

REGULAR ARBITRATION PANEL

C#10930

In the Matter of the Arbitration	GRIEVANT:	Class Action
between	POST OFFICE:	Biddeford, Maine
UNITED STATES POSTAL SERVICE	CASE NO:	
and	Mgmt:	N7N-1K-C35702
NATIONAL ASSOCIATION OF LETTER	NALC:	B 13A
CARRIERS, AFL-CIO	GTS#:	7270

BEFORE: Thomas J. Germano, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Thomas A.Caiazzo, Labor Relations Rep.

For the Union: Mike Fox, Arbitration Advocate

Place of Hearing: 125 Forest Avenue, Portland, Maine 04101-9401

Date of Hearing: June 20, 1991

AWARD: Auxiliary route 13 at the Biddeford, Maine, Post Office shall be converted to a full-time position and posted for bid according to Article 41 of the National Agreement.

If at anytime during the period of May 10, 1990, until the converted position is filled, the senior PTF at the Biddeford, Post Office received less than eight hours in a day due to lack of work, that employee shall be paid the amount of straight-time hours necessary to attain an eight hour day.

Date of Award: June 30, 1991

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NALC.-NEW ENGLAND REGION


Thomas J. Germano, Arbitrator

Pursuant to the terms of the Collective Bargaining Agreement between the United States Postal Service ("Postal Service") and the National Association of Letter Carriers ("Union"), the undersigned has been duly designated to hear and render a final and binding award concerning the immediate issue in dispute between the Parties.

A hearing was held on June 20, 1991, at the postal facility 125 Forest Avenue, Portland, Maine. At that time the Parties were accorded a full and fair opportunity to present witnesses, documentary evidence and oral argument in support of thier respective positions.

ISSUE

Did the Postal Service violate the Collective Bargaining Agreement by not converting auxiliary city delivery route 13 to a full-time assignment at the Biddeford, Maine Post Office? If so, what shall the appropriate remedy be?

RELEVANT CONTRACT PROVISIONS

Article 7: EMPLOYEE CLASSIFICATIONS

Section 3. Employee Compliments

C. A part-time flexible employee working eight (8) hours within ten (10) on the same five (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.

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

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE AND

NATIONAL ASSOCIATION OF LETTER CARRIERS

AFL-CIO

Re: Maximization/Full-Time Flexible - NALC

Where a part-time flexible has performed letter carrier duties in an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months (excluding the duration of seasonal periods on seasonal routes, defined in Article 41 Section 3.R of the National Agreement), the senior part-time flexible shall be converted to full-time carrier status.

This criteria shall be applied to postal installations with 125 or more man years of employment.

UNION'S POSITION

The Postal Service has violated Articles 7 and 41 of the National Agreement in failing to maximize the senior part-time flexible (PTF) to full-time regular status and in not converting auxiliary route 13 to a full-time assignment. There are approximately 14 hours of auxiliary work available at the Biddeford Post Office on a daily basis with eight of those hours consisting of work on route 13. Because these conditions also existed over a six-month period prior to the filing of this grievance, the Postal Service has continuously violated the Agreement and the appropriate remedy is therefore, to convert auxiliary route 13 to a full-time position and then post that assignment for bid according to Article 41. In addition, the senior PTF should be converted to full-time regular status and awarded 2 hours of penalty pay for each day the position was not converted beginning May 10, 1990 and continuing until the assignment is filled.

POSTAL SERVICE'S POSITION

The Postal Service is not required to create a regular position nor did the Union request such in its grievance file. There is no evidence that shows 8 hours of work existing on auxiliary route 13 on a regular basis. In fact, with the exception of one day's count and observation, no more than 7 1/2 hours of work is available and not all of that is fully efficient. The Union never requested a count and inspection for the route, without which no conversion may be effected. The criteria outlined in Article 7 does does not exist in regard to converting auxiliary route 13 and therefore no violation of the Agreement has occurred. The Union has failed to meet its burden of proof, its grievance is without merit and should be denied.

TESTIMONY AND EVIDENCE

The Superintendent of Postal Operations testified that although there were ways other than outlined in Article 7, Section 3.D of the National Agreement to convert assignments to full-time positions, he believed auxiliary route 13 did not meet the criteria for such conversion. Although this witness stated that the figures for the six month time period prior to the filing of this grievance showed that work on auxiliary route 13 averaged more than 8 hours each day, this work included a certain portion of combined work, i.e. work ordinarily assigned to other than route 13 and that work which the records report as being part of the route 13 assignment was, in fact, performed by more than one letter carrier. The Superintendent added that in his estimation it would not be efficient to combine any of the other

auxiliary type work in the station with the work assigned to route 13 in order to create a full-time assignment. He said his reasons for this conclusion were: he would lose flexibility in allocating assignments especially among the PTFs whom he tried to provide fairly equal and sufficient working hours to; the remaining auxiliary work could be more efficiently and expeditiously delivered by carriers not working route 13; and he did not want to disrupt the system for a change that would likely be temporary since significant innovations in technology were scheduled to be implemented in the near future. This witness further testified that creating an 8 hour assignment on route 13 was possible and doing so would not have caused a major disruption to postal operations.

Documentary evidence showed that the Superintendent in denying the instant grievance at Step 2 of the grievance-arbitration procedure had acknowledged that there had been sufficient reason to convert auxiliary route 13 to full-time status but that he could not actually effect such a change and stated that he believed anticipated automation would ultimately cause the assignment to be reverted thus causing an undue hardship on the letter carrier who would have assumed the position.

The Associate Office Coordinator testified that he analyzed all of the available data including mail counts, and a street observation of route 13 and concluded that there was insufficient volume to create a full-time position. This witness said his calculations showed that only approximately 7 hours and 17 minutes of work was performed by route 13 on a daily average basis. Under cross-examination and after calculating figures contained in some documentary submissions the witness agreed with the majority of estimates, namely, that route 13 consisted of

approximately 7 1/2 hours of work. According to this witness, a formal count and inspection would be required before an auxiliary route would be converted to a full-time assignment. He also stated that such a conversion could occur even if an assignment did not have exactly 8 hours of work attached to it. This witness said he did not analyze any of the other auxiliary work in the station nor did he consider combining any of that work with that of route 13. He agreed that route 13 consisted of 4 hours and 47 minutes of street time on a consistent basis but maintained that there was an expectation that daily work time on route 13 would soon be reduced by about 50 minutes. Under re-direct examination he contended that Management wants to maintain flexibility by not creating full-time assignments.

ANALYSIS OF THE CASE

The applicable contract language in this case is clear and explicit: a part-time flexible employee working eight (8) hours within ten (10), on the same five (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. (Article 7, Section 3.C).

In the instant grievance Management admits that there were 8 hours or more of work on auxiliary route 13 for more than a six month period when the grievance was first filed in April, 1990. Therefore, at that point in time, the assignment should have been converted to a full-time position.

Management's contention that a formal count and inspection must be conducted before such a conversion can be made is not supported because

the Parties agree that there are additional methods for effecting these conversions which do not require a count and inspection.

Management's reasons for not converting the assignment to a full-time position are also unsupportable. Even if the anticipated changes in automation had occurred after the conversion, thereby requiring the position to be reverted, Management was contractually obliged to first effect the conversion. The fact is, the innovations have yet to be implemented despite more than a year having gone by since the grievance was filed. Whether or not there will eventually be sufficient work to continue route 13, or any other route for that matter, at some future date is not the issue which has been processed and presented through the instant grievance. Therefore, any speculations regarding such possibilities must be disregarded in determining the outcome of this case.

Based on the foregoing and after examining all of the facts submitted, it is concluded that the Postal Service did violate the Collective Bargaining Agreement by not converting auxiliary route 13 to a full-time position. What is not clear is who the individual would be who ultimately would end up in that position once the bidding process, which would be open to all carriers in the station, was completed. Therefore, it is not possible to retroactively place any particular individual in that position as the Union requested nor is it reasonable to grant penalty overtime pay to the senior PTF, which was another aspect of the Union's requested remedy.

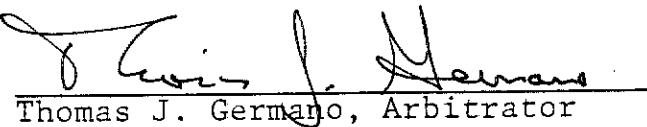
Furthermore, since the Memorandum of Understanding regarding maximization does not apply to the Biddeford Post Office, because that installation does not have 125 or more man years of employment, the only applicable contract provisions which apply in this case are those of Article 7, Section 3 and Article 41.

AWARD

Auxiliary route 13 at the Biddeford, Maine Post Office shall be converted to a full-time position and posted for bid according to Article 41 of the National Agreement.

If at anytime during the period of May 10, 1990, until the converted position is filled, the senior PTF at the Biddeford Post Office received less than 8 hours in a day due to lack of work, that employee shall be paid the amount of straight-time hours necessary to attain an 8 hour day.

Dated: June 30, 1991



Thomas J. Germano, Arbitrator