

C# 01612

between

and

Decided, April 24, 1981

Jack R. Sebold

## STATEMENT OF FACTS

This proceeding arises out of a bid posting that occurred on July 7, 1979 at the Hamtramck Station of the Postal Service in the Detroit, Michigan area. On that date, regular route #1206 was posted for bids to the letter carriers of that unit. When the posting was made, management announced that there would not be a trial period for the successful bidder.

The Union filed the instant grievance as a class action on behalf of all full-time letter carriers. The Union claims that the refusal of the Service to permit a five-day trial period to the successful bidder was a violation of Article IV, Section E of the Detroit Memoranda of Understanding. The Union's grievance has been processed through the pre-arbitration steps in the parties' disputes' procedure. When, in all such prior steps, the Service denied the grievance, the Union invoked arbitration of it in this proceeding.

## APPLICABLE CONTRACTUAL PROVISIONS

### National Agreement:

#### ARTICLE XXX

#### LOCAL IMPLEMENTATION

A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1978 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below.

B. There shall be a 30-day period of local implementation to commence October 1, 1978 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1978 National Agreement:

\* \* \*

22. Local implementation of this Agreement relating to seniority, reassignments and posting.

\* \* \*

#### ARTICLE XLI

##### LETTER CARRIER CRAFT

##### Section 1. Posting

\* \* \*

##### C. Successful Bidder

1. The senior bidder meeting the qualification standards established for that position shall be designated the "successful bidder."

2. Within ten (10) days after the closing date of the posting, the Employer shall post a notice indicating the successful bidder, seniority date and number.

3. The successful bidder must be placed in the new assignment within 15 days except in the month of December.

4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to T/6 and utility assignments, unless the local agreement provides otherwise.

#### 1975 - Detroit Memoranda of Understanding:

#### ARTICLE IV

##### POSTING

\* \* \*

#### E. Procedure For Successful Bidder

A senior applicant bidding for a vacant assignment, route or utility schedule within a unit, will be allowed a period of five (5) working days to determine acceptance. He shall have the option of accepting or refusing the reassignment in writing before expiration of the five day period. The applicant's original assignment shall not be posted during the period, or until he indicates in writing that he/she has accepted the reassignment.

#### POSITIONS OF THE PARTIES

##### Union

The Union contends that the five-day trial period has been a part of the local memoranda of understanding and local practice since at least 1965. The provision of Article XLI-1C of the National Agreement has not been changed in any material respect from the 1975 National Agreement. The Detroit Memoranda was approved as consistent with the prior agreement; it is equally consistent with the 1978 National Agreement. The Service did not have the right to unilaterally ignore the Memo of Understanding with no explanation or reason why.

Moreover, the Union contends that five day trial period is not inconsistent with the National Agreement. Under both, the senior bidder is always put on the assignment.

Finally, the Union contends that the provisions of the 1975 Memoranda are still valid. The parties did not agree upon a new memorandum in 1978. Therefore, the prior memo remains in effect.

## Service

The Service argues that there is no local memorandum of understanding in effect for the Detroit area. The Union refused to follow the procedures for negotiating a new agreement during the 1978 local implementation period.

Secondly, the Service contends that, if there is a local memorandum, Article IV, Section E is void because it is inconsistent with the National Agreement. Under the National Agreement, the senior bidder must be designated as the successful bidder and placed in the job. The result can be different under the local memorandum. Therefore, the National Agreement must prevail.

### OPINION OF THE ARBITRATOR

In the judgment of the Arbitrator, the Service violated the collective bargaining agreement between it and the Union by refusing to afford a five day trial period to successful bidders for letter carrier positions in the Detroit area. Therefore the instant grievance, protesting that refusal, must be sustained.

This conclusion is derived from the following reasoning:-

#### I

The facts underlying this dispute are not in contention. The Service and Branch 1 entered into a Memoranda of Understanding on October 30, 1975 to supplement the 1975 National Agreement. Article IV, Section E of that Memoranda expressly afforded a five working day trial period for successful bidders.

The parties did not execute a new local memorandum in 1978. The parties to the 1978 National Agreement signed a supplemental memorandum on September 28, 1978, setting October 16, 1978 through November 14, 1978 as the local implementation period. Issues still in dispute at the end of that period were to be transferred to the Regional level. If there was no resolution at that level, the matter could be appealed to arbitration. This national memorandum stipulated that if there was no local agreement and the matters were not submitted to the Regional level or arbitration, the former local Memorandum of Understanding "shall apply unless inconsistent with or in conflict with the 1978 National Agreement."

Branch 1 and the Service did little if any negotiating of a new local memorandum during the 1978 local implementation period. The president of Branch 1 wrote the Detroit Postmaster on October 10, 1978, proposing to "update" the existing local memo. A meeting was held on October 13, at which the Service presented a letter declaring 15 articles in the 1975 Memoranda (not including Article IV, Section E) to be inconsistent with the 1978 National Agreement. The Union refused to negotiate until the Service withdrew that letter. The Service refused to withdraw it, and the meeting broke up. Several additional meetings were held during the 1978 local implementation period but there was no change in position by either party. At the end of the local period, no agreement had been reached and no effort was made to refer any matters to the Regional level.

Shortly thereafter, the Service instituted a policy of continuing to honor only those provisions of the 1975 Memoranda that it considered to be consistent with the 1978 National Agreement. Sometime in December 1978, the local branch managers were directed to halt the practice of giving trial periods to successful bidders. The Union claims it was never advised of this action by the Service and it did not become aware of the change until the instant dispute arose in July.

## II

The Arbitrator finds first of all that the 1975 Detroit Memoranda of Understanding is still in effect between the parties.

There is no doubt that paragraph 2 of the National Memoranda relating to local implementation can be read to impose a mandatory duty on local parties to identify issues still in dispute at the end of the local period, and upon the local Union to refer those matters to the Service's Regional Director, E. & L. R. However, paragraph 5 of the National Agreement expressly provides that the only consequence of a failure to refer matters in dispute to the Region is that nonconflicting provisions of the former Local Memorandum of Understanding remain in effect. The same consequence is provided for in Article XXX, Section A, quoted above.

Therefore, there seems to be absolutely no room to doubt that in view of the lack of agreement or referral to the Regional level, the 1975 Detroit Memoranda of Understanding remains in effect unless it is inconsistent with or in conflict with the 1978 National Agreement.

### III

In addition, the Arbitrator holds that the subject of "procedure for successful bidders", which is the claimed subject of Article IV, Section E, is one which could properly be covered in a local Memorandum of Understanding.

Section B of Article XXX lists the 22 items that can be treated in a local memorandum. The last enumerated item, quoted above, permits agreements to implement the national provisions relating to "seniority, reassignments and postings."

Section 1 of Article XLI, which contains the provisions relating to "Successful Bidders", quoted above, is designated as a "Posting" provision. Therefore, it follows that any local provision intended to implement any portion of Section 1 of Article XLI is a provision "relating to posting" and consequently is expressly authorized by Section B of Article XXX.

### IV

The above conclusion necessarily raises the issue whether Section E of Article IV of the Detroit Memoranda, intended to implement Section 1 of Article XLI of the National Agreement, is invalid because it is inconsistent or in conflict with Section 1, C of Article XLI. The Service claims it is, because compliance with the local memorandum can lead to different results than the National Agreement.

The Arbitrator finds this argument to be without merit. Under both the National and local agreements, the senior qualified bidder is the "successful bidder". Under both, notice is given



within ten days. Under both, the successful bidder is placed in the new assignment within fifteen days (the local memo does permit a longer period if the successful bidder is on leave at the time, but the Service has not challenged that qualification). Under both, the senior bidder is required to work the duty assignment as posted.

Article IV, Section E of the Detroit Memoranda does not have any effect until after the procedures set out in the National Agreement have been completed. The local memo says that for the first five days after he is placed in the new assignment, the successful bidder is on a trial period, and he can either accept the assignment as a permanent assignment or reject it and return to his original assignment. The National Agreement neither authorizes or prohibits trial periods; it is silent on the matter. In that regard, it is important to note that Section C, 4 of Article XLI merely requires the successful bidder to "work the duty assignment as posted". If the parties to the National Agreement had intended that the successful bidder would be forced to immediately assume the new assignment and vacate his original assignment, they should have used explicit language to that effect.

Therefore, it is the conclusion of the Arbitrator that Article IV, Section E supplements National Agreement by eliminating an ambiguity contained in Article XLI, Section C of that agreement. Thus the Detroit Memoranda removes an area of doubt and controversy from the National provisions, with respect to whether a

successful bidder can ever withdraw his bid after it has been made. Because the National Agreement is silent on this subject, a local provision that deals with the problem cannot logically be considered to be inconsistent or in conflict with the 1978 National Agreement. Therefore, the five day trial period is still in effect in Detroit, and the Service violated the agreement by refusing to honor it.

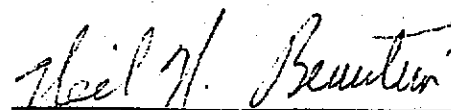
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This leaves only the question of remedy. The Union originally requested that all letter carrier assignments filled since July 1979 without a five day trial period be reposted and rebid. This remedy is so potentially destructive of route assignments throughout the Detroit area that it is totally unacceptable.

Therefore, the Arbitrator will limit his remedy to prospective relief only. The Service will be directed, on all future route or schedule assignment bids in the Detroit area, to permit the successful bidder the five day trial period set out in the local memorandum of understanding.

THE AWARD

The grievance of Branch One is sustained. The Service is directed to allow all successful bidders for vacant assignments, route or utility schedules a five working day trial period to determine acceptance, as per Article IV, Section E of the local memorandum of understanding.

  
NEIL N. BERNSTEIN,  
Arbitrator