

C#00421

UNITED STATES POSTAL SERVICE : Case No. AB-N-3744, et al
and : Taunton, Mass.
AMERICAN POSTAL WORKERS UNION, : ISSUED:
AFL-CIO : January 26, 1976

BACKGROUND

These seven grievances from the Taunton, Massachusetts Post Office claim violation of Article VII, Section 3, of the July 21, 1973 National Agreement between the Postal Service and the Postal Worker Unions. A hearing was held on August 27 and September 18, 1975 and the parties' briefs were filed as of November 21, 1975.

Article VII, Section 3, reads:

"Employee Complements. The Employer shall man all post offices and facilities with 200 or more man years of employment with 90% full-time employees. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all post offices. A part-time flexible employee working 8 hours within 10, on the same 5 days each week and the same assignment over a six-month period will demonstrate the need for converting the assignment to a full-time position. Where a

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count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made."

(Underscoring added.)

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The Taunton Post Office primarily is responsible for local distribution of mail. It normally employs about 100 full-time regular employees, including 32 in the Clerk craft at the time of the hearing. Included in the 32 were 21 Distribution Clerks, 4 Window Clerks, and 3 Mark-Up Clerks, plus four individuals working various other assignments. The 32 full-time regular Clerks are supplemented, as required, on a day-to-day basis, by 8 part-time flexible Clerks. Normally no Clerks are scheduled on Sunday at Taunton. The office also is closed between 7 p.m. and 12:30 a.m. Monday through Friday. The Saturday closing time is 5 p.m. Pursuant to an informal local understanding with the Union, most full-time regular Clerks at Taunton are scheduled so that their second off-day each week falls either on Saturday or Monday. Some off-days for regular full-time Clerks, however, are scheduled on every day during the week. The Clerks normally are scheduled on overlapping shifts during the period from 12:30 a.m. to 7 p.m. on weekdays. A typical daily schedule for Tuesdays, for example, shows 2 Distribution Clerks scheduled from 12:30 a.m. to 9 a.m.; 9 Distribution Clerks scheduled from 5 a.m. to 3 p.m.; 14 Clerks working in various specific areas (but also with limited distribution activity) from approximately 7 a.m. to 5 p.m.; and 4 Clerks performing

a variety of duties between 10:30 a.m. and 7 p.m. Three full-time regular Clerks are scheduled off on Tuesday.

The 8 part-time flexible Clerks are scheduled as required to fill in for and supplement the full-time regular Clerks. Part-time flexibles necessarily are used on Saturdays and Mondays, when many of the regular Clerks are scheduled off. Part-time flexibles also are used regularly each day from 12:30 a.m. to 9 a.m. Nonetheless the part-time flexible Clerks generally are scheduled for work one day at a time, on the preceding day, on the basis of an estimate of the total requirement for the day.

The first of the seven grievances here was filed by APWU Local President Ferreira on June 10, 1974, asserting that the schedules worked by part-time flexible Clerks over the prior six months indicated that conversion to full-time positions was required under Article VII, Section 3. After this grievance was denied, subsequent grievances involving the same basic issue, with supporting data, were filed at various times up to February 7, 1975. Prior to June 10, 1974 there were 29 full-time regular Clerks and 8 part-time flexibles on the Taunton payroll. During 1974, however, it became necessary for Taunton Management to implement the Central Mark-Up policy thereby significantly increasing the total work required in the Clerk craft. Ultimately, two flexibles were converted to regulars for this reason in early 1975. An increased volume of work at Copper Craft Guild in 1974 also resulted in conversion of one part-time flexible to full-time regular status in September of 1974. Three additional part-time flexibles were hired to maintain the part-time flexible complement at 8 through 1974.

In support of the grievances the Union presented comprehensive statistical analyses of hours actually worked by part-time flexible Clerks over substantial periods. These established that on most days during the workweek there were significant blocks of time in which a substantial number of part-time flexible Clerks were utilized regularly at Taunton. No effort was made to particularize reasons why any individual flexible Clerk was used at any given time. While the data do not show that any single individuals actually were scheduled and worked 8 hours within 10 over the same 5 days each week for a 6-month period (so as to trigger application of the third sentence of Article VII, Section 3), the Union believes that it easily would be possible to schedule specific individual flexibles for regular 8-hour days and to post such positions for bid.

In addition to its comprehensive statistical analyses, the Union presented testimony by APWU Local President Ferreira, based on his observation and experience in the Taunton Post Office, that it easily was possible to create at least five additional regular full-time assignments at Taunton without imposing undue inefficiency upon the Postal Service. Ferreira presented five proposed specific regular full-time assignments which he believed should be posted by the Taunton Post Office in order to comply with Article VII, Section 3.

Relying on testimony by Taunton Postmaster Schondek and its own statistical analyses of the work schedules of the Taunton part-time flexible Clerks over representative periods, the Postal Service urged at the hearing that the essential requirement for flexibility in operating the Taunton Post Office could not be met if additional full-time regular Clerk positions were created. A mere review of work schedules to

establish total hours regularly worked by part-time flexibles during the week, it said, could not be significant without a showing of why particular hours were worked by each individual. Over many months prior to August 15, 1975, the total number of full-time regular hours which were not worked (by regulars) for any reason substantially exceeded the total hours worked by part-time flexibles. Postal Service evidence also indicated that 1974 was an unrepresentative period at Taunton, particularly because of the introduction of Centralized Mark-Up. During the first eight months of 1975 there was a significant decrease in the part-time flexible Clerk hours required, in comparison with a similar period in 1974. This was true even though absences of full-time regular employees were greater in 1975 than in 1974. In 1975, moreover, the total volume of pieces handled at Taunton was lower than in 1974. The Postal Service, therefore, deems 1975 to be more representative than 1974 for purposes of Article VII, Section 3.

CONTENTIONS

No summary could do full justice to the parties' comprehensive briefs analyzing the evidence and elaborating argument concerning Article VII, Section 3. Nonetheless a brief exposition of each party's argument may be desirable to provide some context for the ultimate findings herein.

UNION

The Union asserts that the parties to the National Agreement long have had a common objective of eliminating part-time flexible employees to the maximum extent possible. It regards Article VII, Section 3 as providing the basis for continuing progress toward an all regular work force. It characterizes the first sentence of Article VII, Section 3, as a starting point toward this objective, in requiring that larger Postal installations maintain no fewer than 90% full-time employees. Over-all movement toward the ultimate objective, however, is broadly and directly required by the second sentence of Section 3--mandating maximization of full-time employees and minimization of part-time employees in all Postal installations.

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The Union holds, moreover, that the second sentence of Article VII, Section 3, best can be effectuated at Taunton "by the application of the rationale of the third sentence in Section 3" (which applies where a single assignment has been regularly scheduled for, and filled by, a given part-time flexible employee over a 6-month period). Thus the Union urges that "the general principles ... reflected in the third sentence" of Article VII, Section 3, may be applied to determine whether the Service has complied adequately with the mandate of the second sentence. Although the third sentence of Section 3 applies only to work performed by a single specific part-time flexible employee, the Union brief includes the following:

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"...It should be apparent that local management could fill a specific, regularly scheduled work assignment with two or more individuals, on a rotating basis, either to avoid the requirement for conversion, or for minor reasons such as lack of foresight, established scheduling habits, etc. In such a situation, the assignment of the position to a single flexible converted to full-time regular would not present significant operational difficulties and should increase operating efficiency.

"On a similar basis, the third sentence refers to work performed in specific eight hour (in ten) time blocks. This, of course, would normally be ideal. However, it is not unlikely that where flexibles are assigned work based on a six or seven day work week, that management would, by habit, tend to schedule flexible work in less than eight hours per day. Thus, an assignment could require eight hours of work per day, such as where flexibles are filling vacant full-time positions, but in practice the work on a given day might be shared by two flexibles. In this situation, one flexible might fulfill the bulk of the work in a six hour block, while the second flexible would cover the remaining two hours, possibly in addition to another part-time assignment. Here it should be apparent that the assignment of eight hours on a daily basis to a single flexible would limit his availability to five work days in the week, but at the same time

it would free the second flexible an equivalent number of hours which could be scheduled as needed in the week, particularly in the sixth or seventh day.

"These examples suggest that it is not unlikely for a situation to exist where maximization questions could be resolved relatively straightforwardly, but their resolution could not be reached because the situation does not conform to the strict limitations as given in the third sentence. In this situation, resolution can be reached by applying the general principles of maximization which are indicated in the third sentence utilizing a somewhat broader interpretation of these principles to account for situations in which a given work assignment is performed by more than one flexible. Such an interpretation would involve demonstrating the need for conversion by establishing a correspondence between the facts of the situation and the general conditions as outlined in the third sentence.

"In general terms, it is apparent that the essential elements of the third sentence: a specific work assignment, a regular work schedule, and consistency over a period of time, may apply in a number of different situations. In practice, verification of these conditions should not be a great deal more difficult than confirming the applicability of the literal provisions."

Based on its statistical analyses of 1974 and 1975 work schedules at Taunton, the Union brief identifies at least four blocks of time (regularly filled by an assortment of part-time flexible employees) which it deems to reflect daily need for the work performed so as to warrant the posting of four new full-time regular bid assignments.

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The Union urges that in light of the evidence it is incumbent upon the Postal Service to "prove why these regularly scheduled blocks of time should not be considered a regular work schedule." Finally, it asserts that "Where a given situation can be shown to conform to all of the essential elements on which the third sentence is based it should be acknowledged that the need for conversion has, in fact, been demonstrated. In particular, once a correspondence with the third sentence has been established, the significant questions of feasibility and practicality should be resolved by management's past scheduling practices."

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POSTAL SERVICE

The Postal Service rejects the view that the parties share an objective of establishing a full-time regular work force to the maximum extent possible. In its view, maximization in every instance must be balanced against the right of the Postal Service to conduct operations efficiently, under Article III of the National Agreement. When the second sentence of Article VII, Section 3, is read in the context in which it is written, and specifically in light of the first sentence (applicable only to large postal installations), there is plain recognition that smaller post offices cannot operate efficiently with a complement of 90% or more full-time

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regular employees. In the Postal Service analysis, the parties knew when they wrote Article VII, Section 3, that smaller post offices could not absorb and deal with full-time regular employee absences and unusual operating conditions without a greater degree of flexibility than that enjoyed by larger post offices. Since there plainly is no contractual obligation for smaller post offices to attain a 90% full-time regular work force, the use of the relative words "maximize" and "minimize" in the second sentence of Article VII, Section 3, means that maximization shall be effectuated only to the extent economically feasible.

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In the Postal Service judgment, the evidence does not show a sufficient number of hours worked regularly by part-time flexible Clerks to warrant additional maximization of the full-time regular work force. Even if the number of hours worked by part-time flexible Clerks in Taunton in 1974 were to be considered significant, the evidence also shows that there were unrepresentative and unusual operating conditions in Taunton during 1974: introduction of Centralized Mark-Up affected Taunton operations substantially, as did the Expedited Preferential Mail concept and a United Parcel Service strike in late 1974. Indeed, in 1975 there was a decrease in part-time flexible Clerk hours required in comparison with a like period in 1974, and the volume of pieces handled at Taunton decreased in 1975. Any increase in the number of full-time regular Clerks (and decrease in part-time flexibles) at Taunton, says the Postal Service, inevitably would produce substantial overtime and increased idle time during portions of the shifts of full-time regular employees. Local understandings at Taunton already require scheduling of full-time regular Clerks in a manner which tends to increase the total hours when part-time flexible Clerks must be used:

16 full-time regular Clerks are not scheduled to work on Saturday and 6 are not scheduled on Monday. Likewise, most regular Clerks now work 8 hours within 8-1/2, and the others work 8 hours within 9, as a local accommodation to the desires of the employees and Union. Since regular Clerks could be scheduled for 8 hours within 10, the present arrangement reduces Management flexibility to deal with peak periods and other unexpected contingencies in utilizing the work force.

The Postal Service attacks the Union's statistical analyses because they fail to consider the reasons why particular hours were worked by particular flexible Clerks on given days. It emphasizes that the need to utilize part-time Clerks depends on many factors, such as volume during peak periods; the need to fill in for absent full-time regular Clerks (who may be off for such reasons as annual leave, sick leave, jury duty, military obligations) and many other variables.

The Postal Service deems the present case to be fundamentally important because the Union seeks to induce the Impartial Chairman to accept total hours worked by part-time flexible Clerks as a determinative criterion in applying the second sentence of Article VII, Section 3, without considering the particular reasons why such hours were worked by part-time flexibles. It believes, indeed, that the Union in effect desires the Impartial Chairman to assume the Taunton Postmaster's duties and responsibilities in making a critical operational decision affecting the future of the Taunton Post Office. It concludes that conversion of even one part-time flexible Clerk to full-time regular Clerk status at Taunton will so diminish Postal Service flexibility to manage as to conflict with the intent of Article III of the National Agreement.

FINDINGS

The end result of each party's arguments in this case seems neither realistic nor consistent with an objective reading of the second sentence of Article VII, Section 3. The breadth of the gulf between the parties' ultimate positions, moreover, well illustrates their need for a practical interpretation of this key provision in the National Agreement. 18

Article VII, Section 3 must be read in the context of the entire Agreement and each sentence thereof also must be given reasonable meaning in light of the balance of Section 3. There should be no serious question that the second sentence in this Section requires the Postal Service at all times to maximize the number of full-time employees in all post offices. It is equally clear that the 90% minimum requirement for full-time employees applies only in larger post offices and facilities, with 200 or more man years of employment. This clear minimum standard for larger installations must have been deemed by the parties to be both desirable and practical in order to minimize problems in application of Article VII, Section 3 to larger installations. Manifestly the parties did not believe that a similar fixed minimum was practical for application in smaller postal installations. 19

This does not mean that good faith application of the second sentence of Article VII, Section 3 always must result in less than a 90% full-time regular complement in smaller installations, even if it is assumed that such minimum cannot practically be approximated in most instances. Practical application of the second sentence of Section 3 is possible only in light of all pertinent conditions in the given installation. 20

The critical problem here is to define as precisely as possible the nature of the ultimate obligation imposed on the Postal Service by the second sentence. The words "maximize" and "minimize" necessarily imply that a standard of practicability should govern in evaluating the relevant circumstances in any given postal installation to determine the extent to which maximization should be achieved. This in no way suggests, moreover, that the Postal Service is not ultimately responsible for maintaining the efficiency of its operations. The right and duty of the Service to maintain efficiency is delineated clearly in Article III of the National Agreement "subject to the provisions of this Agreement." Nothing in the second sentence of Article VII, Section 3 suggests that the Postal Service thereby is required to maximize the number of full-time employees in any given postal installation if the consequence is a significant increase in labor cost. It follows that the Postal Service is not required by this provision to convert part-time flexible employees to full-time regular status where this would produce demonstrable increased costs, such as in unavoidable increased idle time during scheduled tours of regular employees or in overtime pay.

Here the Union seeks a directive from the Impartial Chairman requiring that at least 4 of the 8 part-time flexibles in the Clerk unit at Taunton be converted to full-time regular status. It urges that such an award would not produce any inefficiency because four such assignments allegedly can be carved out of recurring daily periods during which various part-time flexibles regularly typically have been used at Taunton. The Postal Service replies that the Union fails to consider adequately the reasons why specific part-time flexibles must be used at particular times, and that serious inefficiency would result at Taunton even if only one part-time flexible employee were converted to full-time regular status.

As already indicated the Impartial Chairman, cannot embrace either party's ultimate position. It would appear, indeed, that the Union is asking the Impartial Chairman to determine, from a review of total work requirements in light of all relevant conditions, the optimum number of full-time regular Clerk assignments which reasonably can be filled in the future at Taunton. It is conceivable that an arbitrator might perform such a function in a case where flagrant violation of Article VII, Section 3 has been established, or where the evidence shows manifest failure to deal realistically with some specific, identifiable work assignment. In the present case, however, such an exercise of authority by the arbitrator seems neither required nor warranted in order reasonably to effectuate the intent of the second sentence in Section 3. 23

Here it is noteworthy that the parties in their 1973 negotiations added two sentences to the original Article VII, Section 3 so as to provide concrete guidance for implementation of the second sentence at the local level. The new third sentence is particularly relevant here, and states: 24

"A part-time flexible employee working 8 hours within 10, on the same 5 days each week and the same assignment over a six-month period will demonstrate the need for converting the assignment to a full-time position."

Since individual part-time flexible Clerks are not shown to have worked at Taunton in the manner described in this sentence, it literally does not control here. The Union also errs when it suggests that the "policy" of this sentence may be 25

applied by the Impartial Chairman, on the basis of its statistical analyses, to direct conversion of 4 part-time flexibles to regular full-time status. When the second sentence of Section 3 is read realistically in light of the third sentence, however, it is clear that a practical approach to cases such as the present is available for the parties at the local level, and that they should have very little need to carry such problems to arbitration.

The maximization obligation imposed by the second sentence of Article VII, Section 3 is of a continuing nature. It hardly could be otherwise, since relevant conditions affecting the size and composition of the work force cannot be expected to remain static. The Union's comprehensive analyses of the work schedules at Taunton in the present case surely raise an inference that at least one, and possibly more, of the part-time flexible Clerks there might be converted to full-time regular status without significantly impairing efficiency. An assertion by the Taunton Postmaster that inefficiency will result, without concrete documentation of the nature and extent of such inefficiency, is not enough in the face of such Union evidence. Given the record in this particular case, therefore, and keeping in mind the present composition of the Taunton work force, it would have been appropriate for Taunton Management to try to schedule at least one part-time flexible Clerk experimentally in conformity with the standards in the third sentence of Section 3. The second sentence of Article VII, Section 3 reasonably appears to impose an obligation to proceed in this manner when the Union presents a *prima facie* case for greater maximization in any given installation. Had such a course been followed at Taunton, the local parties easily could have ascertained whether efficiency in fact would be impaired by converting one or more of the part-time flexibles there to full-time regular status.

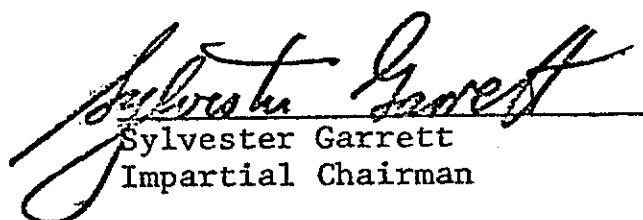
Since the parties have been uncertain until now as to how Article VII, Section 3 should be implemented at the local level, it would seem that their local representatives at Taunton at last should have full opportunity to settle these grievances in light of this Opinion and without further resort to arbitration. The Award thus will return the case to the parties for settlement.

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AWARD

These grievances are returned to the parties for local settlement as outlined in this Opinion. Promptly following this Award the Taunton Postmaster should seek to schedule at least one part-time flexible Clerk on the basis of 8 hours within 10 per day on the same 5 days each week, on an experimental basis. If, after a fair trial, it appears that such scheduling impairs efficiency, it may be discontinued and the grievances should be withdrawn. If no significant inefficiency results from such experimental scheduling over a six-month period, the assignment should be converted to a full-time regular position. Thereafter the same procedure should be repeated experimentally until it appears that maximization of the number of full-time employees at Taunton has been achieved to the extent required by Article VII, Section 3.

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Sylvester Garrett
Impartial Chairman