grievance alleging the methods utilized in cleaning the automated equipment created an excessive amount of dust and debris which, in turn, caused an unsafe work place. In resolving the grievance, the Postal Service advised the Union on June 23, 1997 as follows:

[B]y copy of this decision, the District Senior Safety and health Specialist is requested to become involved in this case and take whatever action they deem appropriate. The Senior Safety and health Specialist will then notify the local Union President of the results of her input.

(U. Ex. 5).

On July 22, 1997, the Postal Service advised the Senior Safety and Health Specialist in response to the grievance that, as a corrective action, "Money has been requested for 8 filter systems for the OCR and BCS equipment for an estimated cost of \$80,000. This system would run through the machines and would eliminate most of the dust in the area." (*Id.*). The record reflects, however, that no filtration system was either purchased or installed in the Raleigh P&DC.

HR Specialist Dunlap acknowledged that the Postal Service never purchased a filter system as indicated in the grievance resolution. She testified that the agreement reached to resolve the 1997 grievance "is not consistent with the ELM requirements" because budget procedures say different organizational levels must provide funding to abate unsafe/unhealthful work conditions. She stated that, nevertheless, the money was requested but a filter system was never purchased because it learned that the same type of system in place at another facility did not work effectively. She testified that there has been a proposal to purchase another system but that has not been effected, either, for reasons not stated.

"The OSHA "General Duty Clause"

Ms. Gowdy-Wright, a labor educator from the North Carolina Safety and Health Project (the "Project"), testified that under OSHA, an employer has a general duty to provide employees with a

place of employment which is free from recognized hazards. (U. Ex. 6). She pointed out that the Postal Service, under Article 19 of the Agreement and Section 810 of the ELM, is subject to OSHA.¹ She testified that the general duty clause delineates an employer's obligations, which are useful to define when there are no standards. She testified that there are no special standards for the Postal industry.

Ms. Gowdy-Wright testified that applicable "permissible exposure limits" (PELs) are insufficient to protect employees from a hazard. She testified that NIOSH exposure limits are research-based and are lower than OSHA limits. She testified that this was the first time she was directly involved in the Postal industry. She acknowledged that she is not an industrial hygienist and did not perform any testing. She further testified that she searched for recommended exposure limits for paper dust but did not find any. She indicated that there are exposure limits for other types of dust. She testified that the Postal Service is covered by OSHA and that employees can file complaints. She testified that OSHA does not automatically send out inspectors. She stated that it would be low on their priority lists because there are no specific standards.

The Postal Service's Efforts to Rectify the Dust Conditions

SMO Dickerson testified that he is familiar with the cleaning methods used by the mechanics; he stated that they are required to vacuum "as much as possible" and then to blow. However, he conceded that vacuuming alone cannot completely clean the sorters. He testified that employees are required to leave the work area when the blowing is conducted. He stated that signs are supposed to be placed in the aisles where employees must traverse prior to when the cleaning is commenced. He testified that he did not know how soon after the blowing is conducted employees are required to return to the work area.

¹It is noted that ELM Section 811.4, Safety Policy, states:

It is the responsibility of management to provide safe and healthful working conditions in all postal-owned or postal-leased installations.

SMO Dickerson testified that, contrary to the Union's assertions, the air nozzles used by USPS at the P&DC comply with applicable OSHA standards. He stated that if a nozzle is found not to meet the standards, it is replaced. SMO Dickerson testified that cleaning is performed at 30 psi. He testified that the compressed air used to clean the sorters runs off of the same air as the other equipment. He also testified that the compressed air comes from three separate IR compressors, and that the house air pressure is 90 to 100 psi. He stated that regulators are located at station where the air hoses are connected. He further testified that the building is equipped with an air filtration system.

The Tests for Dust and Noise

HR Specialist Dunlap testified that the Postal Service made efforts to reduce the level of dust in the facility, as memorialized in the Safety Talks. She testified that among the suggestions made, and implemented by the Postal Service, were that vacuuming occur before blowing; sweeping should occur to remove heavy deposits from the floors; dust masks need to be provided; and employees need to be cleared away from machines during cleaning. She added that the Employer had tests conducted to determine if there was a dust or noise problem; the test results indicated that the facility fell within OSHA limits on both dust and noise. (See P.S. Ex. 1). Ms. Dunlap testified tests were conducted both in June of 1998 and in March 2000, with similar results.

The Grievance

The Union filed the class action grievance at issue in this proceeding on or about March 3, 2000, alleging that mail processors and ETs are exposed to high concentrations of noise and dirt generated through the BCS, DBCS and OCR maintenance cleaning. APWU further asserted that its earlier requests and subsequent discussions since 1996 have not produced any major changes or corrections to the procedure used by ETs to clean the automated equipment. (J. Ex. 2).

USPS's Denial of the Grievance

The Postal service denied the grievance at each of the steps of the negotiated grievance procedure. In its Step 2 response of March 21, 2000, USPS asserted that there have been no violations of Articles 14 and 15 and that there are "no reasonable grounds to determine such a hazard exists." It pointed out that two tests had been conducted regarding dust at the work site, and both indicated that the dust levels were below OSHA PEL standards. In addition, it contended that all of the air nozzles were checked and found to be below 30 psi. Finally, the Postal Service claimed that a noise test conducted while the air hoses were being utilized indicated that the noise levels were below OSHA standards. The Union appealed to arbitration. (J. Ex. 2). This proceeding followed.

POSITIONS OF THE PARTIES

The Parties presented their arguments in oral opening and closing statements. They are summarized as follows:

The Union argues that the dispute is based on the failure of the Postal Service to provide an adequate filtration system for dust caused by the cleaning of automation equipment. It points to the testimony of the bargaining unit witnesses as describing the problem, which it contends involves large amounts of dust in the air. The Union asserts that it attempted to resolve the problem since 1996 through complaints, committee work and cooperative efforts. It contends that, while the Postal Service has recognized the problems and has made some efforts to resolve them, they have been insufficient and inconsistent, with little actual change in the work environment. APWU points out that its previous efforts culminated in the resolution of a grievance by the Postal Service's agreement to implement various changes, including seeking the purchase and installation of filtration systems. However, complains the Union, the Postal Service failed to implement that commitment and, with respect to other commitments made in resolution of the grievance, did so only sporadically.

The Union argues that the Employer's compliance with requirements is questionable. It points to the concession of SMO Dickerson that the air pressure used to clean the machines is

essentially unmonitored. The Union asserts that maintenance of a proper 30 psi pressure would reduce the amount of dust blown into the air by the cleaning. The Union also points out that as to much of SMO Dickerson's testimony, he was unsure as to the facts and that the examples he used to support his testimony related to the flat sorter, rather than OCRs, DBCSs and the other machines which are the subject to the grievance.

The Union also challenges whether employees are properly removed from the area during cleaning. It challenges the adequacy of the signs, the usage and visibility of which it asserts is insufficient. It points to testimony from several of its witnesses that verbal notification is not given and that employees only learn of the cleaning from the noise after the cleaning is started. Thus, it contends, the Employer's efforts are flawed in implementation.

As to the evidence and argument presented by the Postal Service relying on the testing it conducted, the Union argues that the PEL used by OSHA is not sufficient to protect employees, since respiratory problems and occupational asthma may develop from shorter, but concentrated, exposure to levels of dust. It contends that, in any event, standards alone are not sufficient to establish the Employer's compliance with Article 14 and the ELM.

The Union urges that implementation of the terms of the prior grievance resolution (U. Ex. 5) would be sufficient to resolve the problem. It asserts that there was a filtration system which had been used at the former GMF with positive results. It contends that the evidence establishes that the former system significantly reduced dust, but the Postal Service failed to install either a new system or the former system. It concedes that the obligation of the Postal Service under that settlement with respect to the filter system was only an obligation to request funding. However, it points out that despite the availability of funding, but a determination by the Postal Service that the system the Postal Service had hoped to purchase turned out to be inadequate. The Union argues that the Postal Service was then obligated to consider an alternative system, but points out that there is no indication that the Postal Service sought such a system.

The Union urges that the grievance be sustained and that, by way of remedy, the Postal Service be required to install filtration system adequate to alleviate the dust pollution faced by employees.

The Postal Service argues that the evidence establishes that it has not violated the Agreement. It asserts that the evidence is that Maintenance employees have been instructed to use the vacuums in the first instance, and only use the compressed air to blow when necessary. It further contends that the evidence is that employees are instructed to leave the area before cleaning of the sorters is conducted to avoid dirt and dust kicked up in the cleaning process, and that the ET testified that he advises employees that he is to commence cleaning. According to the Postal Service, employees are made aware of the cleaning and may remove themselves from the area to avoid exposure to dust. It contends that while the conditions may represent a nuisance for employees and be uncomfortable, it does not constitute a hazard to health or safety.

USPS further contends that the testing that has been conducted reveals levels below OSHA in both noise and dust. Based on these tests, it asserts that the Union has not proven that conditions have created a safety or health hazard. Moreover, it points out that no testimony was introduced that indicated that any employees have ever suffered any on-job injuries from either dust or noise, and no employees have ever filed and on-job injury claims.

The Postal Service also points out that the facility is equipped with an efficient facility-wide air filtration system, for which filters are changed monthly. It argues that an additional filtration system is not necessary, as indicated in the tests conducted on individual employees.

Citing authority, the Postal Service argues that it need only meet OSHA standards; where the air sample is shown not to be in excess of OSHA standards, a safety/health hazard is not established. It further argues that compliance is to be measured on the basis of applicable OSHA standards, not more restrictive standards.

Finally, the Postal Service contends that I should not consider the remedy set forth in the resolution of the 1997

grievance because the instant grievance makes no mention of the prior resolution. It argues that the Union's suggestion in this regard constitutes a new argument which should not be considered in this proceeding. The Postal service asserts that if the Union was going to challenge the resolution, it should have made that fact clear in the grievance. For these reasons, USPS urges that I deny the grievance.

DISCUSSION AND ANALYSIS

USPS' Obligation to Provide a Safe Workplace

Article 14, Section 1, of the Agreement obligate the Postal service "to provide safe working conditions in all present and future installations and to develop a safe working force." Article 14, Section 2, "Cooperation," states "[m]echanization, vehicles and vehicle equipment, and the workplace must be maintained in a safe and sanitary condition, including occupational health and environmental conditions." Applicable provisions of the ELM also require the Postal Service to provide employees with a safe place in which to work. (See e.g., ELM Section 810, incorporated in the Agreement by Article 19). In addition, an employer has an obligation, under the general duty clause of the Occupational Safety and Health Act, to provide workers with a safe work place.

In this dispute, the Union had the burden to establish, by a preponderance of the evidence, that the Postal Service's action violated the Agreement. For the reasons set forth below, I find that the Postal Service did violate Article 14 of the Agreement and the general duty to provide its employees with a safe and non-hazardous work place in the manner it dealt with dust² generated by cleaning the mail processing machines.

The evidence establishes that the Parties have been aware for years that dust and dirt presents an unhealthful and potentially unsafe condition for employees, contributory to various, mostly

²There is insufficient evidence to establish a contract violation in management's handling of noise generated by such procedures. No significant evidence was offered with respect to that issue; and it is not further addressed.

minor, physical responses, some requiring medical attention. The Parties attempted to resolve the issues through settlement of the 1997 grievance, but have not done so. I am persuaded that the condition remains substantially unabated today. There is dispute whether Management's violations of the terms of that settlement are properly before me for determination. I am not persuaded that such determination is necessary to resolution of the dispute before me. However, the terms of the prior resolution between the Parties does serve as an appropriate and useful set of guidelines to determine what is appropriate and practical - since Management agreed to the terms - to alleviate the problem.

While the reported efforts to vacuum some or much of the dirt and dust from the sorters, and remove employees from the areas in which cleaning is performed are creditable, the evidence persuades me that these actions have fallen far short of ameliorating the condition. More particularly, the record indicates that the cleaning nearly always includes "blowing" of the dirt and dust particulate matter from "hard to get" areas of the sorters; the blown dirt and dust are catapulted into the air where the lighter particulate matter remains for some time. In the cleaning observed, the Technician made not even a cursory effort to vacuum. Dirt and dust flew everywhere, the dust hanging in the air. Indeed, it is apparent that the general building ventilation and filtration system is neither intended to clean the air, nor does it effectively do so in the context of this dispute.

The Employer does not dispute that employees are directed to resume work immediately after the cleaning is completed. Therefore, employees are directed by management to return to the sorters while dirt and dust remain floating in the air and, consequently, breathe in the dust. For this reason, warning employees that the cleaning is about to occur and temporarily relocating them to an adjacent work area does not prevent them from becoming exposed, on a daily basis, to high concentrations of the airborne particulate matter. Better notice, a broader evacuation and a time of return which recognizes the dust hanging in the air are needed. Any delay can be shortened by using cleaning regimens which leave less dust in the air.

I am also not persuaded that the cleaning is conducted with air hoses operating at 30 psi, despite Management's conclusory testimony. SMO Dickerson testified that the regulators which provide air to the air hoses operate at 90 to 100 psi, and my observation during the site visit was that the pressure in the hoses appeared much greater than 30 psi.

I am also not persuaded by the Employer's contention that the Union has not shown a violation of the Agreement because the dust at the facility are within OSHA limits. The Postal Service has a general duty, under both the ELM and the general duty clause of OSHA to provide a safe work place. The Union has submitted evidence, not rebutted by the Postal Service, which indicates that Mailhandlers on Tours 2 and 3 suffer adverse health consequences as a result of the dust and dirt. Based on the evidence in the record, I conclude that the Postal Service has violated that duty. In sum, I conclude that the practices in place at the facility are not safe (do not produce a safe work environment) within the meaning of Article 14.³

I am not persuaded by the Postal Service's contention that the tests it performed, which showed dust levels to be within allowable OSHA limits, absolves it of any more general obligation to provide a safe work place to employees. First, the Parties' Agreement does not state that the Postal Service must provide a work place which merely meets OSHA levels. The provisions agreed to by the Postal Service essentially restate the general duty clause of OSHA. Had

³The decision relied upon by the Postal Service, *USPS and National Association of Letter Carriers, Branch 283, Case No. G90N-4G-C 93053881*, (Brandon, Arb. 1994) (NALC) is distinguishable and, therefore, not dispositive of the issue. In that case, the Grievant was asthmatic and hyperallergic and essentially sought an accommodation (a transfer) based on that condition. In that regard, the arbitrator found that there was nothing in the language of the Agreement or the OSHA standards presented to him which indicated compliance was to be measured on a flexible scale based on the peculiar medical condition of an employee. In addition, Arbitrator Brandon stated that meeting OSHA standards "represents a reasonable effort" to achieve a safe work environment; he did not state that it represented conclusive proof that the work environment was safe. Finally, it does not appear that the arbitrator in *NALC* addressed the Postal Service's obligation, as presented in this dispute, to provide a safe work environment under OSHA's general duty clause.

the Postal Service desired to absolve itself from a general obligation to provide a safe work place, it could have proposed that it would be obligated to provide a work place which meets minimum OSHA requirements. It did not do so, and, therefore, its reliance on the "Industrial Hygiene Report," reflecting that its dust levels were within applicable OSHA limits does not insulate it from its obligation under the Agreement. Where, as here, there is sufficient proof that peak period exposure produces objective, substantial adverse health and safety impact, proof that longer term exposure is within OSHA PELs is not sufficient.

It is possible that the Employer could satisfy its obligation under Article 14 by demonstrating that it had complied with OSHA requirements and done all that it practically could beyond that. But in this situation the evidence is that the Employer has been confronted with this problem over a period of years and has, based on the minutes of the Safety Committee meetings, essentially given lip service to the problem, with little or inconsistent follow-through. Indeed, the evidence is that the Employer voluntarily entered into a settlement agreement in resolution of the 1997 grievance and then proceeded to neglect both the terms of that agreement and any other diligent efforts to actually correct the problem. The record persuades me that Local management has been, put most charitably, neglectful of its obligations to the employees and, more probably, disingenuous in its stated commitment to solving this problem. This must cease. The Award establishes a framework to accomplish that end.

As to the appropriateness of the Union's specific requested remedy of uninstalling the special filter system, I am not persuaded. The settlement does not require the Postal Service to engage in an exercise in futility, as the reports furnished to management suggest it would do if it were to expend \$80,000 to install an ineffective machine. Despite the Union's specific remedy request, I am not prepared to order installation of such devices. Indeed, short of a shroud over each machine, my observation does not persuade me that any filter system will prevent substantial exposure so long as Management uses high pressure air to clean unvacuumed machines and leaves floors, trays, and surfaces inadequately cleaned.

This is, at bottom, a long-term situation which should be explored at the national level, since many facilities nationwide use these machines and since effective solutions to this national problem would benefit from the kind of attention and resources national handling can bring to bear. I so recommend, although I lack authority to compel such treatment. In the meantime, the Award reflects my determinations as to the most practical local amelioration of the problem.

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