27503

REGULAR ARBITRATION PANEL
WESTERN AREA

In the Matter of the Arbitration	Grievant: CLASS ACTION
between	Post Office: TERMINAL OPERATIONS SEATTLE, WASHINGTON
UNITED STATES POSTAL SERVICE and	USPS Case Number: 601N-4E-C 07236170
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievance Number: 595-C-07 SE NALC DRT No. 02-077524

Before SYLVIA MARKS-BARNETT, ARBITRATOR

Appearances:

For the United States Postal Service – JAMES M. WALTERS, Postmaster

For the National Association of Letter Carriers – COBY JONES, Trustee

Place of Hearing: 10700 27th Avenue South, Seattle, Washington

Date of Hearing: December 7, 2007

Date of Award: February 25, 2008

Relevant Contract Provision: Article 30.B.2, of the National Agreement; Article 8, Section 5, of the Seattle Local Memorandum of Understanding (LMOU)

Contract Year: 2001-20007

Type of Grievance: Contract

AWARD SUMMARY

The evidence and testimony in this case show that Management, at the Seattle Installation, Washington, violated the provisions of Article 8, Section 5, of the LMOU, by, on May 24, 2007, unilaterally changing the schedule of Route 24052, from a fixed Monday through Friday schedule to a rotating schedule. The grievance is sustained. Management is to restore said Route, as well as any other existing Routes which have been similarly changed, whether encumbered or unencumbered, to a fixed Monday through Friday schedule. Letter Carrier, Bill Lewis, together with all other carriers

similarly affected by such changes, are to be paid for all Saturdays, that each such Carrier worked, the difference between the overtime rate and what was actually paid for said Saturdays, from the time such Saturday work began on said Routes, until payment is made under this Remedy.

Sylvia Marks-Barnett

SYLVIA MARKS-BARNETT, Arbitrator

STATEMENT OF THE CASE

This case was heard on December 7, 2007, in Seattle, Washington. All parties were afforded the opportunity to call and to cross-examine witnesses, to submit documentary evidence and to make opening statement and closing argument. Coby Jones, Branch 79 Trustee for the National Association of Letter Carriers (hereinafter referred to as the "Union"), Seattle Formal A Steward, Letter Carrier at Interbay Station; Gary A. Coy, Terminal Operations Steward; and Jo Ann Pyle, Branch President, Letter Carrier, Bothell Station; testified on behalf of the Union. The United States Postal Service (hereinafter referred to as "Management") called Jeff Maxfield, Seattle Area Manager, Customer Service Operations; Katherine Nash, Seattle Postmaster; Paula Louise Stafford, Manager, Customer Service Operations, Westwood Station; Jaime Timbang, Manager, Customer Service Operations, Midtown Station; and William Straight, Station Manager, Terminal Operations; as its witnesses. All witnesses voluntarily appeared and were duly sworn.

The hearing was concluded on said date. Post-hearing briefs were mailed by both parties, with the date of receipt, for the last one received, was January 26, 2008, whereby the case stood submitted on said date.

ISSUE

The joint statement of the issue was whether Management of Terminal Operations, Seattle, Washington, violated the provisions of the National Agreement, Article 8, Section 5, of the LMOU (Local Memorandum of Understanding) and/or a prior Step B decision, in May of 2007, by unilaterally changing the schedule of Route 24052, from a fixed Monday through Friday schedule to a rotating schedule. And, if so, what is the appropriate remedy.

DISCUSSION AND OPINION

Facts

Based on the testimony and the exhibits, the facts appear to be that on October 14, 2004, a Step B decision was rendered by the Dispute Resolution Team (hereinafter referred as the "Team") for the Seattle Installation, which arose from actions taken by the Employer in the Westwood Station. This decision is hereinafter referred to as the "Westwood decision." In the Westwood decision, the undisputed facts were that the Employer unilaterally changed the schedule days off on route #4680 from a historically, fixed Monday through Friday, with Saturday off to a rotating schedule.

The Team decided in favor the Union, finding that Management had violated Article 8, Section 5, of the LMOU, by doing so. Management did not seek any clarification of the decision.

Prior to May 24, 2007, Route 24052, at Terminal Operations in Seattle had historically and always been a Monday through Friday route that had Saturdays as its fixed day off. On May 24, 2007, the Employer posted the recently vacated Route 24052, with a rotating day off schedule. This was done without benefit of negotiation and/or agreement by the Union. Carrier Bill Lewis was the successful bidder for the position. In accordance with the posting, Carrier Lewis has been carrying Rout 24052 on a rotating day off schedule.

These facts gave rise to the filing of the grievance before the Arbitrator.

Contentions

The contentions of the Union were:

(1) The Westwood decision stands as precedent in this case.

(2) In the alternative, if the Westwood decision is not precedent in this case, the language of Article 8, Section 5, of the LMOU, is ambiguous as to whether mutual agreement between the parties is necessary for changing existing Monday-Friday scheduled routes.

The Employer contended:

(1) The Westwood decision should not be considered as precedent in this case because the facts of the former are not identical to those of the later, i.e. in this case, the change from a fixed route to a rotating route was made at the time the route was vacant.

(2) If the Westwood decision does not have any weight in this matter, as precedent, the language of Article 8, Section 5, of the LMOU, does not restrict Management from exercising its Article 3 Management Rights by changing a fixed route to a rotating route for a vacant position, without going to the Union first for an agreement to do so.

PERTINENT PROVISIONS OF THE NATIONAL AGREEMENT

ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

...

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...

ARTICLE 5 PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting ...hours and other terms and conditions of employment ...which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

Joint Contract Administration Manual

5-1 Prohibition on Unilateral Changes. ...Not all actions are prohibited by the language in Article 5 – only those affecting wages, hours or working conditions as defined in Section 8(d) of the National Labor Relations Act. Additionally, certain management decisions concerning the operation of the business are specifically reserved in Article 3 unless otherwise restricted by a specific contractual provision.

ARTICLE 30 LOCAL IMPLEMENTATION

Joint Contract Administration Manual

30-1 Local Implementation. Article 30 of the National Agreement enables the local parties to negotiate over certain work rules and other terms and conditions of employment...Article 30.B lists 22 items which are mandatory subjects of discussion if raised during the period of local implementation.

...

30.B.2 (from Article 41, of the National Agreement). The establishment of a regular work week of five days with either fixed or rotating days off.

ARTICLE 41 LETTER CARRIER CRAFT

41.1.A.3 The existing local procedures for scheduling fixed or rotating non-work days ... shall remain in effect unless changes are negotiated locally.

Joint Contract Administration Manual

Local Implementation *NALC branches may establish local rules regarding fixed or rotating days off ...by section or installation-wide – through local implementation procedures under Article 30 of the National Agreement. Such rules are then contained in a Local Memorandum of Understanding, which must be read in conjunction with Article 41. Fixed or rotating days off are negotiated pursuant to Article 30.B.2 ...*

2001 – 2006 SEATTLE LOCAL MEMORANDUM OF UNDERSTANDING
November 15, 2002

ARTICLE 8 HOURS OF WORK

Section 5 With the exception of existing Monday-Friday scheduled routes, all letter carriers will be on a rotating schedule. Future exceptions shall be by mutual agreement between Management and Branch 79 only.

Analysis

The advocates are to be commended for presenting a well-prepared case in a zealous, as well as congenial fashion, all of which was of great assistance to and is appreciated by the Arbitrator. In order to avoid an unduly lengthy opinion, the Arbitrator will not respond to every argument presented by both the Union and the Employer, but will, instead, focus her attention only on those matters which she deems necessary to a correct, proper and fair decision of the dispute.

In the Westwood Decision, the DRT found that when Management unilaterally changed the scheduled days off from a fixed schedule to a rotating schedule, it violated the LMOU. The DRT explained its decision on the basis of contract interpretation, i.e. (1) that construing the language to mean that Management could unilaterally change routes with a fixed schedule to ones with a rotating schedule would give Management an unfair and unreasonable advantage; (2) that so construing would work a forfeiture because it would allow Management to unilaterally eliminate any or all fixed schedule routes; and (3) that such construction would lead to a harsh result.

Management urges that this decision does not apply here because in the Westwood Decision there was an incumbent in the position when the change was made. This, Management claims, is in contrast to the facts in this case because the change here was made only after the incumbent retired when the position became vacant and was posted. Management claims further that when the position became vacant, it lost its nature as an existing route. No employee was impacted by the change of days off. Management argues that this did not work a forfeiture because the rotating schedule was a part of the position for which those wanting the position bid; and that the route had changed, in that it called for collection box pick-up on Saturdays, a new assignment.

Whether or not the DRT interpreted the LMOU correctly in the Westwood decision is not before me. However, I do find that it is applicable. There is no language in it that expressly confines its application to encumbered routes only. Because the facts involved an encumbered route, there

wouldn't be such language. However, the rationale it relied on to reach its decision makes clear that whether the route is encumbered or unencumbered is not a distinction that would make no difference.

While the facts in this grievance an unencumbered route, that route was an existing Monday through Friday scheduled route. The mere posting of the route as a rotating one does not make it a different route. The number stayed the same, it had not been abolished. Adding a box pick-up does not make it a different route. The addition of the box pick-up could have just as easily been assigned on Monday through Friday (for the sake of argument and not from the perspective of business necessity) and the assignment would not even have been noticed. To claim that the addition of that assignment for a Saturday turns the into something new just begs the question.

It is important to note that the LMOU refers to "routes", not to employees. The claim that the change made by Management to Route 24052 did not impact any employees does not satisfy its obligations under the LMOU. What Management did in this case was to unilaterally change Route 24052, a route with a fixed schedule, to a route with a rotating schedule. This worked a forfeiture because Management unilaterally eliminated Route 24052 as a fixed schedule route. This is precisely what the DRT in the Westwood decision said should be avoided. To be sure, if this was done to an encumbered route, the result would be much harsher than what was done in this case. But that does not make Management's action any less violative of the LMOU.

The Arbitrator is mindful of the staffing problems at Terminal Operations as testified to at the hearing. The developing residential area is increasing the need for service on Saturdays. At the same time the Union has expressed a strong desire that the number of part-time regulars be reduced. And, the cost of paying overtime is contrary to the dictates of sound business practices. However, the parties negotiated the LMOU. Its terms are binding on Management, just as it is on the Union. Management still has its rights to solve staffing problems and to fix work schedules, but that right is subject to, among other things, the terms of the LMOU. This decision should be taken to mean that Management may not change a fixed schedule route to a rotating route, but that it can do so only after reaching agreement with the Union. Given the testimony in this case, there is a history of such agreements and the Arbitrator is confident that agreements can be reached in the future.

Based on all the foregoing, the compelling conclusion is that Management did violate the provision of Article 8, Section 5, of the LMOU, by, on May 24, 2007, unilaterally changing the schedule of Route 24052, from a fixed Monday through Friday schedule, to a rotating schedule.

Matter of the Remedy

With regard to the remedy, the Arbitrator orders that the Grievance is sustained, the Employer is to restore Route 24052, as well as any other existing Route which has been similarly changed, whether encumbered or unencumbered, to a fixed Monday through Friday schedule, with Saturdays and Sundays off. The incumbent carrier, Bill Lewis, together with all other carriers similarly affected by such changes on Route 24052 are to be made whole by being paid, for all Saturdays that each Carrier worked, the difference between the overtime rate and what he was actually paid for said Saturdays, from the time such Saturday work began on said Routes, until payment is made under this Remedy. The Arbitrator declines to impose any additional Remedy for pay for weekdays inappropriately not scheduled.