Robert Leventhal 3/14/85 Won
Art. 11.6 - Holiday Scheduling
AIRS #4727

AWARD IN ARBITRATION

C # 146

UNITED STATES POSTAL SERVICE, Employer, -and- AMERICAN POSTAL WORKERS UNION, Union.	W1C-5G-C 626 Local

The above captioned matter was duly processed through the parties' grievance procedure, being unresolved, appealed to and heard before the undersigned in regular arbitration on February 26, 1985, at 2551 No. Galena Street, Simi, California.

Making appearances on the record were:

Leo Walker - USPS representative

Herbert Rosenberg - APWU representative

At the outset of the proceedings the parties stipulated the matter was properly before me for arbitral determination and the issue for resolution to be:

1. Did the United States Postal Service violate Article 11 of the National Agreement when they did not allow full-time regular employees to work on their holiday of October 12, 1981?
2. If the answer is in the affirmative, what is the appropriate remedy?

At the conclusion of the evidentiary portion of the proceedings the parties elected to submit on the record.

Having carefully reviewed the entire record in this case it is my award that:

1. The United States Postal Service did violate Article 11 of the National Agreement when they did not allow full-time regular employees to volunteer to work on their holiday, October 12, 1981.
2. The remedy is as set forth in the appended decision.

Respectfully submitted,

Robert M. Leventhal

Submitted this 14th day of March, 1985
Culver City, California

DISCUSSION

After review of the documents and the agreed upon submission, the parties were able to stipulate as to the following fact picture:

1. In 1981 the Postal Service maintained an overtime preferred list and followed those procedures when overtime on non-holidays was required.
2. The Postal Service elected to have work performed on October 12, 1981, a contractual holiday and assigned seven part-time flex employees each of whom worked eight hours that day.
3. No full-time regular employees were "allowed" to volunteer to work on October 12, 1981.
4. As to remedy, it is agreed that if the Union is correct, seven senior employees were identified in the grievance and they are entitled to eight hours straight time at their 1981 rates, if the Employer is correct, no monetary remedy is due.

The parties' positions in this dispute were quite straight forward, the Employer pointed to Article 11, Section 6, of the National Agreement which sets forth:

> B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required...

The Employer represted that by its actions for the October 12, 1981, holiday using the part-time flexible employees the contractual mandates were fulfilled. Further, the Employer pointed to Article 3 of the National Agreement wherein it has retained the right to direct the work force. Article 3 sets forth in pertinent part:

> A. To direct employees of the Employer in the performance of official duties;
> C. To maintain the efficiency of the operations entrusted to it;
> D. To determine the methods, means, and personnel by which such operations are to be conducted;

The Union acknowledged the text of Article 11, Section 6, but pointed to the fact that pursuant to the provisions of the National Agreement the parties were free to negotiate local agreements provided such were not in conflict with the National Agreement.

A local agreement had in fact been negotiated and was in place when the events of this case occurred. No contentions were raised that the then in effect local agreement was improper or invalid and therefore its provisions are accepted, for the purposes of this arbitration as appropriate.

In the grievance papers the Union referenced that Article 11, Section 6, the holiday schedules had been violated. The Employer, without reference to either the national or local agreements asserted that Article 11, Section 6, had not been violated. Management in its answers

specifically set forth that it saw no violation of the National Collective Bargaining Agreement and set forth that since the part-time flex employees do not have holidays, the Employer was not only free to adjust those individual schedules, but required pursuant to the National Agreement not to schedule regular employees.

In its appeal documents, the local Union cited contract language which it felt supported its position. While two local agreements were submitted as there may have been some question as to which one applied, upon examination of those documents it becomes clear the 1981 local Memorandum of Understanding became effective October 31, 1981. Therefore, since the events in question occurred on October 10, 1981, the 1978 local Memorandum was applicable.

Article 11, Section 6, of that local Memorandum sets forth:

> ARTICLE XI, Section 6, Holiday Schedule.
>
> Employees desiring to work on their holidays shall be selected by seniority, and employee who do not desire to work shall be selected by juniority.

As already noted, absent from any of the Employer's grievance positions, or at this arbitration were any assertions the local Memorandum of Understanding was "invalid," therefore, the local Memorandum of Understanding adds to the bargaining unit employees rights set forth in the National Agreement.

Without delving too deeply into the question of

compatibility between the National Agreement and the local Memorandum of Understanding, the National Agreement requires Postal Service management, to the extent possible, not to require full-time employees to work on schedules holidays. This principle does not appear superceded nor is the Employer relieved of its scheduling obligations by a local provision that extends to "employees" a right to exercise an option to work on a holiday if they so desire. Employee in the above context, by the Employer's definition, must be the full-time or regular employees as only they have holidays to work.

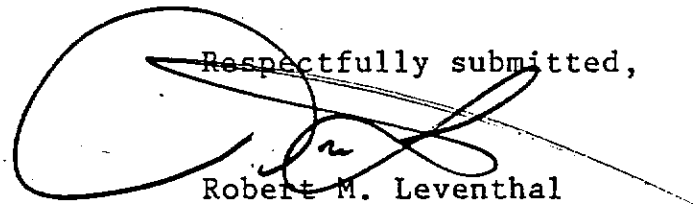
Therefore, this post office agreed, in its local Memorandum of Understanding to expand employees rights and in so doing modified its right as to holiday scheduling by clearly agreeing to allow employees who desire to work on holidays to work if they so desired and then to be selected by seniority. In order to effectuate that clause, clearly when work was scheduled for a holiday the full-time employees would have to be contacted in order to afford them the right to express their option before other employees were scheduled.

Therefore, the Employer did violate Article 11, Section 6, which is not just comprised of the National Agreement, but must be read in its revised state which incorporates the specific modifiers established in the local Memorandum of Understanding.

As to remedy the Union had some concerns about prior positions the Employer has taken regarding the right to monetary remedy in similar cases. Since no such arguments were raised by the Employer in the instant arbitration, I find the appropriate remedy clear.

By stipulation there were seven full-time employees identified who should have been given the opportunity to exercise their preference to work the holiday in question. While I recognize some of those employees may have elected not to work, those employees preference cannot be determined because they were never allowed to make their election.

Accordingly, the seven senior employees, pursuant to the seniority list as Union Exhibit 1, are to be paid eight hours straight time at their 1981 applicable rates of pay.



Respectfully submitted,

Robert M. Leventhal

Submitted this 14th day of March, 1985
Culver City, California