

American Postal Workers Union, AFL-CIO

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August 14, 2001

Lance Coles
President
Des Moines Iowa Area Local
1200 E. Euclid Avenue
Des Moines, Iowa 50313

Re: I90T-1I-C-96015903

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Robert L. Tunstall
Secretary-Treasurer

Greg Bell
Industrial Relations Director

C. J. "Cliff" Guffey
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Robert C. Pritchard
Director, MVS Division

Dear Lance,

Enclosed is Arbitrator Larney's final award for the above-referenced grievance.

The arbitrator ruled that the Postal Service did not violate the National Agreement when it evaluated Mr. Brown's KSA # 10 update in June of 1993 with 1.5 rating which was subsequently determined by the NTAC as a failing rating rendering him ineligible for the BEM PER.

The arbitrator's award is final and binding upon the parties, as such, there is no other appeal regarding this issue within the grievance-arbitration procedure.

Please feel free to contact me should you have any questions regarding this matter. In closing I remain,

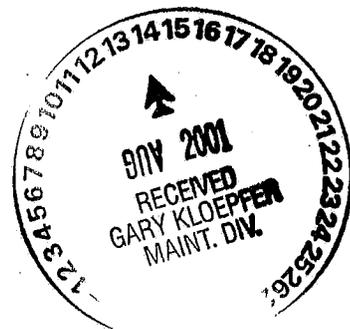
Sincerely and fraternally,

Gary Kloepfer
National Representative-at-Large

cc: file

GK/syi/opei#2/afl-cio

REGULAR ARBITRATION PANEL



IN THE MATTER OF THE ARBITRATION

BETWEEN

EMPLOYER
UNITED STATES POSTAL SERVICE

AND

UNION
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

GRIEVANT: REYNELL M. BROWN

POST OFFICE:
DES MOINES, IA P&DC

CASE NO: I90T-1I-C 96015903

BEFORE: GEORGE EDWARD LARNEY

APPEARANCES:

FOR THE POSTAL SERVICE:

MARCIA G. GRANT
Labor Relations Specialist
Hawkeye District

FOR THE UNION:

GARY KLOEPFER
National Rep-At-Large
Maintenance Division

PLACE OF HEARING:

1165 Second Avenue
Des Moines, IA 50318

DATES OF HEARING:

January 30, 2001
July 18, 2001

DATE OF AWARD:

July 31, 2001

CONTRACT YEAR:

1990-1994

TYPE OF GRIEVANCE:

Contract/Promotion

AWARD SUMMARY

The Postal Service is found by the Arbitrator not to have violated provisions of either the 1990-94 National Agreement (Jt. Ex. 1) or applicable provisions of handbooks, manuals, and published regulations when it evaluated Grievant's KSA #10 update in June of 1993 and gave him a 1.5 rating which was determined by the NTAC as a failing rating rendering him ineligible for the BEM PER.

GRIEVANCE DENIED



GEORGE EDWARD LARNEY
Arbitrator

WITNESSES: (in order of respective appearance) */

FOR THE EMPLOYER

LINDA JENNINGS **/
Diversity Development Specialist

DAVE MALLET
Manager, Maintenance

FOR THE UNION

REYNELL M. BROWN ***/
Custodian, Level 3

JON ARNOLD
Local Union Treasurer
and Steward ±/

*/ All witnesses rendered testimony at the first hearing held January 30, 2001. As witness testimony was not completed until 8:15 p.m., it was determined by and between the Parties and the Arbitrator to reconvene proceedings on which date the Parties would present their respective closing oral arguments. This determination was made in light of the Union's opposition to filing a written post-hearing brief without the benefit of having access to the document titled, "Review Panel Evaluation Guidelines" (effective 12/1/88) but, more specifically, the portion of the Guidelines applicable to the ratings associated with KSA (Knowledge, Skills, Abilities) #10, which probes one's knowledge with respect to the National Electrical Code (NEC). At the second hearing, the Postal Service made available the KSA #10 ratings guideline but, as this is a restricted document, it did not enter a copy into the record as evidence, thereby not providing a copy to either the Union or the Arbitrator. At the first hearing on January 30, 2001, the Union raised strong objection to any witness testimony regarding any aspect of the Guidelines on grounds it constituted new evidence and, therefore, was barred from consideration at the arbitration stage of the grievance procedure. The Union again asserted its strong objection to references/testimony to and about the Guidelines at the second hearing held July 18, 2001. At the first hearing, the Arbitrator addressed the Union's objection by ruling to treat the objection as a threshold question in order to determine the necessity of having to address the merits of the case.

**/ At the time the events occurred which led to the filing of the instant grievance, witness Jennings held the position of Human Resource Specialist.

***/ At the time of this hearing, Grievant Brown was employed at the Atlanta Main Post Office which necessitated taking his testimony by conference telephone.

±/ At the time of this hearing, Arnold, who was the Union's Step 2 Representative, held the Union position of Maintenance Craft Director.

OTHER PRESENT AT HEARING ++/FOR THE EMPLOYER

DON BENSON
 Manager, Maintenance Operations

FOR THE UNION

DAN LABLANC
 Maintenance Craft
 Director

ISSUESThreshold Issue

Following presentation of the Union's case-in-chief, the Employer proceeded to present testimony regarding multiple aspects of the "Review Panel Evaluation Guidelines," effective December 1, 1988, a "restricted" document Postal Service Management relied on in its assignment of the rating given Grievant, Reynell M. Brown, on KSA (Knowledge, Skills, Abilities) #10 pertaining to his knowledge of the National Electrical Code (NEC) which resulted in rendering him ineligible for admission to the Building Equipment Mechanic (BEM), Level 7 Promotion Eligibility Register (PER). The Union strenuously objected to any testimony about or, references to the "Guidelines," asserting the document was never provided to it during any of the preceding lower steps of the grievance procedure and, therefore, cannot become a part of the record proceedings in this arbitration on grounds it constitutes new evidence. In response to the Union's objection, the Arbitrator ruled to treat the objection as a threshold issue akin to the treatment afforded an issue of arbitrability. Thus, if found to constitute new evidence, the Arbitrator will deem the Employer's defense to be substantially flawed, thereby finding it unnecessary to address the merits and ruling to sustain the grievance.

Merits

Based on the Parties' respective statement of the issue which did not differ materially, the Arbitrator discerns the issue before him for resolution on the merits, should it be first determined that testimony and assorted references pertaining to "Review Panel Evaluation Guidelines," effective December 1, 1988, does not constitute new evidence, is as follows:

++/ Benson, serving in the role of the Employer's Technical Assistant, attended only the first hearing. Employer witnesses, Jennings and Mallett, attended only the first hearing. Union witness, Arnold and Maintenance Craft Director LaBlanc attended both hearings.

Did Postal Service Management violate applicable provisions of both the 1990-94 National Agreement (Jt. Ex. 1) and applicable handbooks and manuals, when, by its assigned rating of KSA (Knowledge, Skills, Abilities) #10 on his requested MSS (Maintenance Selection System) update, Grievant, Reynell M. Brown, was determined to be ineligible to be added to the Promotion Eligibility Register (PER) for promotion to the position of Building Equipment Mechanic (BEM) Level 7?

If so, what shall be the proper remedy?

RELEVANT DOCUMENTATION

- I. 1990-94 NATIONAL AGREEMENT (Jt. Ex. 1)
 §§ 2, 15.2 Step 2(d), 19, 31.3, 38
- II. HANDBOOKS AND MANUALS
- EL-350-89-2 Maintenance Selection System (MSS) Management Instruction (Jt. Ex. 6)
 - Employee and Labor Relations Manual (ELM) [Jt. Ex. 5]
 Section 434.6 Out-of-Schedule Premium
- III. OTHER
- Standard Position Description - Building Equipment Mechanic, PS-07 (Jt. Ex. 3)
 - Qualification Standards - Bargaining Unit Positions, Building Equipment Mechanic - Level 7 (5306-07) [Jt. Ex. 4]
 - Maintenance Selection System (MSS) Coordinator's Guide (Jt. Ex. 7)

BACKGROUND

At the time this arbitration was convened on January 30, 2001, approximately 7 years, 3 months after the subject grievance was initiated at Step 1, Grievant had been employed by the Postal Service for approximately 25 years and, as of May, 2000, had voluntarily transferred to the Atlanta, Georgia Main Post Office where he currently holds the position of Building Equipment Mechanic, Level 7. According to Grievant, he commenced his first employment with the Postal Service in 1967 as a Letter Carrier in Atlanta, Georgia and resigned his employment from that Craft and position in 1974 for a job with a privately operated bus service. Grievant commenced his second employment with the Postal Service in December of 1983 as a Custodian, Level 3 at the Main Post Office in Kansas City, Missouri and while there was elevated to the position of Maintenance Mechanic, Level 5. Also during the time he was employed at Kansas City, Grievant testified he submitted application for admission to the Promotion Eligibility Register (PER) for the position of Building Equipment Mechanic (BEM), Level 7, in accord with the Postal Service's Maintenance Selection System (MSS) sometime in 1985.¹ Grievant conceded he was evaluated to be ineligible for admission to the BEM PER having failed the math section of the examination, as well as establishing below average ratings in a number of other KSAs.

Sometime in 1988, Grievant voluntarily transferred to the Des Moines, Iowa Main Post Office, accepting a downgrade from a Level 5 General Mechanic (the title of which was subsequently changed to Maintenance Mechanic) position to a Level 3 Custodian which also

¹ According to the record evidence, the MSS is a method which the Postal Service uses to evaluate candidates for skilled maintenance positions. The MSS consists of a variety of specific knowledge, skills and abilities elements, known as KSAs which are used to evaluate and assess a candidate's entry level qualifications for various maintenance positions. Maintenance positions for which KSAs are utilized are arrayed into six (6) distinct groups, to wit: (1) Air Conditioning and Heating; (2) Area Maintenance; (3) Trades and Crafts; (4) Electronic Technicians; (5) MPE Mechanics; and (6) Mechanics and Machinists. While there exists a total number of 38 KSAs, not all 38 are applicable to each of the six (6) groups. In the case at bar, the position of Building Equipment Mechanic, Level 7, falls in the first group, Air Conditioning and Heating, which utilizes 29 of the 38 KSAs to evaluate a candidate's qualifications. Ratings for each of the KSAs are determined by one of three methods or, a combination of two of the three (3) methods, or, all three (3) methods, to wit: (1) Examination; (2) Review Panel; and (3) Supervisory Evaluation.

entailed taking an actual decrease in pay.² According to Grievant, in the four (4) years between 1988 and 1992, he attempted to submit application to be admitted to the BEM PER but was informed sometime in 1989 that his training records had been lost. Eventually, his training records were located and accordingly, he moved to apply for the BEM PER taking his first written examination for the register at Des Moines on November 10, 1992 (Jt. Ex. 11).³ Subsequently, on March 12, 1993, Grievant appeared before a Review Panel for an update to be evaluated on KSA #10, one of three KSAs of the total of 29 KSAs that is evaluated solely by a Review Panel.⁴ A Review Panel is composed of three (3) members (see fn. 4, supra) and the Panel that Grievant appeared before was staffed by Brian Pietig, Manager, Maintenance Operations, Frank Ward, Maintenance Supervisor, and Linda Jennings, Human Resources Specialist. The primary purpose of the Review Panel, according to the record evidence, is the analysis and questioning of applicants regarding the content of their Candidate Supplemental Application (CSA). During the interview process, review panels are required to confine their questions to the applicant's training, education and experience that is clearly related to the KSA factors identified

² Grievant explained that all of his transfers to various Postal facilities have been voluntary, irrespective of having to accept downgraded positions and decreases in pay due to the fact that, his wife is employed by BP Amoco which has moved her to various geographical locations.

³ It is noted by the Arbitrator that of the 29 KSAs utilized to evaluate candidates for positions falling under the Air Conditioning and Heating Group, fifteen (15) KSAs are measured by the written examination in conjunction with at least one other of the two (2) remaining methods used to evaluate candidates (see fn. 1, supra) and one (1) KSA is measured solely by the written examination.

⁴ The Review Panel is composed of three (3) members, to wit: (1) the senior maintenance manager or designee; (2) a maintenance supervisor from the functional area -- if a maintenance supervisor from the functional area is not available, then a maintenance supervisor who is knowledgeable about the duties and requirements of the position is designated; and (3) one Human Resources representative. According to the MSS Coordinator's Guide (Jt. Ex. 7), when precise membership for review panels is not available, Management may designate Human Resources and maintenance representatives from the next higher level or contiguous facility. According to the record evidence, Grievant was interviewed by the Review Panel for the first time on KSA #10 on November 10, 1992 and, as a result of the rating on this KSA assigned to him by the Review Panel, he was evaluated by the National Testing Administration Service (NTAS) to be ineligible for admission to the BEM PER in and around January 8, 1993 (Jt. Ex. 11).

as part of the evaluation process for the particular group (here, the Air Conditioning and Heating Group). The interview conducted by the review panel is not to be an oral examination and applicants cannot be asked to demonstrate their skills using motors, units, instruments, tools, etc., which may have been placed in the room. The CSA provides the applicant with an opportunity to provide detailed information regarding his/her specific qualifications for the maintenance position to which the applicant aspires to be promoted to. Applicants are apprised that in order to demonstrate their qualification for any one of the KSAs, they need to inform the review panel of any Postal or non-Postal training and/or education they have received relevant to the KSA being inquired about. Additionally, candidates are apprised they should provide the review panel with the one **best** example of a work accomplishment they have completed or are currently working to complete related to the KSA in question. The applicant is further apprised that they can also provide additional examples of work related to the KSA in question. Candidates are also apprised they should describe in some detail what they consider to be their major accomplishments which demonstrate they possess the knowledge or ability indicated by the definition of the KSA being evaluated. Said accomplishments, the candidates are informed, may have occurred in any kind of setting, such as, on-the-job, volunteer services, educational endeavors, hobbies, etc. Further, said accomplishments may be either specific incidents or examples of sustained high performance over a period of time. Candidates are apprised that it is to their best advantage to thoroughly describe their best accomplishment to the review panel for each KSA being evaluated.

The KSA for which Grievant was being evaluated by the Review Panel was, as stated hereinabove, KSA #10 which pertains to a candidate's knowledge of the National Electrical Code (NEC). The definition of this KSA which was provided to Grievant on a pre-printed form among the documents comprising his CSA, and providing blank space in which Grievant could describe his training and accomplishment(s) is, as follows:

Knowledge of the NEC refers to the basic knowledge and familiarity with the techniques and procedures specified in the NEC as they apply to electrical installations such as circuit protection, wiring, conduit, power, and lighting circuits.

(Jt. Ex. 12, p. 10)

On this same form below the definition set forth appears the following instruction:

Review the KSA definition above. In the spaces provided below, describe your accomplishments that best demonstrate your qualifications. Then provide identifying information (such as name, position, title, address,

phone number, etc.) for a person or organization who can verify this information.

(Jt. Ex. 12, p. 10)

As per the definition and instruction provided him, Grievant rendered the following written response:

Postal and nonpostal training courses completed: I completed Heating and Air Conditioning Systems (HVAC) KCMO Tech. School in 1988; Industrial Electrical Service (USPS course #55687-03) in 1986; Environmental Controls 1&2 USPS course #'s 55686-00 and 55689-27) in 1987.

Duty/task accomplished, how it was accomplished and dates:

Example: In September 1992, I was hired by my supervisor at work to wire his unattached and unfinished garage. I had to install a feeder panel [sic] inside the garage, then install outlet boxes for my branch circuits. I also installed circuits for light switches, lights, door opener and outdoor lighting fixtures. I had to refer to chpt. 2, articles 210 and 215 of the National Electrical Code handbook on several occasions to be sure my work would meet or exceed local codes. I worked at Mr. Ira Hicks residence from September 1992 to October 1992. Also during this time I installed ground accent lighting and deck decor lights. This was especially tricky because I had to install photocell timers so that they would catch the light so they would operate from dusk to dawn.

Verifying information: Mr. Ira Hicks (Supervisor, USPS 1165 2nd. Ave., Des Moines, Ia. 50318) can verify the information I have provided in my example. His telephone number is (515) 283-7618.⁵

(Jt. Ex. 12, p. 10)

The record evidence reflects that in this update of his application for admission to the BEM PER, the Review Panel assigned Grievant a rating of 1.0 on his performance level for KSA #10, the lowest rating one can receive on a scale ranging in value from 1.0 to 5.0 (Jt. Ex. 8). The rating was signed by each of the three (3) members comprising the Review Panel and was dated March 12, 1993, the date of the interview. In accord with the MSS Coordinators

⁵ The Arbitrator notes this is the written submission made by the Grievant when he first applied for admission to the BEM PER at Des Moines in November of 1992.

Guide (Jt. Ex. 7) that requires, whenever a candidate is given a performance level rating of less than 1.5 or greater than 4.0, the Review Panel to justify the rating in writing, the Review Panel set forth the following explanation:

Didn't explain correct wiring process on the job he performed.

(Jt. Ex. 8, p. 2)

In response to this rating which rendered Grievant ineligible for admission to the BEM PER, the Union on Grievant's behalf initiated a grievance on April 28, 1993 apprising in its appeal of the grievance to Step 2 that, it learned from Linda Jennings, the Human Resource Specialist on the Review Panel, that after Grievant rendered his explanation as to how he had performed the electrical work he offered as an example on his CSA of his qualifications and knowledge of the NEC, Panel Member, Brian Pietig, informed both her and Frank Ward, the third member of the Panel, that Grievant had explained the procedure incorrectly.⁶ As a result, the Union contended Pietig had not followed the "Review Panel Evaluation Guidelines" by interjecting his own opinion regarding Grievant's verbal account of how he performed the electrical work he offered as the example on his CSA and in so doing, had violated the purpose of the MSS by not following proper MSS procedures. In settling the grievance, Management acceded to the Union's proposed remedy, the terms of which were as follows:

Grievant be given a new Review Panel evaluation within sixty (60) days of the settlement agreement, that Pietig have nothing to do with this Review Panel, that the Review Panel follow the Review Panel Evaluation guidelines and that no Building Equipment Mechanics be hired until Grievant received his rating from the National Testing Administration Center (NTAC).

The record evidence reflects that, in compliance with this settlement agreement, the Review Panel now comprised of two (2) new members, David Mallett, Manager of Maintenance who replaced Brian Pietig and, Don Benson, Maintenance Engineering Specialist, who replaced Supervisor Frank Ward, along with Human Resources Specialist, Linda Jennings, who was carried over as a member from the initial Review Panel, convened on June 16, 1993 (within the 60 day time frame specified) to reinterview Grievant about his KSA #10

⁶ It is noted from the record evidence that this was the second time while employed at the Des Moines Main Post Office that Grievant was assigned a "failing" rating on KSA #10 by the Review Panel which resulted in his being found ineligible to be admitted to the BEM PER (see fn. 4, supra).

submission on his CSA.⁷ The members of this Review Panel rated Grievant 1.5 on his performance level of KSA #10, the next highest rating from 1.0, the lowest end of the range of values from 1.0 to 5.0 (Jt. Ex. 12, p. 6). In a written exposition justifying the unanimous rating of 1.5 on KSA #10, Mallett, authoring the written justification for the Review Panel, stated the following:

I felt no investigation was done to determine maximum load. Did not know how ground fault circuit interrupter (GFCI) worked -- one is required in garage.

All work has been of a simple not a complex installation. Limited reference to NEC.

(Jt. Ex. 12, p. 8)⁸

The record evidence reflects that following a Review Panel evaluation, the result(s) are forwarded to the National Testing Administration Center (NTAC) and it produces a composite rating (combined with the written test results and the supervisor evaluation associated with the other applicable KSAs) to determine the candidate's eligibility for the PER in question. Since this Review Panel rating constituted what is known as an update, the NTAC already had the past results of Grievant's written test and supervisor evaluation. Thus, all the NTAC had to do was to determine whether Grievant's improved rating on KSA #10 of 1.5 from his previous rating of 1.0 was sufficient enough to make him eligible for the BEM PER. When, by September 14, 1993, approximately three (3) months after Grievant was re-evaluated by the Review Panel the NTAC had yet to inform Postal Management whether or not Grievant had been rated eligible for the BEM PER, James Shipman, Manager of Human Resources for the Hawkeye District, made a written inquiry to NTAC as to Grievant's update results. In a written response dated September 19, 1993, James Mahoney, Manager

⁷ It is noted from the record evidence that this constituted the third interview Grievant was given by the Review Panel to evaluate his qualifications and knowledge of the National Electrical Code (KSA #10) since being employed at the Des Moines Main Post Office. The other two times were November 10, 1992, his initial application to the BEM PER, and March 12, 1993 for the update (see fns. 4 and 6, supra).

⁸ The Arbitrator notes that the MSS Coordinator's Guide (Jt. Ex. 7) requires the Review Panel to justify in writing ratings of less than 1.5 or more than 4.0. However, this requirement differs from the requirement specified on page 2 of Form 2518-B, the rating form used by the Review Panel to rate Grievant on his KSA #10 which states, "Rating Justification: In the space below provide a narrative statement justifying all ratings of 4.5 or above and 1.5 or below" (Jt. Ex. 12, p. 8).

of the NTAC, informed Shipman that the Center was experiencing processing problems regarding Grievant but that a manual calculation of his update results proved him to be ineligible for admission to the BEM PER. Mahoney further informed Shipman the NTAC would forward Grievant's Notice of Rating Cards and Individual KSA Summary as soon as they were printed. According to the record testimony, Shipman, in turn, relayed to Grievant the information of his ineligibility and, in response, Grievant requested a copy of his Review Panel Evaluation, the front page of which he received on October 13, 1993. In a separate request, Grievant asked for and subsequently was given the backside of the Panel Review Evaluation rating of KSA #10 which set forth Mallett's explanation in justification of the Panel's unanimous rating of 1.5 as reproduced hereinabove (Jt. Ex. 12, p. 8). Upon securing the copy of Mallett's remarks in justification of the Panel's 1.5 rating, Grievant responded by recording written notes alongside each justifying claim. In response to Mallett's statement, "I felt no investigation was done to determine Maximum Load," Grievant wrote, "speculation, was not asked." In response to Mallett's next statement, "Did not know how Ground Fault Circuit Interrupter worked," Grievant wrote, "lied, this is what I told him [Mallett] I used," noting, "refer to Article 215-9 in the NEC." In response to the next statement, "All work has been of a simple not a complex installation," Grievant wrote, "was not asked for a complex installation in the interview. Not applying to be electrician -- this is speculation!! Read requirements in KSA #10." And, in response to the last statement by Mallett, to wit, "Limited reference to NEC," Grievant wrote, "referred to NEC in KSA does not indicate knowledge of reason for a low score" (Jt. Ex. 12, p. 7).

Mallett testified that the probing the Review Panel engages in of the candidate, here the Grievant, does not constitute an oral examination but rather, the questions posed are based on the written exposition of the KSA in question, here KSA #10 in order to verify the information provided by the candidate/applicant. Mallett also explained the Panel exercises the right to ask the applicant follow-up questions based on the applicant's verbal responses to the initial questions. Mallett asserted that the sense of the Panel was that Grievant did not provide adequate responses in support of the claims he specified on his CSA. Mallett explained that as the Human Resources panelist, Jennings monitored the questioning of Grievant and, at no time did she indicate objection to any of the questions posed. Jennings, who served as the Human Resources panelist on both the March and June, 1993 Review Panels to evaluate Grievant's update for his evaluation on KSA #10 testified that, even though he was questioned by the Panel Members on the identical CSA exposition regarding his knowledge, skills, and ability of the NEC, the difference in his rating on KSA #10 in March of 1993 of 1.0 and the higher rating of 1.5 he received by the Panel in June of 1993 was attributed to the fact that he provided the June Review Panel with a better explanation of the work he performed with respect to safe

procedures.⁹ According to Jennings, when Grievant appeared before the March, 1993 Review Panel, some of his answers signalled unsafe procedures whereas, when he appeared before the June, 1993 Review Panel, none of his answers to the questions he was asked signalled unsafe procedures. Jennings noted that different Review Panels (meaning Review Panels composed of different members) can and do make different interpretations of the written expositions submitted by applicants who appear before them which, in turn, bears on the specific questions posed to them but, all Review Panels permit the applicant to respond to the open ended question as to whether there is any additional information they would like to provide them beyond that which the applicant offered in his/her responses to the specific questions asked, in an effort by the Panel to give the applicant the highest rating possible. In his testimony, Mallett confirmed that, as a matter of standard procedure, Grievant was given the opportunity at the end of the interview to make any additions to what he had told the Review Panel through the answers to the questions posed to him. In this regard, Mallett claimed, Grievant was not treated differently than any other applicant and certainly there was no animus directed toward Grievant on the part of any panel member. Jennings testified she has been a member of many Review Panels, specifically for the BEM PER, that her role on these panels is not as a subject matter expert, as she readily admits she knows nothing about electricity, but rather, her role is to make sure the ratings assigned by the other two panel members are fair and objective. Jennings noted that in assigning performance ratings on KSAs, panel members are required to strictly adhere to the standards set forth in the document known as the Review Panel Evaluation Guidelines (that have been in effect since

⁹ It is noted from the record evidence that the purpose of an update is for the applicant to demonstrate to the Review Panel that he/she has gained additional knowledge, skill, and/or ability associated with the KSA in question in the interim since the applicant's prior appearance before the Review Panel in an effort to boost one's rating to become eligible for the particular register being applied for, here the BEM PER. It is further noted that the identical exposition regarding Grievant's knowledge, skill, ability on KSA #10 that was presented to the March, 1993 Review Panel was resubmitted by Grievant to the June, 1993 Review Panel as the sole purpose for appearing before the June, 1993 Review Panel was to be re-evaluated due to the allegation levied by Grievant that the March, 1993 Review Panel had not properly followed MSS Procedures. According to Jennings, it was extremely unusual for Grievant to secure such a re-evaluation by way of a grievance settlement agreement.

December 1, 1988).¹⁰ Jennings further noted that ratings assigned to applicants are based on a consensus of the three (3) panel members and that, under the general and most usual circumstances, panel members have no knowledge as to what ratings constitute either a passing or failing numerical value.¹¹

Mallett, in contravention to Jennings' testimony that Review Panel members are given extensive training in connection with serving on Review Panels (see fn. 10, supra), testified he has received eight (8) hours of general training in the art of interviewing but has had no training that was specific to sitting on Review Panels. Notwithstanding this absence of specific training, however, Mallett related that in the last ten (10) years, he has served as a member of a Review Panel approximately 100 times and, prior to the June, 1993 Review Panel which convened to re-evaluate Grievant on his KSA #10, he had been a member of about ten (10) to fifteen (15) Review Panels. Mallett explained that in his position as Manager of Maintenance, he is the Management official that selects the two (2) maintenance panelists that sit on the Review Panels and, in the case at bar, he selected himself to sit on the June, 1993 Review Panel as one of the two members in order to insure fairness of the process. Mallett asserted that prior to serving on the June, 1993 Review Panel that re-evaluated Grievant's KSA #10, he was familiar with Grievant's work but not familiar with the specifics of that work. Mallett conceded in his testimony that he did not discuss with Supervisor, Ira Hicks, the person Grievant specified could verify the work he referenced on his written CSA, about the wiring work Grievant described he did for Hicks in his unattached and unfinished garage. Mallett testified he does not recall having any

¹⁰ Jennings noted that persons that sit as Review Panel members are given extensive training relative to performing the duty of assigning ratings associated with one's KSA performance level.

¹¹ Jennings explained that benchmarks are determined for each KSA and that these KSA benchmarks vary relative to the different positions applied for by the candidates. However, if an applicant receives a failing rating on any one of the KSAs that are being examined for a particular position as determined by the NTAC, then the applicant is deemed by the NTAC to be ineligible for that position's register. In the case at bar, Jennings averred, it is now known, at least by the panel members who served on the Grievant's March, 1993 and June, 1993 Review Panels that for the BEM position a rating of 1.0 and a rating of 1.5 are failing ratings but, it is yet unknown whether a rating of 2.0 is deemed by the NTAC to be a passing rating for the BEM position. It is recalled by the Arbitrator that the Review Panel is the sole determiner as to the rating to be assigned to KSA #10 after which the rating is determined by the NATC to either qualify or disqualify a candidate to be eligible for admission to the BEM PER.

conversation with Grievant anytime after he was deemed by NTAC to be ineligible for the BEM PER as a result of the 1.5 rating given him by the June, 1993 Review Panel.

Subsequent to his being notified by either Shipman or Shipman's designee in and around September 29, 1993, that he was found by the NTAC to be ineligible for the BEM PER (a third time), the record evidence reflects that Grievant bid on a vacancy for the position of General Mechanic, Level 5 that was posted October 14, 1993 (Jt. Ex. 13, p. 87). The record evidence further reflects that on October 22, 1993, one day after the closing date of the posting for job 515 (General Mechanic, Level 5), Grievant was selected as the successful bidder for this position, which position he assumed effective October 30, 1993 (Jt. Ex. 13, p. 88). The record evidence reflects that the position of General Mechanic falls within the sixth Maintenance Group within the MSS scheme known as the Mechanics and Machinists Group (MM), and in order to qualify for promotion to this position, the successful bidder is required to have passed on 31 of the total of 38 KSAs, one of which is KSA #10 (Jt. Ex. 7A, p. 3, also see fn. 1, supra). As is the case for qualifying for the BEM PER, the sole determiner in rating an applicant on KSA #10 for the position of General Mechanic is a Review Panel.¹² Apparently as a result of securing the promotion from Level 3 Custodian to General Mechanic, Level 5 which required a passing rating on KSA #10 to qualify for the position, Grievant, on October 27, 1993, five (5) days after he was deemed the successful bidder and awarded the General Mechanic, Level 5 position, initiated the grievance that is the subject of this proceeding. In its lengthy Step 2 written appeal of the grievance submitted following the issuance of the Step 1 denial on November 1, 1993, the Union alleged, among other things, the following:

*** It is the Union's contention that the Review Panel is not conducting itself in a professional manner in accordance with its governing language. The Panel is designed to be an impersonal body which will impartially evaluate a candidate upon the information listed within the CSA and then consult the rating guidelines to achieve a candidate's rating. The Union feels that this is not the instant case. Personal feelings and impressions have no room in this forum, yet they seem to have found a way in. *** The Review Panel has found that it, in effect,

¹² Since the record evidence is devoid of another Review Panel interview given Grievant on KSA #10 specifically for the General Mechanic, Level 5 position, it must be presumed that the KSA #10 rating of 1.5 given Grievant by the June, 1993 Review Panel represented a passing benchmark numerical value for this position even though for the higher level position of Building Equipment Mechanic, the same 1.5 rating represented a failing rating (see also fn. 11, supra).

can act as a job interview panel and block the potential promotion of persons who it deems undesirable for the positions in question.

The Grievant has established that he has a working knowledge of the NEC and has consulted with this document for pertinent information in research of a wiring installation. The information gleaned from this research was then followed when the wiring was performed. This was just the most recent example which the candidate included within his CSA. The Union and the Grievant contend he is maliciously being discriminated against in violation of Article 2, by the MSS Review Panel with the express purpose being to keep him from being promoted into the BEM Occupational Group. This discrimination may very well be based on the fact that the Grievant is black and over 40 years of age, and trying to be promoted above the ranks of the PS3 Custodians.¹³

The record evidence reflects the Postal Service ultimately denied the grievance at Step 2 on November 13, 1995, two (2) years after the grievance was appealed to Step 2. This lapse in time was accounted for by the Parties thus: Even though Grievant was informally notified in and around September 29, 1993 he had failed KSA #10, it was not until March 28, 1994, that the NTAC issued its formal computerized results of all of Grievant's KSAs for the BEM register (Jt. Ex. 10). This report indicates that aside from receiving a failing score for KSA #10, he passed the 27 other KSAs that were tabulated, receiving a below average test score but, nevertheless, a passing grade, on 9 of these 27 other KSAs.¹⁴ However, eleven (11) days prior to the issuance of the NTAC's computerized results, the Union, on March 17, 1994, as part of its then ongoing investigation of this instant grievance, submitted an information request to Jennings asking for copies of all Review

¹³ The Arbitrator notes that at the time the Union appealed the subject grievance to Step 2, sometime following the Step 1 denial of the grievance which occurred November 1, 1993 (Jt. Ex. 2, p. 9), Grievant had already been promoted to and assumed the position of General Mechanic, Level 5. At the hearing, Grievant acknowledged that along with initiating this instant grievance, he also filed an Equal Employment Opportunity (EEO) complaint which apparently is still pending determination.

¹⁴ The Arbitrator notes that for some unexplained reason, the NATC did not tabulate the result for KSA #18, a KSA which is rated solely by the Review Panel for admission to the BEMPER. Accordingly, because this KSA was not tabulated, it resulted in a total of 28 KSAs being tabulated rather than the total of 29 KSAs which comprise the composite evaluation for eligibility to the BEMPER (see Jt. Ex. 7, p. 3 as compared to Jt. Ex. 10).

Panel evaluations and corresponding CSA booklet pages for KSA #10 for a total of eighteen (18) employees listed by name (Jt. Ex. 13, pp. 60 & 80).¹⁵ Said request for information was denied with the Postal Service taking the position that the Union had to secure a release of this information from each of the identified eighteen (18) employees. The Union countered by initiating a Step 1 grievance on May 3, 1994, alleging that the basis of the denial was in violation of the National Labor Relations Act, the National Agreement, specifically Article 17, Section 3 (Jt. Ex. 1), and a January 11, 1977 Step 4 grievance decision signed by Labor Relations Specialist, William E. Henry (Jt. Ex. 13, p. 60). With respect to the Step 4 decision, the Union cited the following excerpt:

... the documents involving the qualifications of those employees desiring to be put on the promotion eligibility register for area maintenance technician are totally relevant to the grievance filed in this instance. In accordance with the terms and conditions set forth in Article XVII and Article XXXI of the National Agreement, said documentation should have been made available for inspection by the Union locally.

The Union asserted that as it had shown that the information it requested was relevant to the processing of the instant grievance, the Postal Service's denial constituted a flagrant violation of this Step 4 decision and the National Agreement (Jt. Ex. 1). As a resolution of the grievance filed over denial of the requested information, the Union requested said information be made immediately available to it so it could further process the subject grievance. In its Step 2 denial, Management asserted the Union's information requests was appropriately denied per Management Instruction EL-350-89-2, Section X, Subsection A, which reads:

Postal Service employees who want access to their final ratings, CSA, and review panel and supervisor evaluations must submit a request in writing, as described in Part 353 of the Administrative Support Manual (ASM).

In addition, Postal Management also cited Section X, Subsection B, titled, "Unavailable Records" wherein, Part 1 states the following:

¹⁵ According to the record evidence, the purpose of this request as explained by the Union to Management was to form a base of information with which to compare the evaluation of Grievant vis-a-vis the evaluation of other applicants for the BEM PER in its processing of the subject grievance now before this Arbitrator in the hope that said comparisons would yield information persuasive enough to settle the grievance at the lowest possible step.

An applicant's request for the following types of information must be denied:

- a. Review Panel evaluation guidelines
- b. Supervisor evaluation guidelines
- c. Ratings of other employees
- d. Examination materials
- e. Information within records that might compromise testing or examination materials.

(Jt. Ex. 6)¹⁶

Postal Management further stated in its Step 2 denial that it had offered to provide the requested information if the Union secured a signed release form from each of the individuals whose records were requested but that said release forms never were produced. As to the cited 1977 Step 4 grievance decision, Postal Management took the position that the settlement pertained only to that grievance and, it therefore lacked support for release of the information the Union was requesting relative to the instant grievance (Jt. Ex. 13, pp. 57-58).

Notwithstanding the Step 2 denial of this information grievance, the Parties reached the following Step 3 settlement agreement, dated September 8, 1994, to wit:

The parties at the local level will meet to determine a mutually agreeable method of providing the requested information in accordance with ASM 353.326 and the Privacy Act Statement on the information form (Jt. Ex. 13, p. 53).

The ASM provision cited above in the settlement agreement, Section 353.326 reads as follows:

¹⁶ The Union explained in its written Step 3 appeal of its information grievance that its request did not pertain to any of these unavailable record items but that its request came closest to item C, "ratings of other employees." The Union further explained the information it was seeking would even be of use if all personal information was redacted as long as the evaluation sheet produced corresponded with the original KSA sheet -- since it was not asking for any specific personal information as it noted that, by design, the MSS is impersonal. The Union argued that a way must be allowed to review the actions taken by Management and to voice an opinion if things seem to be amiss, such as here, where the information requested may show the Review Panel Evaluation Guidelines had not been followed. The Union noted that as said Guidelines are not available, the results yielded in applying the Guidelines are all that is available for review and, as such, it argued, such information may not be denied it (Jt. Ex. 13, pp. 55 & 56).

353.326 TO COLLECTIVE BARGAINING AGENTS

Information about individual employees is released to certified collective bargaining agents, consistent with appropriate provisions of applicable collective bargaining agreements and other statutory obligations, when permitted as a routine use of the system of records. If in doubt about the obligation or the permissibility of a disclosure, obtain the advice of the chief field counsel (see also 353.313b).

(Jt. Ex. 13, p. 54)

The record evidence reflects that following this settlement agreement, the Union, in not receiving the requested information made its first written inquiry by e-mail dated November 16, 1994 to Linda Jennings as to when the matter could be further discussed (Jt. Ex. 13, p. 46). Thereafter, a series of e-mail communications followed (Jt. Ex. 13, pp. 47-51), ending with an e-mail dated June 30, 1995 from Labor Relations Specialist, Stephen J. Thalken, to Union official, Jon Arnold, wherein, Thalken stated he had spoken with Human Resources official, Eleanor Williams, and that she assured him the information in question was being sent to the Union (Jt. Ex. 13, p. 52). Four (4) months later on date of November 8, 1995, the Union filed a second grievance relative to the denial of the information that was the subject of the September 8, 1994 settlement agreement wherein, it noted, there had been numerous road blocks and misunderstandings placed in its way and, notwithstanding the decision reached by Thalken and Arnold as to what information was needed and in what form it could be of use, the information still had not been provided. Meanwhile, a review of the instant grievance record reflects that on November 13, 1995, the Union drafted a settlement of the grievance here being arbitrated but that Grievant had second thoughts and the Union, as a result, declined to agree to the proposed settlement even though it had been signed by Management's Step 2 Designee, Steve Thalken (Jt. Ex. 13, p. 6). The last recorded response to the second information grievance dated November 21, 1995, indicated that Jennings had related that the information in question being sought by the Union would be provided within the following two weeks (Jt. Ex. 13, p. 5). Progression of this information grievance was extended to November 27, 1995. The record evidence reflects that after the Union declined to accept its own proposed settlement of the grievance here being arbitrated, the Employer denied said grievance for a second time, which occurred on November 13, 1995, prompting the Union to appeal the grievance to Step 3. In this third step appeal, the Union stated that the original facts and contentions it set forth in its five (5) page exposition at Step 1 on November 1, 1993, continued to represent its basic position on the grievance but, that the Additions and Corrections it filed in the matter yielded myriad other facets of the case. To begin with, the Union challenged Management's contention that Grievant had failed the training for the BEM PER three (3) times, once in Kansas

City and on two (2) separate occasions in Des Moines, asserting this was false as Grievant had not failed any training in connection with the National Electrical Code (KSA #10)) and that this contention, in all probability, was a misstatement based upon what Mallett had said in a typed response to Grievant's comments in reaction to Mallett's written justification on behalf of the Review Panel regarding the rating of 1.5 it assigned him for KSA #10 (Jt. Ex. 2, p. 5 and Jt. Ex. 13, p. 85). In defense of the 1.5 rating assigned Grievant by the Review Panel, Mallett set forth the following exposition reproduced in whole, hereinbelow:

As to Mr. Brown's reference that I did not ask about a complex installation

1. I would assume that he would have used the most complex installation that he would have done as he was being interviewed on this.
2. As the APWU has pointed out that we can only ask questions on the subject that the applicant has put on his update. We are not allowed to ask about anything else. One time I did make reference to Jon Arnold that at times you must try and get additional experiences from the applicants to make a rating. Mr. Arnold said you can only use what is on the update. I am merely adhering to Mr. Arnold's interpretation.

On determination of load.

I specifically asked Mr. Brown how he determined the amount of load he would have on the panel he installed. He did not give me an adequate answer to how he based the load. He merely installed a panel with a 30AMP (I believe) disconnect and had no idea what type of load was to be used. He did not ask the owner and did no calculations to determine the load as to what would be operated on it.

Rating of 1.5 states performs simple equipment installations. Thus the reference to complex installations. In my opinion the installation was of a simple nature and not complex.

Mr. Brown did not pass this PER in Kansas City and has failed it here twice. The two different review boards were of different maintenance people. It is my opinion

that few if any people in this facility would rank higher than a 1.5 as defined in MSS Review Panel Evaluation Guidelines. (Emphasis by Arbitrator)¹⁷

(Jt. Ex. 13, p. 85)

The record evidence reflects that in further processing this instant grievance, Grievant indicated written responses to each of Mallett's points in notes alongside each paragraph. As to Point 1 about "complex installations," Grievant contended that complex installations were not an issue and therefore not required to be addressed in the update and, additionally, the MSS requires one to possess only basic knowledge of electrical work. Moreover with respect to Mallett's Point 2, Grievant asserted that if it were true that the Review Panel was adhering to the limitation imposed on it of confining its questions to that which is stated on the CSA update, then one must question the reason why Mallett was insisting that he should have used a complex installation on his update. As to Mallett's comments regarding determination of a load, and the claim that he did not ask the owner and did no calculations to determine the load as to what would be operated on it, Grievant contended this was an untrue statement and that his update indicated what the circuits were for. With regard to Mallett's

¹⁷ In fact, the Arbitrator notes, Mallett did not indicate in this exposition as charged by the Union that Grievant had failed the training for the BEM PER three (3) times but, rather, Mallett clearly stated Grievant did not pass the PER in Kansas City and twice failed to pass it in Des Moines. What Mallett meant however was that Grievant failed to secure a passing rating on KSA #10 on three (3) different attempts, once in Kansas City and twice in Des Moines. More likely, in its Additions and Corrections, the Union's claim the Employer misstated the facts in its assertion Grievant thrice failed training in connection with NEC pertained to the Employer's third step denial of the instant grievance wherein Postal Service Step 3 Designee, Paul Lyons stated, in part, "the Grievant has been given several training opportunities which he has failed to complete successfully." The record evidence makes clear that this is a misstatement of the facts as there is no evidence of Grievant having failed any "training opportunities." More than likely what Lyons meant to state was that Grievant had been afforded three (3) opportunities to secure a passing rating on KSA #10 but that he failed in all three attempts to achieve a passing rating. It is further noted that this was not the only distortion of the matter rendered by Lyons in his third step denial (Jt. Ex. 2, p.2), as he also stated that the Union made no mention of a request for information in the Step 2 appeal having raised such a request for the first time in its Additions and Corrections as an afterthought. In fact, the progression of the instant grievance was deferred by mutual agreement in order to afford the Union to acquire additional information regarding the subject dispute.

stated opinion that few if any people in [the Des Moines] facility would rank higher than a 1.5 [rating] as defined in the MSS Review Panel Evaluation Guidelines, Grievant wrote, "if this statement is true then 1.5 is all that is required to pass the interview panel on this NEC or none of his present BEMs are qualified. Ratings from my Kansas City PER has no bearing here and should not be considered in the processing of this grievance" (Jt. Ex. 13, p. 84).

With respect to training Grievant had received on NEC, the Union noted in its Step 3 Appeal that Grievant had taken the Employer's Industrial Electrical Service resident training course at the Maintenance Training Center in Norman, Oklahoma, which included a section on the NEC (Jt. Ex. 2, p. 4).¹⁸ The Union further noted Grievant's credentials by referencing his having worked with the NEC in his duties at the Postal Service as well as in his own business as a Refrigeration and Air-Conditioning Serviceman. The Union also noted Grievant had submitted a good example of his using the NEC associated with the electrical installation work he described for the Review Panel. The Union asserted in its Additions and Corrections that, if furnished the comparative information it had requested pertaining to other candidates' CSAs and their KSA #10 ratings assigned by the Review Panel for admission to the BEM PER, it could demonstrate that there was no consistency between what a candidate stated in their CSA and the rating that was assigned them by the Review Panel. Such a disconnect between the CSA expositions and the Review Panel

¹⁸ Grievant's Record of Training (Jt. Ex. 9) reflects that he completed the Industrial Electrical Service course on May 16, 1986 with a rating of Satisfactory. The Record of Training further reflects the course was comprised of eighteen (18) major elements and that included among these elements was the National Electrical Code. The description of this course reads in whole as follows:

This course is designed to provide the student with theoretical and practical knowledge of industrial electricity, switchgear, motors, lighting, electrical panels, standard electrical circuits and the basic skills of electrical wiring. Emphasis is placed on fundamental principles, physical application, selection and installation of electrical circuits to operate postal and plant equipment (Jt. Ex. 9).

It is recalled that in his written exposition on his CSA regarding KSA #10, that, in addition to listing the above training course, Grievant also indicated he had completed the Postal Service's training courses, Environmental Controls 1 & 2 in 1987, and in 1988, he completed a non-Postal Service training course at Kansas City, Missouri, Technical School in Heating and Air-Conditioning Systems (Jt. Ex. 13, p. 7).

ratings, the Union asserted, made the point that this was not in conformance with the MSS Procedures, in that the Review Panel Evaluation Guidelines (the restricted document, not made a part of this evidentiary record) are to govern the ratings given to candidates.¹⁹ The Union reasoned that when one candidate can write down two lines of information on their CSA with no specific information regarding KSA #10 and another candidate can list and explain specific references and procedures on their CSA regarding KSA #10 and receive the same rating, such an outcome could, politely be termed, an inconsistency. At the time the Union advanced this position, it had yet to receive the requested CSA expositions and corresponding KSA #10 Review Panel ratings of other employees as a means of support for this allegation. However, between the time the Step 3 appeal was filed and this instant case finally proceeded to this subject arbitration, the Union was given the CSA expositions and corresponding Review Panel Ratings on KSA #10 for eleven (11) of the eighteen (18) employees it had initially requested.²⁰

A review of the comparative information yields the following broad results:

- Four (4) candidates received a Review Panel rating of 1.5. These four employees were:

¹⁹ The Union stated in its Additions and Corrections that this argument constituted the basic crux of its entire case relative to the instant grievance and that the only reason it did not request the Review Panel Guidelines itself was because it knew full well the Guidelines would never be released to it. Notwithstanding this reality, the Union nevertheless adhered to its position that the Guidelines were really required for any true discussion regarding the subject grievance. It is recalled that according to Section X of the EL350-89-2 Handbook (Jt. Ex. 6), the Review Panel Evaluation Guidelines is one of five types of information that falls under the scope of "Unavailable Records."

²⁰ In alphabetical order, the eleven (11) employees whose information was released to the Union were:

- | | |
|---------------------|--------------------|
| 1. Roger Barnett | 6. Richard Link |
| 2. Gary Beaman | 7. Rich McCloney |
| 3. Dennis Kain | 8. Paul Olson |
| 4. Bob Lepley | 9. Pasquale Romore |
| 5. John Lillibridge | 10. Bret Weyers |

It is noted by the Arbitrator that the eleventh employee was not identified in the documents by name but that this employee's name was among the remaining eight (8) names on the list the Union tendered to Postal Service Management (Jt. Ex. 13, p. 80).

- Bob Lepley
- Richard Link
- Paul Olson
- Unidentified by name
- One (1) candidate received a rating of 2.0, to wit:
 - Bret Weyers
- Two (2) candidates were rated 2.5 by the Review Panel -- they were:
 - Roger Barnett
 - Pasquale Romore
- Three (3) candidates were rated 3.0 by the Review Panel -- they were:
 - Dennis Kain
 - John Lillibridge
 - Rich McCloney
- One (1) candidate received a 3.5 rating from the Review Panel:
 - Gary Beaman

As to those seven (7) candidates who received a rating higher than the 1.5 rating given to Grievant, the Union made the following observations in its closing oral argument at hearing:

1. Bret Weyers (Rated 2.0)
Noted that with respect to training, Weyers had taken a National Education Center course in 1985, titled, "Working Safely with Electricity." The Union claimed this course was comparable to the Industrial Electrical Service (IES) course Grievant had taken at the Postal Service's Technical Training Center in 1986.

On his CSA, Weyers provided the following exposition in support of KSA #10:

Duty/task accomplished, how it was accomplished and dates:

Example: I was taught the purpose of the National Electrical Code which is to safeguard buildings and people of (sic) electrical hazards. All electrical wiring should be within compliance with the Code. I installed breakers, wiring, switches, receptacles in a newly constructed house which pass [sic] N.E.C. by a [sic] electrical inspector. I was

taught the understanding of safety codes and good safe work habits.

(Jt. Ex. 13, p. 13 & p. 25)

2. Roger Barnett (Rated 2.5)
Only training was the Industrial Electrical Service course, the identical Postal Service training course taken by Grievant.

On his CSA, Barnett provided the following exposition in support of his KSA #10:

Duty/task accomplished, how it was accomplished and dates:

Example: The NEC is adhered to by the Postal Service. Its purpose is protection of life & property -- code is a minimum - code recommends better than the minimum -- to use the NEC -- look up topic in the index at the back and turn to proper chapter and article to find the answer to your question. Worked on lighting project -- mounted boxes and conduit -- anchor every 10'-3' from box -- pulled and connected wires and hung lights tied into existing line from existing circuit protection (breakers), took old lighting. Partial rewired L-series conveyor -- Westinghouse motor starter -- flex conduit to allow for vibration motor adjustment -- look out in sight of motor -- replaced some conduit -- emergency stop button -- pulled wire with Earl Boncher.

(Jt. Ex. 13, p. 35)

3. Pasquale Ramore (Rated 2.5)
Noted paucity of any exposition on his CSA and that the only training he listed was a Building Trades Course.

On his CSA, Ramore provided the following exposition in support of KSA #10.

Postal and non postal training courses completed: Building Trade Course, reference #2 on the 991.

Duty/task accomplished, how it was accomplished and dates:

Example: A segment of the wiring course mentioned earlier (see KSA 2) was devoted to the NEC. It covered all the items mentioned above as well as other thing [sic] such as proper location of switches and outlets. Completed the course in 1980.

(Jt. Ex. 13, p. 32)

4. **Dennis Kain** (Rated 3.0)
Noted that Kain claimed in his appearance before the Review Panel to have performed electrical installations outside the Postal Service and to have accomplished this work in accord with the NEC. The Union argued that this was the identical profile Grievant possessed yet Kain was rated a 3.0 on KSA #10 whereas, Grievant was rated a 1.5.

On his CSA, Kain provided the following exposition in support of KSA #10.

Objective/task accomplished and approximate dates: Worked as journeyman electrician 1982-1984

What was done to accomplish the objective/task: New construction was done involving wire size calculation; conduit calculation and all code rules. Before approval all jobs were inspected by City and Iowa Power Inspectors.

Additional Supporting Information: I worked and watched over jobs ranging in size from house rewires to an 1800 AMP 480V grocery store. Also gas stations where hazardous areas existed.

Verifying person (name, position, address, and phone): Ron Tesdell
Tesdell Electric
Ankery, Iowa
964-8641

(Jt. Ex. 13, p. 8 & p. 30)

5. John D. Lillibridge (Rated 3.0)
Noted worked as a BEM for the Postal Service.

On his CSA, Lillibridge provided the following two (2) examples of previously performed work in support of KSA #10.

Duty/task accomplished and approximate date:
1988 working as a BEM for USPS. Installed new outlets at Fairgrounds Annex.

What was done to accomplish the duty/task:
Use of safety tags to lock out circuit worked on tore out obsolete conduit and outlets then rerouted new conduit and outlets eliminating safety hazards of electric cords strung across walkway to electric panels.

Additional Supporting Information: Followed NEC Application on grounding procedures of recepticals, conduit, anchoring of conduit and gauge of wire to amperage use.

(Jt. Ex. 13, p. 37)

Duty/task accomplished and approximate date:
1988 - Work order to eliminate any hot male plug cord ends or cord wired permanent lights (against code) while working as BEM for USPS.

What was done to accomplish the duty/task:
Initially inspection was done to find any hot male plugs then report and eliminate them. Then any lights attached to permanent mounts had to be hand wired (conduit and wire) and not with drop cords.

Additional Supporting Information: Following NEC code performed the above mentioned and also relocated cord drops that weren't verticle drops to verticle drops according to code.

(Jt. Ex. 13, p. 38)

6. Richard P. McCloney (Rated 3.0)
Noted that he only referenced having had NEC training with no exposition regarding a duty/task accomplished and how that duty/task was accomplished yet, he received a 3.0 rating from his Review Panel.

On his CSA, McCloney provided the following exposition in support of KSA #10.

Duty/task accomplished and approximate date:
 Attended NEC from June 1980 to August 1982.
 Had instruction on electricity and the National Electrical Code.

What was done to accomplish the duty/task:
 Had classroom instruction on National Electrical Code.

Additional Supporting Information: Also attended TTC at Norman, OK for Bulk Conveyor course and had some instruction on the code.

(Jt. Ex. 13, p. 20)

7. **Gary F. Beaman** (Rated 3.5)
 In its oral closing argument, the Union noted that Berman, like the Grievant, took the IES course and that his higher rating of 3.5 was predicated on his having taken the course.

On his CSA, Beaman provided the following two (2) examples of previously performed work in support of his KSA #10.

Duty/task accomplished and approximate date:
 My objective was to attend, learn, pass and retain the information in an Industrial Electric Service class at O.P.F.O. #55087-03 in February 8, 1985 which I did. (116 hrs.)

What was done to accomplish the duty/task:
 While attending class, I was reintroduced to the theoretical and practical knowledge of industrial electricity, switch gears, motors, lighting, electrical panels, standard electrical circuits and the basic skills of electrical wiring. Emphasis was placed on fundamental principles, physical application, selection and installation of electrical circuits to install and operate postal and plant equipment.

Additional Supporting Information: This class stressed the use and reference of the NEC as a valuable tool in correct and safe wiring methods.

(Jt. Ex. 13, p. 44)

Duty/task accomplished and approximate date: Some of my responsibilities, as an AMO Technician are the installation of new outlets, lights, and vending equipment. 1987 to present.

What was done to accomplish the duty/task: On several occasions my job required installing vending and change equipment. These machines (new ones) have RE Boards with sensitive chips. These chips are susceptible (sic) to high and low voltage signals; therefore, they must have and be in compliance with the NEC regarding equipment grounding to avoid spikes on the line.

Additional Supporting Information: The code is a very valuable source of information when you need to refer back to questions concerning groundings, number of conductors, size of conductors, size of conduit, etc.

(Jt. Ex. 13, p. 45)

As to the four (4) applicants who received a rating of 1.5 from the Review Panel as did the Grievant, the Union asserted the following:

1. **Bob Lepley**

The Union, in its closing oral argument asserted that in his CSA, Lepley referenced the fact that he read the NEC and for that, he received a 1.5 rating. However, in reviewing Lepley's CSA (Jt. Ex. 13, pp. 10 & 11) it shows that Lepley took the IES course offered by the Postal Service in Norman, Oklahoma and that he consulted the NEC in the performance of electrical work in his bathroom at home which involved installing ground fault receptacles in the bathroom, kitchen, laundry room and by his sump pump. Lepley explained in his exposition he used the ground fault receptacles which open in case of a short or, if appliances come in contact with water as a safety measure to protect his family.

2. **Richard Link**

The Union asserted that Link's knowledge of the NEC was shown by his CSA to be far less than that of Grievant, yet he received the same 1.5 rating given to Grievant. A review of Link's CSA reflects that prior to his employment at the Postal Service he worked as

a Lead Mechanic for the State of Iowa at its Vacation Rehabilitation Center where he received on-the-job training on a project that involved wiring a room for different appliances and lighting. Link explained that in performing this work, the NEC was consulted to determine conduit and wire size for grounding purposes as a precautionary measure. On another project, Link explained that there was a problem with a breaker and, in the process of determining the problem the NEC was consulted and it was discerned that both breaker and wiring size was not that stated in the NEC, thus necessitating the installation of the proper size breakers (Jt. Ex. 13, pp. 41 & 42).

3. Paul Olson

The Union contended that in his CSA, Olson made no reference of any knowledge he had of the NEC yet, he received the same 1.5 rating from the Review Panel as did Grievant. A perusal of Olson's CSA reveals that, in response to training courses completed, he claimed he had taken over a dozen courses and that he had performed wiring work at the Mt. Etna, Iowa Post Office involving upgrading electric heat and several wall outlets. Specifically, Olson asserted, he, along with another Postal employee, staggered the wiring on the outlet to balance the load and prevent over loading. Additionally, he also added 30 AMP extension box for heat, and ran conduit and #8 wire with each leg fused (Jt. Ex. 13, p. 17 & p. 28). In its written explanation to justify Olson's 1.5 rating, the Review Board stated, "minimal experience, [as] demonstrated in the following KSAs - 3, 10, 12, 13, 17, 18 and 20 (Jt. Ex. 13., p. 27).²¹

²¹ The other KSAs referenced in the Review Board's written justification are as follows:

#3	-	Basic Electronics
#12	-	Refrigeration
#13	-	HVAC
#17	-	Plumbing
#18	-	Painting
#20	-	Complex Math

4. Unknown Applicant/Candidate

The Union simply noted the fact that this candidate took the Postal Service's IES course and argues that in comparing this applicant's CSA with that of Gary Beaman who was given a 3.5 rating, said comparison would clearly show how Review Panels subjectively apply the objective evaluation standards as set forth in the restricted document, the "Review Panel Evaluation Guidelines." A review of this applicants CSA reflects that he claimed to have received extensive training through the Postal Service's IES course and that the work he had performed involved wire circuits, motor contractors, circuit protection power and lighting circuits (Jt. Ex. 13, p. 15).

The record evidence reflects that as of March 30, 1994, four (4) of the eleven (11) identified employees hereinabove subsequently were promoted to the position of Building Equipment Mechanic, Level 7, to wit, in order of their job seniority: Dennis Kain; Richard McCloney; Richard Link; and Roger Barnett (Jt. Ex. 13, p. 90). The record evidence further reflects that Link and Barnett were declared the successful bidders of the November 17, 1993 posting for the BEM, Level 7 position which closed on November 24, 1993 (Jt. Ex. 13, pp. 89 & 89B). As noted above, from the evidence submitted in this arbitral proceeding identified as Joint Exhibit 13, Richard Link had been given a 1.5 rating on KSA #10, which is now known to represent a failing rating and one which would bar an applicant from admission onto the BEM PER. How then to explain Link's promotion to the BEM, Level 7 position? A review of the documentation submitted for Link reveals that his 1.5 rating on KSA #10 was given to him by a Review Panel in June of 1988 (Jt. Ex. 13, pp. 39-42). Apparently, therefore, as one possibility, subsequent to this 1988 rating, Link could have submitted an update for KSA #10 and based on that update, received a rating from the Review Panel that qualified him as eligible for admission onto the BEM PER and eventually resulted in his promotion to the BEM, Level 7 position.²² The Union claims that after Link and Barnett were promoted to the BEM PER, one other employee, Mark Mayros was promoted to the BEM Level 7 position and that this promotion would

²² As another possibility, Link may have been promoted to the position as a result of no one being on the BEM PER at the time and the Postal Service filling the position from the In-Service Register pursuant to the pecking order in filling vacancies as set forth in Article 38, Section 5B5 of the National Agreement (Jt. Ex. 1).

have gone to Grievant had he been given a passing rating by the Review Panel on KSA #10 (Jt. Ex. 13, p. 90).²³

In other testimony, Grievant explained that after leaving his employment at Des Moines as a Level 5 Maintenance Mechanic and transferring to a custodian position at Tulsa, Oklahoma in the first half of November, 1995, he performed work on a church furnace with heat sequence in December of 1995 which involved troubleshooting the problem and repairing the problem by replacing damaged wiring. Grievant noted he added this work to his CSA for KSA #10 update and then appeared before a Review Panel in Tulsa where he finally secured a KSA #10 rating that qualified him as eligible to be admitted to the BEM PER. Grievant testified that he was promoted to the BEM, Level 7 position in June of 1996 and that he currently holds this same position at the Atlanta, Georgia Main Post Office where he transferred to in May of 2000. Grievant asserted that the Review Panel members at Tulsa confined their questioning of him to the written exposition he submitted on his CSA for KSA #10 whereas, in Des Moines, the Review Panel members asked him questions that went beyond the information he supplied on his CSA for KSA #10. Grievant maintained that he felt he did not answer these general questions well and that such questioning of him constituted putting him through an oral examination, something that the Review Panel is prohibited from doing by its format design. Mallett, on the other hand disputed Grievant's claim he had been given an oral exam by the Review Panel Members, asserting that the questioning of Grievant was confined to his exposition set forth on his updated CSA pertaining to KSA #10 and, that simply Grievant did not provide adequate responses associated with his asserted work experience claims. For example, Mallett defended his questioning of Grievant with regard to determining load as appropriate to his claim that he wired a garage that, theretofore, had been devoid of electricity and that Grievant failed to provide an adequate/acceptable response.

In other testimony, Jennings explained that the Review Panel Evaluation Guidelines is a restricted document, asserting the reason being that if the written basis associated with each corresponding rating level were to be made public and therefore known to the applicants it would, in effect, be disseminating the answers to the applicants, thereby rendering the rating process a nullity. Jennings further explained this was the rationale as to why said Guidelines could not be released to the Union and the same rationale was at hand for the Postal Service's refusal to enter the

²³ It was noted at the hearing that had Grievant been admitted to the BEM PER he would have been promoted and assumed the position of BEM Level 7 as of December 11, 1993. However, the record evidence reflects that said position was not filled until February 5, 1994 by employee Mark Mayros who transferred into the Des Moines P&DC from the Des Moines BMC (Jt. Ex. 13, p. 90).

Guidelines as evidence in this arbitral proceeding. With respect to what the Postal Service is in a position to do regarding grievances and pre-arbitration settlements associated with the Maintenance Selection System (MSS), such was referenced in a Memorandum dated May 19, 1993, approximately five (5) months preceding the filing of the instant grievance, directed to Area Managers, Plant Managers and District Managers issued by William J. Downes, Manager, Contract Administration (APWU/NPMHU) Labor Relations, to wit:

This document will serve to facilitate grievance and prearbitration settlements dealing with the Maintenance Selection System (MSS). The MSS was developed to help ensure the selection and promotion of qualified maintenance personnel and to ensure a uniform application of qualification requirements. The National Test Administration Center (NTAC) administers the scoring and register status of the MSS which is computer based.

Therefore, in an effort to assist this process, NTAC should be contacted during the investigation of grievances and other settlements involving maintenance craft positions within the MSS. This coordination will further ensure that implementation of settlements is done in accordance with MSS.

NTAC can be reached regarding this issue at (703) 207-2700. If there are any questions regarding national policy questions, you may contact Thomas J. Valenti of my staff at (202) 268-3831.

(Jt. Ex. 13, p. 81)

As the Parties were unable to reach a mutually acceptable resolution of the matter in dispute at the preceding steps in the grievance procedure, the matter was appealed to Regular Arbitration on January 29, 1996 and now comes before this Arbitrator for a final and binding determination.

CONTENTIONSUNION'S POSITION

In its extensive oral closing argument, the Union reiterated many of the arguments advanced during the processing of this grievance through the first three (3) steps of the grievance procedure which have been referenced throughout the preceding Background section and, in brief, are set forth in outline form hereinbelow:

- The Review Panel which convened to interview Grievant in June of 1993 on KSA #10 did not rate him in accordance with the procedures set forth in the Review Panel Evaluation Guidelines. The Union argued that the written justification for the Panel's 1.5 rating it gave to Grievant clearly showed that the factors it considered, to wit, simple versus complex installations, determining maximum load, and lack of knowledge with respect to how ground fault circuit interrupters work, are all factors that fall under KSA #21, titled, "Apply Theory to Practical Operations," a KSA which Grievant passed. Additionally, the Union submits, these justifications clearly establish that the Review Panel subjected Grievant to an oral examination which it is bared by regulations from doing, as opposed to confining its questioning of Grievant to what he stated in his written CSA update relative to training received and work performed relevant to demonstrating a basic knowledge of the National Electrical Code. The Union further submits that the Panel was subjective in its evaluation of Grievant which resulted in not following its mandate of applying the objective standards as set forth in the Review Panel Evaluation Guidelines. Additionally, the union contends, Management thwarted its effort to prove this latter argument conclusively by denying its request to review a copy of the Review Panel Evaluation Guidelines as it pertains to KSA #10. As this request for the Guidelines was never met, the Union now asserts objection to any reference to the Guidelines in this arbitral proceeding on grounds it constitutes new evidence. It is this objection that resulted in the Arbitrator's ruling he would address the objection as a threshold question prior to consideration of the merits of this case and, if the objection is sustained, to find for the Union in this cause.
- The Union asserts that the Review Panel's evaluation of Grievant's knowledge of training in, and work experience with the NEC as worthy of only a 1.5 rating was purely subjective and that the underlying motive for this

blatant subjectiveness was racial discrimination. The Union notes that Grievant is an African-American male and had he been given a proper rating on KSA #10, which it contends should have been no less than a rating of 2.5 given Grievant's showing he, in fact, possessed the basic knowledge of the NEC as required for KSA #10, he would have been the first black person at the Des Moines, Iowa Postal facility to ascend to the Level 7 BEM position. The Union notes that the level of knowledge required to be shown to the Review Panel by an applicant relative to KSA #10 is basic with respect to techniques and procedures specified in the NEC as they apply to electrical installations such as circuit protection, wiring, conduit, power, lighting circuits, etc. The Union maintains that the credentials presented by Grievant to the Review Panel via his written CSA pertaining to KSA #10 clearly establishes that Grievant demonstrated he possesses said basic knowledge of and familiarity with the NEC yet, the Review Panel, in disregard of these credentials, assigned a low and failing rating to Grievant of 1.5, the same rating, it has been shown by the record evidence as a whole, that has been given to applicants with far less knowledge of the NEC than that possessed by the Grievant. When compared to these and other applicants who possess the same level of knowledge about KSA #10 yet, were given higher ratings by the Review Panel, it becomes abundantly obvious that Grievant has been subjected to not only racial discrimination but also to disparate treatment.

- The Union submits that when the comparisons of the ratings for all twelve (12) employees, including the Grievant, are looked at and analyzed as a whole, the results reveal that Review Panels act arbitrarily in their application of the objective evaluation standards set forth in the Guidelines due to the fact of panel members injecting their feelings and personal biases when rating applicants. This point, the Union argues, is clearly supported by the fact that the ratings assigned by the Review Panel to applicants with equivalent credentials have such wide ranging variance whereby Grievant can be rated a 1.5 and someone like Beaman with less formal course training than Grievant can be given a much higher rating of 3.5
- With respect specifically to the threshold issue of barring any and all references by the Postal Service to the Review Panel Evaluation Guidelines on grounds it represents new evidence, the Union argues that by Article 15.2, Step 2(d), of the National Agreement (Jt. Ex. 1), the Postal Service is obligated to make a full and detailed statement of facts and contractual provisions

relied upon relative to the grievance under review and, in the case at bar, Postal Service Management failed to make such full and detailed disclosure by its refusal to make available the Guidelines, notwithstanding its disclosure in the grievance procedure that the Review Panel relied on the Guidelines in assigning the 1.5 rating to the Grievant. Once that disclosure was articulated, the Union asserts, the Postal Service was required to produce the Guidelines regardless of its status of being a restricted document. The Union offered that this could have been accomplished by the Postal Service sharing the restricted information with designated Union officials in camera as Management ultimately did when it shared this information with it and the Arbitrator at the second hearing in this arbitral proceeding. The Union argues, the fact that the Postal Service refused to make the Guidelines available during the second step of the grievance procedure, prejudiced its ability to fully investigate the matter complained of in the grievance, thereby substantially delaying the processing of the grievance until it could secure alternative information to substantiate its claims, and, in turn, this delay negatively impacted Grievant's due process rights. Specifically, the Union argues, that after the Postal Service denied this grievance in its first Step 2 response asserting it (Union) had failed to produce evidence in support of its discrimination claim, said denial forced it to request an extension in progressing the grievance in order to afford it the opportunity to obtain the KSA #10 ratings of other employees who had applied for admission to the BEM PER. Additionally, even after the Postal service agreed to give it the requested information, Management continued to stonewall this commitment and many months passed before the information was finally obtained. Moreover, failure to obtain the Guidelines also prejudiced its ability to put forth the best case possible before the Arbitrator. The Union argues that since the Postal Service did not move to admit the Review Panel Evaluation Guidelines into the evidentiary record of this arbitration, the Arbitrator is left with the comparative evidence of KSA #10 ratings among the identified employees who, over the years, have made application to the BEM PER and, that this unrefuted evidence establishes, without doubt, that Grievant was treated disparately which, treatment, was predicated on racial discrimination.

- In support of its position that the Postal Service's interjection of the Review Panel Evaluation Guidelines through testimony at the arbitration step of the grievance procedure should be deemed by the Arbitrator to

constitute new evidence and, therefore, should be disallowed and not considered by the Arbitrator in his final determination of this instant case, the Union cites seven (7) previously decided cases including one national level arbitration decision rendered January 25, 1984 by Arbitrator Ben Aaron (NC-E-11359) [Un. Ex. 4]. In its closing oral argument the Union cited Cases COT-4R-C 9486 rendered March 17, 1993 by Arbitrator Edwin H. Benn and J94T-4J-C 97047080 rendered February 18, 1998 by Arbitrator Elliott H. Goldstein (Un. Exs. 5 and 6 respectively) as supporting the rationale set forth by Arbitrator Ben Aaron in his cited case. Claiming that its position taken here of a failure by the Postal Service to produce evidence in contravention of its contractual obligation to make full disclosure at Step 2 of the grievance procedure is fatal to its case and results in a finding favorable to the Union, is supported by other cases, the Union here cites the following four (4) such cases:

- E90T-1E-C 9405928, April 15, 1999
(Arbitrator Thomas F. Levak) [Un. Ex. 7]
- H94T-1H-C 98068944, January 6, 2000
(Arbitrator Mark I. Lurie) [Un. Ex. 8]
- D94T-1D-C 96080772, May 29, 2001
(Arbitrator Irwin J. Dean, Jr.) [Un. Ex. 9]
- W7T-5H-C 11869, January 11, 1993
(Arbitrator Gary L. Axon) [Un. Ex. 10]

As a remedy, the Union requests that Grievant be promoted to the position of Level 7 Building Mechanic effective December 11, 1993 and that he be compensated for all hours he was denied the promotion, as well as, those hours he worked outside of and instead of the schedule he should have been assigned to work. The out-of-schedule premium entitlement would cease upon the date he voluntarily transferred to Tulsa, Oklahoma and the higher level pay liability would cover the period from December 11, 1993, the date he should have been promoted until August 22, 1996, the date he was promoted to the Level 7 BEM position in Tulsa, Oklahoma. In support of its requested remedy, the Union cites the following three (3) previously decided arbitration cases:

- C9T-1C-C 96060709, July 25, 2000
(Arbitrator Michael E. Zobrak) [Un. Ex. 11]
- C7T-4D-C 32562, December 21, 1992
(Arbitrator Robert W. McAllister) [Un. Ex. 12]

- COT-4L-C 20617, September 18, 1993
(Arbitrator Charles E. Krider) [Un. Ex. 13]

Based on the foregoing argument asserted, the Union requests the Arbitrator to sustain the instant grievance in its entirety.

EMPLOYER'S POSITION

The Employer asserts it solely possesses the right to promote employees to positions such as the maintenance position here sought by the Grievant, Level 7 Building Equipment Mechanic, and that right is contractually granted by Article 3 Section B, the Management Rights clause of the National Agreement (Jt. Ex. 1). The Employer contends that what the Union is seeking to do in this grievance is to have the Arbitrator substitute his judgment for that of the Review Panel, an outcome that is barred by Article 15 Section 4A6 which limits an arbitrator's decision to the terms and provisions of the Agreement (Jt. Ex. 1) and prohibits the Arbitrator from altering, amending, or modifying the terms and provisions of said Agreement (Jt. Ex. 1). The Employer submits that under the given circumstances of the case at bar, if the Arbitrator proceeded to, in fact, substitute his judgment for that of the Review Panel Evaluation process, he would be second-guessing the determinations of not one, but three (3) Review Panels, the members of which all concluded, that Grievant's knowledge of and concomitant skills and abilities associated with KSA #10, the National Electrical Code, did not warrant a rating higher than 1.5. The Employer argues that the two (2) ratings assigned Grievant on his updates of March and June 1993 by the differently constituted Review Panels, were determined unanimously by the three (3) panel members and that both the 1.0 and 1.5 ratings respectively were predicated on the objective numerical values corresponding to the levels of knowledge of, and actual work performance, using the National Electrical Code as set forth in the Review Panel Evaluation Guidelines. As to the allegation the panel members interjected subjective views when making their ratings determinations relative to Grievant's KSA #10, the Postal Service acknowledges that, while the views and even work history of each evaluator on a review panel varies and to some degree will influence their individual judgments, nevertheless the Guidelines, in their specificity as to what level of knowledge and work experience constitutes a particular rating, checks the tendency of any member to impose a bias substantial enough to result in an unwarranted rating. In the case at bar, the Employer submits, any tendency on the part of individual panel members to be biased in their rating of Grievant was additionally checked by granting Grievant a re-interview of his update before a differently constituted Review Panel in June of 1993 than the one he appeared

before in March of 1993. The Employer submits that even though Grievant obtained a higher rating on KSA #10 from this second Review Panel, the fact that the rating was just one notch higher establishes that while the composition of panel members on one panel differs from that of another panel, nonetheless, Review Panels of any composition prove to be consistent in their ratings as was the case here.

By showing that subjectivity and potential biases of individual panel members are held in check by the application of the objective evaluation process set forth in the Review Panel Evaluation Guidelines, the Employer rejects the Union's allegation that the Grievant suffered disparate treatment and that said disparate treatment was racially based. As to the charge of racial discrimination, the Employer acknowledges there are very few African-Americans who live in Des Moines, Iowa and, as a result, there are not a lot of African-American employees working at the Des Moines Main Post Office but, nevertheless, some of these African-American employees hold the position of Electronic Technicians which is a higher level position than a BEM. Therefore, the charge by the Union that the Review Panels engaged in racial discrimination to bar Grievant from becoming the first African-American to be elevated to the position of Level 7, Building Equipment Mechanic at the Des Moines Main Post Office is nothing short of ludicrous. As to the charge by the Union that the Review Panels treated Grievant disparately in assigning him lower ratings on his KSA #10 than it assigned other employees with equivalent knowledge and work experience relative to the National Electrical Code, the Employer argues the comparisons made by the Union fall far short of substantiating the claim Grievant suffered disparate treatment. Review Panels, by the very nature of being constituted with different members, function differently in the manner in which they interview applicants regarding the credentials they claim to have on their CSAs in seeking eligibility to certain personnel registers. Thus, even though an applicant's CSA might be identical when appearing before more than one Review Panel differently constituted as was the case here when Grievant presented the identical CSA update before both the March and June, 1993 Review Panels, the interview itself and the questions posed may vary in large degree which seems to have been what Grievant encountered and, may very well account for the fact that Grievant received a higher rating from the June Review Panel than he did from the March Review Panel. Nevertheless, the Employer submits, even though Grievant may have experienced being asked different questions by the two (2) Review Panels, this variance in probing in no way substantiates Grievant's claim he was subjected to an oral examination by the June Review Panel in contravention of the MSS procedure that limits the Review Panel to asking questions confined to the exposition set forth on one's CSA. The Employer submits the Union failed to present any conclusive evidence that Grievant was subjected to an oral examination by the June 1993 Review Panel and that the Union's only evidence in support of this allegation is the

self-serving testimony of Grievant that he was so subjected but, that Grievant's testimony on this point was refuted by the testimony proffered by Management's witnesses, Jennings and Mallett. Additionally, the comparisons of other applicant's CSAs and their corresponding KSA #10 ratings are of no probative value since no one on either side, nor the Arbitrator, has any knowledge of how the differently constituted Review Panels went about interviewing these candidates, the questions posed to them and their responses to those questions. This information remains unknown since the Union failed to call any of these applicants to testify in this proceeding regarding their interviews.

As an aside with respect to the Union's allegation of bias, disparate treatment, and racial discrimination, the Employer notes that the members of the Review Panel rate applicants according to the numerical values set forth in the Guidelines but, it is the National Testing Administration Center that determines whether the numerical value assigned a particular KSA represents a pass or fail for that element relative to the particular register being applied for. In the case at bar, the Employer maintains, the panel members of either the March or June, 1993 Review Panel had no knowledge that their respective KSA #10 ratings for Grievant would result in their being deemed by the NTAC to have failed KSA #10 and declared ineligible for admission to the BEM PER. Additionally, the Employer submits, the very fact that it took the very unusual approach of granting Grievant a re-interview before the Review Panel through the settling of his grievance claiming the March interview had not been fair and too, acceding to Grievant's request to staff the June Review Panel with different members is more than sufficient proof to establish that it was not biased toward Grievant, that it did not treat him in a disparate fashion and, certainly did not engage in racial discrimination.

Finally, as to the Union's attempt here to claim that the introduction of the Guidelines constitutes new evidence, the Employer argues this whole attempt is completely without merit. The Union knew very early on in the processing of this instant grievance that the Review Panel relied on the Guidelines in rating the Grievant on KSA #10 and, it also knew full well that the Guidelines is a restricted document not to be shared with it as evidenced by the Union's own admission in processing the grievance as stated in its **Additions and Corrections** that, the only reason the Review Panel Guidelines was not requested was because it knew it would never be released to it (Jt. Ex. 2, p. 5). The Employer submits that in not sharing the Guidelines with the Union it was complying with applicable provisions set forth in Section X, subsection B of the EL-350-89-2 Management Instruction (Jt. Ex. 6) which designates the Guidelines as an unavailable record. This Management Instruction, the Employer contends, is part of the National Agreement (Jt. Ex. 1) through incorporation of handbooks and manuals as set forth and provided for in Article 19 of the Agreement (Jt. Ex. 1). The Employer asserts that given the Union's

knowledge the Guidelines were applied by the Review Panel and its knowledge too, the Guidelines is a record that is not available to it, the Union was not prejudiced in any way from processing the subject grievance nor, can it claim surprise and therefore, an inability to address testimony and evidence regarding the Guidelines in this arbitral proceeding. The Employer submits that the Guidelines do not constitute new evidence and, therefore, the Union's objection should be denied and dismissed by the Arbitrator and, accordingly, the Arbitrator should consider the evidence presented about the Guidelines in his determination of the resolution of this instant grievance.

Based on the foregoing argument asserted, the Employer requests the Arbitrator to deny the subject grievance in its entirety.

OPINIONI. THRESHOLD ISSUE

The Union's objection to the Employer's introduction of the Review Panel Evaluation Guidelines into this proceeding on grounds it constitutes new evidence, has a certain amount of verisimilitude, in that, the barring of new evidence at the stage of arbitration, the terminal step in the grievance procedure, is not only explicitly provided for in the Agreement (Jt. Ex. 1) by way of the requirement imposed on both Parties to have their respective representatives at Step 2 to make full disclosure and detailed statement of all facts and contractual provisions relied upon with respect to the grievance(s) in question but, it is also supported by a long and strong line of arbitral authority. The Union's objection in the instant case must necessarily fail however, primarily for two (2) reasons, to wit: (1) the Guidelines do not meet the test of new evidence in the classic and traditional sense; and (2) there exists contractual grounds for exempting the Guidelines from the full disclosure requirement as set forth in Article 15.2 Step 2(d) of the Agreement (Jt. Ex. 1).

With respect to reason number 1 hereinabove, the record evidence pertaining specifically to the handling of the instant grievance makes abundantly clear the Union was fully aware that, as part of the MSS Procedure and the update process of CSAs, as such updates pertain particularly to the KSA #10 element, having to do with the National Electrical Code, candidates for admission to personnel registers for certain maintenance positions, here the BEM PER, are required to appear before a Review Panel for evaluation and, that this evaluation is predicated on a consensus rating determined by the three (3) member panel applying the rating scale set forth in the Guidelines. Thus, the record evidence establishes that the MSS procedure and CSA update process falls within the realm of general knowledge possessed by the Parties and, it is this aspect that disqualifies the claim by the Union that introduction of testimony regarding the Guidelines constitutes new evidence. The classic example of new evidence is evidence that surfaces for the first time at the terminal step of arbitration, the introduction of which takes the opposing side by surprise and renders it incapable of immediately and instantaneously making an adequate response in defense of its case. Certainly, in the case at bar, the introduction during this arbitral proceeding of witness testimony regarding application of the Guidelines by the Review Panel members in determining the proper rating in accurately evaluating Grievant's knowledge of, skill in, and ability as it pertained to the National Electrical Code, did not come as any surprise to the Union, as the record evidence establishes, without doubt, the Union was totally aware of the reliance by the Employer on the Guidelines in rating the Grievant. The only information that had the potential of surprising the Union at arbitration was information

involving the specific descriptions of the level of knowledge, skill, and ability corresponding to each numerical value rating, information it was never privy to because of its restricted nature. In any event, after having reviewed the whole of this record evidence, in depth, the Arbitrator concurs in the Union's opinion that knowledge of this information would have been helpful in developing its case but, the Arbitrator is convinced that the Union's lack of this knowledge did not prejudice its cause in this matter and did not result in any failure on its part to fully and adequately contest the Employer's actions here.

With respect to reason number 2 hereinabove, there exists the contractual reality of exceptions made or, provided for, relative to specific mandated requirements mutually agreed upon. Specifically, while the Parties are bound by Article 15.2, Step 2(d) to make full and complete disclosure of all facts and contractual provisions relied upon in a given situation, the circumstances of which lead to the filing of a grievance, such as here, where the Union challenged the KSA #10 update rating assigned to Grievant by the June, 1993 Review Panel, other contractual provisions, namely those of Article 19 which incorporate into the National Agreement (Jt. ex. 1) parts of all handbooks, manuals and published regulations of the Postal Service that directly relate to wages, hours or working conditions that do not conflict, and are not inconsistent with other provisions of the Agreement (Jt. Ex. 1), alleviate the Parties, but more particularly the Postal Service, from compliance with the full disclosure requirements of Article 15.2, Step 2(d). In accord with Article 19 of the Agreement (Jt. Ex. 1), Management Instruction EL-350-89-2 (Jt. Ex. 6) is a document that falls within the scope of published regulations that have been incorporated into the National Agreement (Jt. Ex. 1) and one that has not been shown, at least by any evidence put before the Arbitrator here, to be in conflict or, inconsistent with, other provisions of the Agreement (Jt. Ex. 1) but, more particularly, with Article 15.2, Step 2(d). Section X of Management Instruction EL-350-89-2 (Jt. Ex. 6) titled, "Privacy Act and Freedom of Information Act Considerations and Disclosure of Records" allows employees who want access to their final MSS ratings, CSA, and review panel and supervisor evaluations to obtain these records by submitting a written request for them pursuant to Part 353 of the Administrative Support Manual (ASM). On the other hand however, Part B of this Section X specifies that certain records are unavailable upon an applicant's request for them and among the five (5) categories listed of such records is the Review Panel Evaluation Guidelines. This provision therefore, which has not, heretofore, been challenged by the Union as being unfair, arbitrary, capricious, or discriminatory, effectively bars the Postal Service from yielding the Guidelines to an individual employee's request and, this prohibition extends as well to a Union's request to obtain a copy of the Guidelines when seeking to resolve a grievance on behalf of an individual employee, even though the Union, as here, holds the view that reviewing the

Guidelines might be useful in its quest to either resolve the grievance or to progress the grievance ultimately to arbitration should the effort at resolution fail, as was the case with the instant dispute. Additionally, under the fifth and last category of "unavailable records," information within records that might compromise testing or examination materials will not be released even upon an applicant's written request. According to the testimony of Linda Jennings, formerly a Human Resources Specialist at the time she functioned as one of the three (3) members of the June, 1993 Review Panel that interviewed Grievant, releasing the Guidelines to the Union would compromise the integrity of the Guidelines because, it would be tantamount to revealing to the Union and, its constituent members, the answers, read ratings, keyed to the delineated levels of knowledge, skill and ability assessed by the Review Panel through its questioning of the applicants. The record evidence clearly established the Union was fully aware of the restrictions placed on the Postal Service in releasing the Guidelines, albeit self-imposed restrictions, as reflected in the Union's **Additions and Corrections** filing it submitted in connection with the instant grievance wherein, the Union admitted to not requesting said Guidelines because of its knowledge that the Guidelines would never be released to it (Jt. Ex. 2, p. 5). With respect to this admission, it is the Arbitrator's view that even if the Guidelines were not a restricted document, the Union has no standing relative to its objection of admitting the Guidelines on grounds it constitutes new evidence, because, in fact, it never, ever requested of the Employer to secure this documentation in the first instance at any step in the grievance procedure. The record evidence quite clearly established that in the two (2) grievances the Union filed seeking to obtain information that would assist it in progressing the instant grievance beyond Step 2 of the grievance procedure, there was never a request to secure the Guidelines itself but, rather, the request was to obtain KSA #10 ratings given to other applicants seeking admission to the BEM PER. These multiple requests for such information were, at first, vehemently resisted by the Postal Service but, eventually it relented and agreed to give the requested information to the Union. However, the Postal Service can be faulted for unreasonably prolonging the submission of the requested information to the point of unduly delaying the progression of this grievance eventually to arbitration. There is absolutely no reason or justification for the Postal Service's stonewalling the Union in the months that followed the mutual agreement reached by the Parties in resolution of the information grievance on September 8, 1994, to turn over the requested information. However, the Arbitrator is without authority to remedy this delay as no specific, formal complaint was filed by the Union pertaining to this undue delay.

Based on the foregoing analysis, the Arbitrator finds that introduction of the Guidelines as relevant to the grievance at hand, does not, constitute new evidence. Accordingly, the

Arbitrator overrules the Union's objection to testimony rendered about the Guidelines and its application by the Review Panel in evaluating Grievant's KSA #10 update and, therefore, shall utilize such testimony in his determination of the merits of the grievance.

II. MERITS

The Arbitrator concurs in the Employer's position that what the Union is seeking from him in this proceeding is to have him substitute his judgment for that of the several Review Panels the Grievant appeared before but, most particularly the June, 1993 Review Panel, with the end result being that the Arbitrator will nullify the 1.5 rating the Panel assigned to Grievant on his KSA #10 update and simply declare, from the evidence submitted before him, that Grievant, in fact, presented credentials to the Review Panel that, in comparison to the credentials of other applicants similarly situated, were sufficient enough to demonstrate, conclusively, that he possessed the basic knowledge of the National Electrical Code required to perform the work of the higher level BEM position. In addition however, the Arbitrator is convinced that what the Union is seeking from him goes even further than simply negating the rating of the 1993 Review Panel and, that is, that through a favorable decision here, this Award will throw in question the fairness and integrity of the whole Review Panel process itself. After all, the central thesis of the Union's argument here is, that not only in Grievant's case but, also in the cases of other applicants for the BEM PER, that members serving on any Review Panel are simply not capable of exercising judgment free of bias and personal feelings when evaluating the knowledge, skills, and abilities of the applicants and, that this accounts for the reason why there exist disparities in the ratings among applicants with seemingly identical or highly similar credentials and qualifications. The Arbitrator fully recognizes that the Parties have imbued him with a great deal of discretionary authority in his decision-making role, but on the other hand, the Arbitrator also is cognizant that his discretionary authority is not boundless and is reminded of this fact at almost every hearing when one or the other of the Parties will remind him that he lacks the authority to add to, subtract from or, in any other way, amend the National Agreement (Jt. Ex.1 1). Thus, the Arbitrator here would be establishing a very bad precedent if he were to render a decision in concurrence with the Union's position, a position the Arbitrator finds is not supported by the record evidence that there exist inequities in the MSS procedure and, as a result, no candidate appearing before a Review Panel on a KSA, the rating of which is solely determined by the Review Panel, will ever be the recipient of a purely objective evaluation. The Union simply cannot allege at one and the same time that, on the one hand Review Panel ratings of applicants' KSA #10 updates vary all over the board while, on the other hand, alleging that the rating given to Grievant on his KSA #10 update reveals, without doubt, that he has

been treated in a disparate manner and, going even further, alleging he has been discriminated against both on grounds of race and age. In order for the rating comparisons of the KSA #10 values given to Grievant and each of the eleven (11) other applicants discussed in the preceding Background section of this Award to have any probative value at all, one or more of the variables involved in the rating process have to be held constant. In fact, the record evidence establishes that none of the critical variables have been held constant such as, the Review Panels being constituted with exactly the same three (3) members, the interviewing process consisting of the identical set of questions asked of each applicant and, the credentials of each applicant to be exact equivalents, to name the most important of these variables. Of lesser import would be such variables as every member serving on a Review Panel to have been the recipient of the same training in interviewing techniques and having the same amount of past experience serving on a Review Panel and, confining the sample of applicants for comparison purposes to a specified relatively short period of time as opposed to a prolonged open-ended period of time. Without the benefit of holding some of these variables constant, it is impossible to make comparisons on a like basis, that is, comparing apples to apples and oranges to oranges. Here, the comparisons are of almost no value and meaning because what is being compared are apples and oranges. Thus, the Arbitrator finds the comparison of the eleven (11) other applicants' ratings based on their CSAs to Grievant's rating and his CSA to be of no persuasive or probative value in resolving the issue before him.

The only evidence of import then in discerning how it was that Grievant was rated 1.5 on his KSA #10 update by the June, 1993 Review Panel is Grievant's own testimony as contrasted with that proffered by both Mallett and Jennings. But even here this evidence is of limited import given the passage of nearly seven (7) years from the time the grievance was initially filed until the time it was finally heard in this arbitration. Memories fade over such a long span of time and people are prone to remember only those recollections that are favorable to their cause. Furthermore, Grievant's testimony was, as expected, mostly self-serving and the same can be said of Mallett's testimony. Grievant asserts that instead of the Review Panel asking him questions confined solely to that which he detailed in writing on his CSA about his formal training in the NEC and work he performed in accord with the NEC, he was subjected to an oral examination which is not within the province of the Review Panel to administer under the MSS procedure whereas, Mallett maintained otherwise, asserting that the questions posed to Grievant were proper and certainly conformed to the MSS procedure. It is impossible to judge which of these two individuals rendered the more credible testimony as no one else attending these proceedings with the exception of Jennings was present at the interview. What is known is, that aside from Grievant complaining about the fact he was given an oral examination rather than being asked questions that directly related

to his knowledge of the NEC and his skills and abilities exhibited in performing NEC related work, there is acknowledgement in the written record by Mallett of the line of inquiry pursued by the Panel in their questioning of Grievant. Other than Grievant's asserted complaint this line of inquiry was improper, there was no testimony presented by the Union in support of Grievant's complaint whereas, Jennings in her testimony maintained the probing of Grievant by the Review Panel was in conformance with the role of the Review Panel which is to inquire about the level of relevant experience an applicant has gained in order to evaluate one's basic knowledge of the National Electrical Code. In this regard, Jennings who, by her own admission lacks subject knowledge of the NEC, testified that, in her view and estimation, the questioning of Grievant was completely proper and did not run afoul of the MSS procedure, more specifically the role of the Review Panel, by subjecting Grievant to an oral exam. Overall, the testimony proffered by the central participants in the interview simply cancel each other out.

What the Arbitrator is left with in his deliberation of the subject grievance is to determine if there is any validity to the Union's allegation Grievant was treated disparately by the Review Panel and whether such treatment was motivated by the twin evils of racial and age discrimination. The moral compass as painted by the whole of the record evidence does not point in the direction of either racial or age discrimination having been committed by the members of the June 1993 Review Panel. If anything, the record evidence supports the view that Grievant received special consideration by Management in this whole promotion process. First and foremost, Management lent a sympathetic ear to Grievant's complaint he had not received a fair interview and proper rating by the March 1993 Review Panel, alleging bias on the part of Panel members, and, in response, Management took the unusual approach of affording Grievant a re-interview, something that Management had never acceded to do with any other applicant in the past. Could this exception have been motivated by the fact that Grievant is an african-american and middle age? Perhaps, but would the Union label this as an example of racial discrimination? The Arbitrator thinks not. Not only did Management accede to giving Grievant a re-interview, it also accommodated Grievant's request that the members of the Review Panel be changed with the exception of retaining Jennings for the purpose of maintaining some continuity and historical memory of the MSS procedure as it applied to Grievant. Could this accommodation have been motivated by the fact of Grievant's race and age? Perhaps, but would the Union claim this constituted an act of racial discrimination? The Arbitrator thinks not. Next, there is the fact that Management promoted Grievant from a Level 3 Custodian to a Level 5 Maintenance Mechanic during the time Grievant was continuing to protest his KSA #10 update rating. Was this promotion of Grievant an act of racial or age discrimination on the part of Management or, was it simply the fact that Management viewed Grievant as sufficiently competent to

perform the work of this position based on the fact that he had previously held this position in Kansas City prior to transferring to the Des Moines installation where he was forced to assume the downgraded position. The fact of this promotion coupled with the reality that there are african-american employees working at the Des Moines Main Post Office who hold the position of Electronic Technician, a position of higher level than the Level 7 BEM position in question here, completely negate and, render highly improbable, that members serving on the Review Panel of both March and June, 1993 conspired on grounds of racial and age discrimination to achieve the sole purpose of barring Grievant from becoming the first african-american employee to ascend to the Level 7 BEM position at Des Moines. Even in the grievance procedure in the course of processing this grievance to the third step, Management again accommodated Grievant by affording his Union representative the time necessary to engage in discovery, albeit, that for a substantial period of time, it stonewalled the Union's request for comparative information derived from those employees who previously had made application to be placed onto the BEM PER. Again, the rhetorical question must be posed as to whether this accommodation was made due to the fact Grievant is an african-american male and, the conclusion reached by the Arbitrator is, that the Union would not claim that said accommodation was an act of racial and/or age discrimination. Thus, it seems that where the Grievant may have received favorable treatment because of his race the Union turns a deaf ear but, where it appears Grievant has been the recipient of ill treatment, the Union is all too ready to charge racial discrimination. All in all, Grievant was, in fact, the recipient of disparate treatment but such treatment was favorable and not detrimental to him.

Based on the foregoing analysis, the Arbitrator concludes that Postal Service Management did not violate any applicable provisions of the National Agreement (Jt. Ex. 1) or applicable handbooks and manuals when, upon re-interviewing the Grievant on his KSA #10 update, the June, 1993 Review Panel determined to rate him a 1.5 on a scale ranging in numerical value from 1.0 to 5.0 in evaluating his basic knowledge of the NEC. The Union failed to substantiate its claims that Grievant was the victim of racial and/or age discrimination at the hands of the Review Panel and that the 1.5 rating was unjustified. Accordingly, the Arbitrator is compelled to rule to deny the subject grievance in its entirety.

A W A R D

Based on the rationale set forth in the preceding Opinion section, the Arbitrator finds that the Postal Service did not violate applicable provisions of either the 1990-94 National Agreement (Jt. Ex. 1) or applicable parts of handbooks, manuals and published regulations by its Review Panel evaluation of Grievant's KSA #10 update and attendant rating of 1.5 in June, 1993 which resulted in his being determined by the National Testing Administration Center (NTAC) to be ineligible to be placed onto the Promotion Eligibility Register (PER) for the position of Level 7, Building Equipment Mechanic (BEM). Accordingly, the Arbitrator rules to deny the subject grievance in its entirety.

GRIEVANCE DENIED

GEORGE EDWARD LARNEY
Arbitrator

Chicago, Illinois
July 31, 2001

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In addition, it is noted that regular audits are essential to identify any discrepancies or errors early on. This proactive approach helps in maintaining the integrity of the financial statements and prevents any potential issues from escalating.

Furthermore, the document highlights the need for clear communication between all parties involved. Regular meetings and reports should be held to discuss the current status of the project and any challenges that may arise. This collaborative effort is crucial for the successful completion of the task.

It is also stressed that all team members should adhere to the established guidelines and procedures. Consistency in reporting and documentation is key to ensuring that the information is reliable and can be used for decision-making purposes.

Finally, the document concludes by stating that the success of the project depends on the commitment and dedication of everyone involved. By following these guidelines and working together, the team can achieve its goals and deliver high-quality results.

The following table provides a summary of the key points discussed in the document. It serves as a quick reference for all team members and ensures that everyone is on the same page regarding the project's requirements and expectations.

Category	Requirement
Documentation	All transactions must be supported by receipts or invoices.
Auditing	Regular audits should be conducted to identify discrepancies.
Communication	Regular meetings and reports are required for project updates.
Compliance	All team members must follow established guidelines and procedures.
Commitment	Successful project completion depends on the dedication of all team members.