PRIDDY, CUTLER, MILLER & MEADE PLLC

ALTON D. PRIDDY +
IRWIN H. CUTLER, JR.
MARK L. MILLER
SCOTT M. MILLER + +
DON C. MEADE

PETER J. NAAKE
MARY W. SHARP
EVERETT C. HOFFMAN + + +
THOMAS J. SCHULZ
MARSHALL B. HARDY, JR., OF COUNSEL

+ ADMITTED IN INDIANA
+ + ADMITTED IN COLORADO & PENNSYLVANIA
+ + + ADMITTED IN CALIFORNIA

March 1, 2007

Ms. Beth A. O'Donnell
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40602-0615

Re: Case No. 2007-00069

Dear Ms. O'Donnell:

Enclosed find an original and ten copies of CWA/IBEW Reply to Windstream Response/Motion for Emergency Relief.

Respectfully,

Don Meade/ss

Don Meade

DM/sks
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

COMMUNICATION WORKERS OF AMERICA	)	
AND INTERNATIONAL BROTHERHOOD OF	)	**CASE NO.**
ELECTRICAL WORKERS' REQUEST TO	)	**2007-00069**
ENFORCE COMMISSION ORDER REGARDING	)	
WINDSTREAM CORPORATION'S	)	
COMPLIANCE WITH SPIN-OFF CONDITIONS	)	

CWA/IBEW REPLY TO WINDSTREAM RESPONSE MOTION FOR EMERGENCY RELIEF

I. THE BUSINESS JUSTIFICATION FOR THE LAY-OFF INVOLVES MATERIAL ISSUES OF FACT WHICH REQUIRE A HEARING.

Despite 28 pages of legal argument, an affidavit and numerous attachments, Windstream offers only one fact to support that the Kentucky lay-offs are not the result of merger. That fact is contained in the Bradley Affidavit, paragraph 2:

> 2. Windstream did not begin reviewing the potential for consolidation efforts until at least one month after the close of the separation/merger transaction on July 17, 2006.

Although Windstream argues that the Kentucky downsizing is a part of ongoing Company efforts dating back several years, and that such downsizing would have occurred without the merger, it offers not a single shred of testimony, nor one document to support such a conclusion. It only disavows that the matter was ever considered until after the merger.

The Company's position is belied by the statement of its Chief Operating Officer, as reported in the *Lexington Harold-Leader* on December 7th:

> The restructuring is a progression in the Company's operations, its Chief Operating Officer said, since it was spun off from Alltel Corporation and combined with Valor Communications Group in July. (Ex. 1)

The same article details that the restructuring plan will consolidate 14 locations of the Company's assigning departments into three. The Company makes no effort to demonstrate that this large scale consolidation of operations was not spurred by the change of control, in Kentucky and elsewhere.

Windstream's response fails to demonstrate that the Kentucky employee reductions would have occurred independent of the merger. Although the Company claims that consolidation efforts have been occurring for five years within the Company, it comes forward with no evidence that downsizing was considered for Kentucky until after the merger approval. The Company urges that its Kentucky downsizing, occurring within months of the Commission's Order, was purely coincidental. By its own admission, the matter was not even considered until merger was approved.

The question of exactly what role the merger played in the lay-off will only be clarified after a due process proceeding that involves discovery, disclosure, hearing and argument. Yet nothing in Windstream's response, beyond the declarations of its CEO and Human Resources VP, undermines the prima facie case that Windstream has not lived up to its obligations.

II. THE PSC IS THE CORRECT FORUM FOR EVIDENTIARY PROCEEDINGS TO DETERMINE IF WINDSTREAM IS IN VIOLATION OF THE ORDER.

The Commission should conduct necessary proceedings to determine whether Windstream is in compliance or violation of its Order. Based upon such proceedings, the Commission could then determine whether a Franklin Circuit Court action is necessary for enforcement. Such a proceeding would be within the jurisdiction of the Commission. If Windstream objects on grounds that the Commission does not have jurisdiction, a decision can be made to determine the appropriate course

of action. This could include conducting proceedings without Windstream's participation or instituting circuit court action for either the conduct of such proceedings or an order requiring Windstream's participation.

The issues involved are certainly no more complex than those typically adjudicated by the PSC. Such a proceeding would have all necessary due process safeguards and could be conducted expeditiously. The conduct of such proceedings would be a prudent exercise of PSC authority.

III. THE PSC SHOULD SEEK A TEMPORARY RESTRAINING ORDER FROM THE FRANKLIN CIRCUIT TO MAINTAIN THE STATUS QUO PENDING THE CONDUCT OF ITS ADMINISTRATIVE PROCEEDING.

Windstream raises both objections and salient points to the Commission's authority to enter temporary injunctive relief. Perhaps such relief is authorized by either its enabling statute or regulations. The undersigned must defer to the Commission's expertise in that regard. If such authority does not clearly exist, the appropriate course of action would be proceedings in the Franklin Circuit Court.

The conservative approach would be to seek a circuit court restraining order in aid of the exercise of Commission powers to conduct appropriate proceedings on the issues before it. This would permit the circuit court to exercise its expertise on matters involving injunctive relief, but would reserve to the Commission matters related to the investigation and administration of its own orders – proceedings formally within its expertise.

IV. INSTRUCTIVE LEGAL AUTHORITY EXISTS FOR PRESERVING THE STATUS QUO, IN A LABOR SITUATION, PENDING RESOLUTION OF THE UNDERLYING DISPUTE.

Federal courts have a long history of dealing with injunctions arising between unions and companies. The issue arises when the union alleges a breach of its labor agreement. The normal method of resolving such a dispute would be through arbitration. Where changes would occur that would render the outcome of an arbitration as moot or futile, federal courts have developed a body of law for determining when injunctions may be entered to maintain the status quo pending the outcome of arbitration.

If Windstream's actions of laying off employees violated the labor agreement, the CWA/IBEW would file a grievance. It could then seek relief through a federal court injunctive action. The source of violation, in the present circumstance, is not the collective bargaining agreement but the Commission's Orders. Nevertheless, federal law provides guidance and insight as to what standards should be met to enjoin Company action pending the outcome of other dispute resolution – in this case further Commission proceedings.

The significance of this body of law is that it recognizes an additional issue for injunctive proceedings. Maintaining the integrity of the underlying dispute process (whether arbitration or PSC hearings) is a vital public policy. Company actions that threaten the viability of those processes should be enjoined, to preserve the status quo in order for the processes to achieve their intended outcomes.

Beginning with the U.S. Supreme Court's decisions in *Boys Markets v Retail Clerk's Union*, 398 U.S. 235 (1970), and *Buffalo Forge Co. v United Steelworkers of America*, 428 U.S. 397 (1976),

the federal courts have recognized the importance of "injunctions in aid of arbitration."[1] "[I]t is well-established that federal courts after *Buffalo Forge* retain the authority, in aid of arbitration, to enjoin employer actions." *Machinists Local Lodge 1266 v Panoramic Corp.*, 668 F.2d 276, 283-84 (7th Cir. 1981). Federal courts will enjoin actions by employers which threaten to make "a hollow formality" of the grievance and arbitration process in a collective bargaining agreement. *Lever Brothers Co. v International Chemical Workers Local 217*, 554 F.2d 115 (4th Cir. 1976); *Oil, Chemical and Atomic Workers Local 2-286 v Amoco Oil Co.*, 885 F.2d 697 (10th Cir. 1989); *Aluminum Workers Local 215 v Consolidated Aluminum Corp.*, 696 F.2d 437 (6th Cir. 1982).

The starting point for the issuance of injunctions in federal court, as in state court, is Civil Rule 65. Federal Rule 65, like Kentucky Rule 65, authorizes a court to grant temporary restraining orders and preliminary injunctions where the movant has shown that his rights are being violated, that he will suffer irreparable harm, and that he has presented a substantial case on the merits. In the context of injunctions to aid arbitration, the federal courts have taken the traditional requirements of Civil Rule 65 and modified them for the context of a union seeking an injunction against an employer in aid of arbitration: (1) the underlying grievance must be arbitrable, (2) the employer's breach must be ongoing; (3) the union must suffer irreparable harm in the absence of an injunction; (4) the balance of hardships must rest with the union; and (5) the union must establish that the position it will espouse in arbitration is sufficiently sound to prevent the arbitration from being a futile endeavor. *Lever Bros*, *supra*; *Panoramic Corp.*, *supra*.

---

[1] The *Boys Market* case involved an injunction against a labor union, prohibiting it from striking over a grievance that was arbitrable. Thus, when injunctions in aid of arbitration are directed at unions, they are called *Boys Market* injunctions. When they prohibit employers from taking action that may undermine a future arbitration award, they are referred to as "reverse *Boys Market* injunctions."

Because of their similarity to the traditional Rule 65 analysis, many of these factors do not require much additional discussion here. CWA/IBEW have already demonstrated that they will suffer irreparable harm in the absence of a restraining order and temporary injunction, met and surpassed, all five criteria.

As the Seventh Circuit stated in *Panoramic Corp.*, 668 F.2d at 286, the practice of most courts is to "focus into a single concept the twin ideas of irreparable injury and frustration of arbitration." Irreparable injury is injury so irreparable that a decision of the Arbitrator in the Union's favor would be but an empty victory. *Id.* at 285-86.

The central question of these proceedings is whether irreparable injury has been demonstrated.

V. THE IRREVOCABLE PROCESSES SET IN MOTION BY RETIREMENT DISTINGUISH THIS CASE FROM THOSE RELATED ONLY TO JOB LOSS.

Windstream correctly cites that the majority view is that interruption of employment, and the financial consequences flowing from it, are capable of pecuniary measurement and often not the grounds for irreparably injury. Were employees going to only suffer the difficulties and uncertainties of being thrown into the open labor market, by lay-off, the case might not warrant Commission action. Forced retirement of a majority of affected union employees presents a different scenario which elevates to a different consideration. It is simply not possible to anticipate the many legal, financial and lifestyle implications of severing the employment relationship by a move into retirement. Although the Company declares that what will be done can be undone, the commonsense complexities of the transition urge otherwise.

The distribution of retirement benefits has significant implications under ERISA and IRS law. The reinvestment or re-characterization of these funds will trigger legal consequences which cannot be simply reversed by flipping the money back into Windstream retirement accounts. While employees may receive cash equivalents of medical insurance benefits, retirees will be electing different medical insurance plans than those who simply want to maintain their COBRA election. While Windstream makes long argument on these matters through its attorneys, the affidavit fails to provide any factual support about the conversion or reconversion of retirement status, benefits or insurances. It does not respond to nor contravene the affidavit by Local Union President Garkovich.

A change in working conditions, which would result in the forced retirement of employees, was sufficient for a preliminary injunction pending arbitration of the dispute. *Postal Workers Local v. United States Postal Services*, 107 LRRM 2943 (N.D. Cal. 1981) [Ex. 2]. One criteria considered by the federal courts is which party would suffer the most hardship from a status quo injunction – the union from its denial or the employer from its issuance.

The operation of many principles, invoked in these proceedings, is illustrated in *Brotherhood of Locomotive Engineers v. Missouri-Texas Railroad Company*, 363 U.S. 528, 80 S.Ct. 1326, 4 L.Ed.2d 1379 (1960). The Supreme Court considered whether a federal court status quo injunction was proper in order to preserve the jurisdiction of the National Railroad Adjustment Board to determine the merits of a labor dispute. It determined that the federal trial court acted appropriately in exercising jurisdiction to enter the status quo injunction. The merits to be considered by the trial court were entirely different than the merits to be considered by the Board. Once potential irreparable injury was identified, the court had the power to enter the status quo injunction and permit proceedings by the Board.

The underlying dispute was the elimination of jobs by consolidation of functions by the railroad. The unions threatened to strike and were enjoined against such strike by the company. The unions sought a status quo injunction pending resolution of the underlying dispute. The court determined that the railroad had to either (1) restore the pre-existing situation or (2) pay the employees adversely affected the wages they would have received had the orders not been issued. The Supreme Court upheld these conditions as reasonable for justice and maintaining the status quo.

One issue addressed by the Court was the balance of hardships on the union and company. The Court recognized that from the employees' point of view was that "by the time of the frequently long-delayed Board decision, it might well be impossible to make them whole in any realistic sense." (p. 535) The Court also recognized:

> It is true that preventing the Railroad from instituting the change imposed upon it the burden of maintaining what may be a less efficient and more costly operation. (p. 535)

Despite this, the Supreme Court upheld the lower court's determination of imposing such conditions on the company.

This principle has been carried forward into cases where employers have been enjoined from closing plants. In *International Ass'n of Machinists. v. Panoramic Corporation*, 668 F.2d 276 (7th Cir. 1981), the Court found that a permanent loss of employment, for which the only certain remedy would be an award of damages, established irreparable injury. The injury to the union and its members outweighed the financial injury Panoramic would suffer in forced continuation of operations pending arbitration. This determination was made despite arguments by the company that its opportunity to sell its division could be lost. Its second argument was that forced continuation of operations was a hardship because of the expenses incurred. The Court held:

> We find little merit in Panoramic's complaint that the operating expenses incurred by its are unrecoverable, for there is no suggestion in the record that the ... division is operating at a loss. In any event, the Supreme Court has noted that the relative hardships may favor issuance of an injunction even when the employer is compelled to maintain what may be a less efficient or more costly operation. (Citing *Locomotive Engineers v. Missouri Railroad*, supra.)

These cases from federal court labor relations law offer ample guidance to support the Commission's decision to seek injunctive relief before the Franklin Circuit Court.

VI. NO BOND IS REQUIRED FOR INJUNCTIVE PROCEEDINGS.

KRCP 81A exempts governmental units from the requirement of posting a bond when taking an action in "any proceeding ...".

The CWA/IBEW has acted in a timely and responsible fashion. The history of these proceedings is outlined in the CWA/IBEW Petition for Enforcement of Order. The Unions interacted immediately with the Commission seeking action and investigation. The Company's position was disclosed by letter of January 5. The Unions waited to see if any further action wold be taken by the Commission, which initiated the inquiry. As a result, its Petition was filed on February 8.

The timetable of these events demonstrate that the nature of these emergency proceedings has not been originated by the Unions lack of action.

VII. THE IBEW CONTRACT NEGOTIATIONS OF JANUARY, 2007 ARE NOT RELEVANT.

Windstream argues that the IBEW brought the issue of employee lay-off to the collective bargaining table. It then relinquished the issue in return for enhanced severance benefits. If the IBEW had any power to compel the Company to reverse its decision, at the bargaining table, it would have done so.

This is like being told that you are going to be thrown out of the lifeboat and asking for a life jacket in return. You first ask not to be thrown out of the boat. When that doesn't work, you accept the life jacket.

Respectfully submitted,

PRIDDY, CUTLER, MILLER & MEADE PLLC

Don Meade
800 Republic Bldg.
429 W. Muhammad Ali Blvd.
Louisville, KY 40202
(502) 587-8600
Counsel for CWA/IBEW

CERTIFICATE OF SERVICE

This is to certify that on the 1st day of March, 2007, an original and ten copies of the foregoing were served and filed by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40601; furthermore it was served by mailing a true and correct copy of same, first class postage prepaid, to:

Jeffrey Gardner, CEO
Windstream
4001 Rodney Parham Road
Little Rock, AR 72212

Mark Overstreet
Stites & Harbison
P. O. Box 634
Frankfort, KY 40602-0634

Dennis G. Howard, II
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Tiffany Bowman
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40602-0615

Don Meade

Kentucky.com

Windstream cuts 30 jobs in Lexington

Part of plan to consolidate operations

By Scott Sloan | Dec 7, 2006 | 537 words, 0 images

Windstream Communications will eliminate 30 jobs in Lexington by March, the company announced yesterday.

The cut of more than 8 percent of the land-line phone provider's 350 Lexington employees is part of a restructuring plan that will consolidate 14 locations of the company's assigning departments into three.

The restructuring will also eliminate 12 jobs in Elizabethtown and 180 overall, the company said. The company has 770 employees in Kentucky and 8,000 total.

The affected employees will receive severance packages, the details of which were not disclosed, along with outplacement and career services, said Windstream spokeswoman Erin Ascione.

The restructuring is a progression in the company's operations, its chief operating officer said, since it was spun off from Alltel Corp. and combined with VALOR Communications Group in July. Alltel continues to operate as a wireless business.

Focused on land-line telephone service, as well as offering its broadband Internet and satellite television from a partner company, Windstream has sought to reduce inefficiencies when possible, Keith Paglusch said.

The assignment jobs being consolidated deal with deciding specifically where on a line new customers can be served and then ensuring the company's central offices are made aware so "the whole connection gets made," Paglusch said.

The three locations that will remain -- Cornelia and Dalton, Ga., and Export, Pa. -- were chosen because they are quickly becoming operational hubs that include various other operations, such as call centers, Paglusch said.

"It wasn't that Lexington didn't stand out," he said. "It's that those areas were already becoming larger hubs for us in this kind of work."

Lexington, though, is likely to gain a couple of new employees because the city will continue to host some of Windstream's engineering operations, which are being consolidated from 30 locations nationwide into six, Paglusch said.

The company is encouraging employees whose positions will be eliminated to apply for other jobs available in the company, Paglusch said, though he added he understands some employees might not be willing to move.

Of the 30 employees whose jobs are being eliminated, 27 were represented by a union, said Mike Garkovich, president of Communications Workers of America Local 3372, which represents some local Windstream workers as well as employees at other companies.

"At some level, I think they just don't like unions," Garkovich said.

Paglusch denied Garkovich's assertion, saying "what we look for is available workforce and where we could gain the most synergy...

"(Unions) had no play whatsoever," he said, adding that one of the three remaining assigning department locations has union-represented employees.

He also said the company is offering a "tremendous amount of notice" to employees who will be affected.

Some of the locations won't be closed until next summer, Paglusch said.

*1981 U.S. Dist. LEXIS 13960, *; 107 L.R.R.M. 2943;*
93 Lab. Cas. (CCH) P13,404

OAKLAND LOCAL, AMERICAN POSTAL WORKERS UNION, AFL-CIO v. UNITED STATES POSTAL SERVICE

No. C 80-4662 SW

United States District Court for the Northern District of California

1981 U.S. Dist. LEXIS 13960; 107 L.R.R.M. 2943; 93 Lab. Cas. (CCH) P13,404

February 11, 1981

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff local union claimed irreparable harm to elderly employees forced to retire if they had to stand for the entire shift. The local union filed a motion for a preliminary injunction to enjoin defendant, United States Postal Service, to maintain the status quo at a post office with regard to the use of adjustable platform stools.

OVERVIEW: The local union representing postal workers filed a motion for a preliminary injunction to maintain the status quo at a post office regarding the use of adjustable platform stools. The Postal Service began removing the stools, resulting in employees being required to spend their entire shift standing. The union objected on the ground that older employees would be forced to take time off or retire. The local union filed a grievance. Pending the completion of the grievance procedure, the local union sought injunctive relief, claiming irreparable harm to elderly employees and a strong likelihood of success. The Postal Service argued that the seats were being removed for safety reasons. While noting that courts were generally reluctant to issue status quo injunctions where a labor agreement provided for mandatory arbitration, the court held that an exception was allowed when the injunction was needed to protect the arbitration process itself. The court granted injunctive relief because the irreparable nature of the injuries likely to be caused during the interim period compelled the conclusion that the arbitration of the grievance would at most produce a meaningless victory.

OUTCOME: The court granted the local union's motion for a preliminary injunction and ordered the Postal Service to restore the stools to the same degree as was used prior to their removal.

CORE TERMS: grievance, stools, status quo, platform, injunction, adjustable, interim, retire, local union, removal, arbitration process, plant, grievance procedure, pending resolution, arbitration, removing, restore, elderly, cart, mail

LexisNexis(R) Headnotes ◆ Hide Headnotes

Civil Procedure > Alternative Dispute Resolution > General Overview

Labor & Employment Law > Collective Bargaining & Labor Relations > Arbitration > General Overview

Labor & Employment Law > Collective Bargaining & Labor Relations > Enforcement

HN1 Courts are generally reluctant to issue status quo injunctions where collective bargaining agreements provide for mandatory grievance procedures. Courts allow for exceptions to this policy when the injunction is necessary to protect the arbitration process itself or when there was an implied promise by the union to maintain the status quo pending resolution of the dispute. More Like This Headnote | *Shepardize:* Restrict By Headnote

Labor & Employment Law > Collective Bargaining & Labor Relations > Enforcement

Labor & Employment Law > Collective Bargaining & Labor Relations > Judicial Intervention

HN2 When the grievance process cannot restore the status quo ante in an acceptable form, courts will allow an injunction. More Like This Headnote

COUNSEL: [*1]

David A. Rosenfeld (Van Bourg, Allen, Weinberg and Roger), San Francisco, Calif., for plaintiff.

Larry Anderson and Stephen Sheffler, for defendants.

OPINION BY: WILLIAMS

OPINION: WILLIAMS, District Judge: -- This matter came on for hearing on February 11, 1981 on plaintiff's motion for a preliminary injunction to maintain the status quo at the Oakland Post Office regarding the use of adjustable platform stools. The court having carefully considered the briefs and argument of counsel, the supporting materials, declaration, and other evidence in the record, the court orally granted the motion. The following constitutes a brief statement of the court's reasons for so ruling, and its written order thereon.
FACTUAL BACKGROUND

This action involves an attempt by the Oakland Local of the American Workers Union in which it seeks to enjoin the United States Postal Service from removing certain rest bars (adjustable platform stools) pending resolution of its grievance and arbitration procedure.

The Postal Service has used rest bars for certain employees on a continual basis at the Oakland Post Office since March 31, 1952. Commencing on October 25, 1980, the Postal Service began removing **[*2]** these stools resulting in more than 150 employees being required to spend their entire shift sorting mail while standing.

The local union filed a grievance pursuant to its union agreement to challenge the defendant's unilateral removal of the stools. The union objected pointing out that several older employees would be forced to take time off or retire. The Postal Service responded by stating that its decision was made because of safety and productivity concerns.

Plaintiff's supporting materials indicate that the grievance procedure may take up to one year for resolution, and that at least one employee has already been forced to retire due to the unilateral action. In 1977, the Post Office attempted to effectuate a similar policy which was reversed after a successful grievance. In fact, similar grievances have been successful in other post offices throughout the country.
DISCUSSION

The union presently seeks to maintain the status quo (i.e. utilization of rest bars) until the completion of the grievance procedure. The plaintiff alleges that irreparable harm will result to elderly employees during the interim period. Further, plaintiff alleges that in light of the success **[*3]** of similar grievances in other post offices, there is a strong likelihood of success.

*HN1*Courts are generally reluctant to issue status quo injunctions where collective bargaining agreements provide for mandatory grievance procedures. See Columbia Local Am. Postal Workers Un. v. Bolger, 621 F.2d 615, 104 LRRM 2341 (4th Cir. 1980); Amalgamated Transit Union v. Greyhound Lines, 550 F.2d 1237, 95 LRRM 2097 (9th Cir. 1977). Courts allow for exceptions to this policy when the injunction is necessary to protect the arbitration process itself or when there was an implied promise by the union to maintain the status quo pending resolution of the dispute. See Boy's Market v. Retail Clerks Union Local 770, 398 U.S. 235, 74 LRRM 2257 (1970); Amalgamated Transit Union v. Greyhound Lines, supra. at 1239.

Plaintiff meets the requirements for both exceptions. First, it appears from the facts stated in the materials before this court that elderly postal employees may be forced to take time off or even retire due to the fatigue and strain from standing all day long. If employees are forced to retire during the interim period, it seems clear to the court that the outcome of the arbitration process **[*4]** itself could not possibly restore the status quo in an acceptable form.

Case law is clear that *HN2*when the grievance process cannot restore the status quo ante in an acceptable form, courts will allow an injunction. In Lever Bros. Co. v. International Chemical Workers Union Local 217, 554 F.2d 115, 93 LRRM 2961 (4th Cir. 1976), the court affirmed a status quo injunction which restrained the defendant from relocation its plant from Baltimore to Hammond, Indiana. The court reasoned that even if the arbitration was successful, the parties could not be returned to their present position as the harm was caused during the interim period. In essence, if the company moved its plant, the employees would be performanently deprived of their employment. Id. at 122.

As previously noted, the irreparable nature of the injuries caused during the interim period compels the conclusion that the arbitration of the grievance would at most produce a meaningless victory. This case is unlike Amalgamated Transit Union v. Greyhound Lines, Inc; supra. or Columbia Local Am Postal Workers Un. v. Bolger, supra. where the courts reversed the trial courts' granting of status quo injunctions in cases where **[*5]** the parties could easily be returned to their previous position after the grievance process.

Second, it appears that the Postal Service at least impliedly promised not to remove the stools before an employee hearing. Article XXXVII, Section 5 provides for anti-fatigue procedures and states:

"The Employer will continue to furnish adjustable platform stools for periods of sustained distribution..."

Additionally, Article V states:

"The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the N.L.R.A. which violate the terms of this agreement or are otherwise inconsistent with its obligation under law."

These two provisions when read together imply a promise on the part of the Postal Service to maintain the platform stools for the benefit of employees. As a practical matter, employees are being asked to stand for sustained periods, often as long as their entire shift.

Defendant argues that the reason the rest bars were removed was because it had instituted a new mail carrying cart (GPMC) which was unsafe when used in conjunction with the rest bar. This reason apparently was never given during **[*6]** the grievance process and appears for the first time in the defendant's moving papers herein.To the contrary, this court finds that the institution of the GPMC system poses no greater safety problem than the carts previously in use.

Defendant's final argument states that the local union has no standing to grieve complaints based on the national agreement. See Pittsburgh Metro Area v. U.S. Postal Service, 463 F.Supp. 54, 105 LRRM 2415 (W.D. Penn. 1978). This rule, if applicable at all to the present case, does not control this case because here the local union secured approval from the national group to bring the suit.
CONCLUSION

Counsel for the defendant did not appear at the appointed time for hearing on this motion. However, the court carefully considered defendant's lengthy and excellent brief on this matter and is fully apprised of both the legal and factual arguments on this motion.

Accordingly, IT IS HEREBY ORDERED that pending a resolution of any grievances over the removal of adjustable platform stools or rest bars in the Oakland Post Office those adjustable platform stools or rest bars shall be restored to the same degree as were used prior to their removal in **[*7]** October, 1980.