

REGULAR ARBITRATION PANEL

C# 09679

In the Matter of the Arbitration

- between -

UNITED STATES POSTAL SERVICE

Class Action

- and -

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

Springfield, New Jersey
Post Office

Case No. N7N-1P-C 5096

Before: George S. Roukis, Arbitrator

Appearances:

FOR THE UNITED STATES POSTAL SERVICE

Michael Melchionda, Labor Relations, Newark, New Jersey
Harry Hochut, Superintendent, Postal Operations, Springfield,
Post Office

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Robert Borgognoni, Director of City Delivery and Compensation
Specialist - Merged Branch 38
Anthony Colatruglio, Letter Carrier, Springfield Post Office

Place of Hearing: NALC Branch 38 Office
2414 Morris Avenue
Union, New Jersey

Date of Hearing: November 20, 1989

Award: The Postal Service did not violate Articles 7 and 41 of the National Agreement when it posted the General Works position with VOMA duties. It did technically violate Article 41 when it did not provide the Union with written notice. The violation for the reason expressed in the Opinion was De Minimus.

Date of Award: February 8, 1990



Pursuant to the arbitration procedures set forth under Section 4B of Article 15 of the National Agreement between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, hereinafter referred to as the Postal Service and the Union respectively, the undersigned was appointed Arbitrator to hear and decide the grievance herein. Accordingly, a hearing was held at NALC Branch 38's Union, New Jersey office, at which time, the parties were afforded ample opportunity to present evidence and testimony germane to their positions.

The adjudicative issues before the Arbitrator are:

Did the Postal Service violate Articles 7 and 41 of the National Agreement when it posted the General Clerks position with VOMA duties?¹

If so, what shall be the remedy?

¹VOMA Position = Vehicle Operations Maintenance Assistance Position

PERTINENT AGREEMENT PROVISIONS

ARTICLE 7 EMPLOYEE CLASSIFICATIONS (in part)

Section 2 Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

ARTICLE 41 LETTER CARRIER CRAFT (in part)

Section 1.A.1.

When a position is under consideration for reversion, the decision to revert or not to revert the position shall be made not later than 30 days after it becomes vacant. If the decision is made not to revert, the assignment must be posted within 30 days of the date it becomes vacant. The Employer shall provide written notice to the Union, at the local level, of the assignments that are being considered for reversion and of the results of such consideration.

Section 1D Other Positions

City letter carriers shall continue to be entitled to bid or apply for all other positions in the U.S. Postal Service for which they have, in the past, been permitted to bid or apply, including the positions listed below and any new positions added to the list:

SP 2-188 Examination Specialist
SP 2-195 Vehicle Operations-Maintenance Assistant

AGREED UPON STIPULATIONS

1. Whenever anyone works the duty of VOMA, the applicable higher rate of pay shall apply.
2. Presently, the part-time duties of the VOMA are worked anywhere between 15 and 20 hours a week or approximately 4 hours per day.
3. The criteria for a full-time VOMA position is 8 hours daily and that the facility shall have at least 30 vehicles to qualify for a full-time position.

BACKGROUND

The Postal Service posted a General Clerk's position on November 10, 1987 and invited interested clerk personnel to apply for the position. VOMA duties were included in the position's principal assignments and such inclusion precipitated the grievance herein. Prior to this posting, a position at the Springfield installation was reverted on November 2, 1987 and the General Clerk's position was subsequently authorized. It was the Union's position that said action violated Articles 7 and 41 of the National Agreement, since Letter Carriers were precluded from bidding on the newly posted position. As a remedy, it requested that the position be posted as a multi-craft position and assigned to the senior most qualified bidder. Retroactive make whole compensation was also requested.

UNION'S POSITION

The Union maintained that as a historical past practice on 8 hours VOMA position existed at the Springfield, New Jersey Post Office. It observed that when said position was reverted, the Union was never given notice of the reversionary action. It noted that when the General Clerk's position was first posted on October 13, 1987, the Letter Carriers craft questioned the posting and the bid notice was removed. It grieved the second bid notice posted on November 10, 1987.

The Union also contended that the Postal Service failed to comply with Sections 112 and 113 of the M-52 Handbook, Section 352 of the Employee and Labor Relations Manual, Subchapter 520 of the P-11 Handbook, and the Northeast Field Directors VOMA guidelines issued on May 7, 1986. Specifically, it asserted that the Postal Service failed to adduce substantive justification to post the job as a General Clerk's position and such failure warranted the grievance herein.

Letter Carrier Anthony Colatruglio testified that he had apprised postal management of his interest in the position, but was estopped from doing so, because it was posted as a clerk's position. He noted that he had bidden for the VOMA position 12 years ago, but was not certain what criteria was used for the position. He identified the past incumbent of the VOMA position and reviewed the duties performed by said employee (Ralph Herman). On cross-examination, he indicated that Mr. Herman performed "in

general" about 2 hours a day clerical duties and normative VOMA tasks. These included minor repairs and keeping records on "maintenance and procedures".

POSTAL SERVICE'S POSITION

The Postal Service argued that the criteria relative to a VOMA position relate to full-time positions and not to positions with collateral duties. In fact, it asserted that Articles 7 and 41 are germane only to full-time positions. It observed that the position prior to the establishment of the General Clerks Position was not a full-time VOMA position, since the incumbent didn't perform more than 6 hours of VOMA duties a day. Furthermore, it pointed out that it wanted to continue the position occupied by Mr. Ralph Herman but was advised by MSC to convert the position to a General Clerks position. In effect, it maintained that the criteria governing the establishment of a VOMA position were not present at the Springfield facility, since there were not 30 vehicles at the installation or 8 hours a day of VOMA work.²

Superintendent of Postal Operations Harry Hochut testified that Mr. Ralph Herman performed VOMA duties, but also 2 hours of clerks work in the morning. (Distribution work). He stated that

²It stated that the General Clerks position performs 4 hours of VOMA duties a day as compared to 6 hours under Mr. Herman.

when Mr. Herman retired, he (Superintendent Hochut) wanted to put the position up for bid and accordingly called the Newark Personnel office for a copy of the VOMA requirements. Since the new VOMA criteria now required a postal installation to have 30 vehicles as compared to 15 vehicles under the 1972 guidelines, he was advised by Newark that Springfield didn't meet the criteria for a VOMA position.³ Thus, Newark authorized the General Clerk's Position. He indicated that there was no set time for the performance of clerical or VOMA duties, though the VOMA duties fluctuated daily.

On cross-examination, he acknowledged that Mr. Herman's job was an 8-hour VOMA position and also that the Union was not given written notice of the reversion. He also indicated that a person performing VOMA duties earns Level 6 pay. He testified that a VOMA position is open to both crafts and noted that Mr. Herman came from the clerk's craft.⁴

³Superintendent Hochut testified that he orally advised Union Steward Patrick McKee of this requirement.

⁴He stated that when Mr. Herman originally bidden for the position, it was pursuant to a multi-craft posting.

ARBITRATOR'S OPINION

In the early 1970's when the Springfield VOMA position was established, the job was open to multi-craft bidding since it was a full-time VOMA position. Further, under the 1972 guidelines, the primary qualifying requirement for a VOMA position was that the employing facility have 15 vehicles. Accordingly, and based upon governing selection criteria, the Postal Service selected an employee from the clerical craft and said employee performed VOMA and distribution duties. Hence, all things being equal, if the position later became vacant, the Postal Service would be obligated to bid the position, so that all crafts would have an opportunity for the VOMA position. Selection would then be made upon a senior qualified basis among those eligible employees who submitted bids and met the minimum positional qualifications. In later years the requirements for a full-time VOMA position specified that a postal installation must have at least 30 or more postal owned vehicles or the workload consists of 8 hours per day, 5 days a week. (See also Section 123 of the M-52 Handbook.)

In the Fall of 1987, when the incumbent of the VOMA position retired, the Postal Service moved to bid the position as a VOMA/ Distribution job and said bid was posted on October 13, 1987. The bid was not restricted to the clerk craft. Subsequently, and consistent with the Newark's MSC review, the position was reverted (deleted) and a new position, entitled General Clerk SP2-45 2340-01XX PS-5 was created. Postal management (Newark) had concluded

that the Springfield facility did not meet the criteria for a full-time VOMA position, since the installation did not meet the (at least) 30 vehicles standard or an 8-hour VOMA work day. An employee from the clerk's craft was selected to fill the new position and assigned approximately 4 hours a day of VOMA duties. It is this assignment that is at issue herein.

Firstly, the Postal Service is not barred from reverting a VOMA position, provided it observes the applicable reversion procedures. Secondly, there is no mandatory requirement for a VOMA position because it existed in the past or the installation had less than 30 vehicles or less than an 8 hour VOMA work day. The May 7, 1986 Guidelines for the utilization of a VOMA position recognized that numerous existing VOMA positions were not full time assignments, but noted that determination of what other duties would be performed rested upon the craft from which the VOMA employee came. This is exactly what occurred in the early 1970's. It would also apply if the Springfield facility in 1987 had at least 30 vehicles or an 8 hour per day, 5 days a week VOMA position. The guidelines also recognized that existing full time VOMA positions should not be automatically reverted as a result of the May, 1983 revision to the job description, though reversion per se was not precluded. It did indicate that reversion should be pursued when the position is vacant and the MSC determines that less than four hours of VOMA work is available on a predictable and recurring basis. The parties herein stipulated that the

present part-time VOMA duties vary anywhere between 15 and 20 hours a week or approximately 4 hours a day. On its face there is a surface presumption that this is a predictable consistent 4 hour per day workload, but the position can also work 15 hours a week. Technically speaking the time limits would fall within the 1986 VOMA reversion guidelines. In effect, the Postal Service could revert the position.

Furthermore, there has been no authority cited that would preclude assigning VOMA duties to a clerical or Carrier position where the requirements for a full-time VOMA are lacking. In the dispute herein, the Postal Service reverted the full-time VOMA position and created a General Clerks position. It assigned ancillary VOMA duties to the new position. There is an additional requirement set forth in the 1986 guidelines and also in Article 41 of the National Agreement which requires notification and advisement before the position is reverted. Article 41 requires written notice to the Union at the local level that the assignment is being considered for reversion. Since the position as it then existed was filled in the early 1970's pursuant to multi-craft bidding, the Carriers Union was entitled to written notice. To the extent that it was not given, a violation occurred, but it was De Minimus in effect. In other words since the Postal Service had justification under existing Agreement and rule authority for reverting the position, requiring written notice at this point would not produce a variant substantive outcome. The Postal Service has authority to revert the VOMA position.

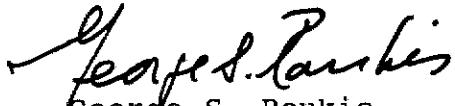
AWARD

The Postal Service did not violate Articles 7 and 41 of the National Agreement when it posted the General Clerks position with VOMA duties. It did technically violate Article 41 when it did not provide the Union with written notice. The violation for the reason expressed in the Opinion was De Minimus.

Issued in Union,
New Jersey

February 8, 1990

Respectfully submitted,


George S. Roukis
Arbitrator