

WITHDRAWAL OF MAIL: HARD TIME VS. SOFT TIME

X

ARTICLE XXXIV

C# 03244

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UNITED STATES POSTAL SERVICE	:	CASE NOS.
	:	NB-S-4334
	:	NB-S-4277
	:	NB-C-4774
	:	NB-C-4744
and	:	NB-W-5018
	:	NB-E-4756
	:	
NATIONAL ASSOCIATION OF	:	ISSUED:
LETTER CARRIERS, AFL-CIO	:	January 30, 1978
	:	

.....

BACKGROUND

These combined grievances are before the Impartial Chairman for decision pursuant to Article XV of the National Agreement. The hearing took place on April 27 and 28, and July 19, 1977. Post-hearing briefs were submitted as of September 6, 1977.

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The issue came to arbitration under an agreement of the parties, reflected in a March 15, 1977 letter of Assistant Postmaster General Gildea to NALC President Vacca, which embraced an earlier definition of the scope of the issue to be arbitrated, as set forth in a January 24, 1977 letter from Gildea to outgoing NALC President Rademacher. This letter agreement read, insofar as relevant:

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"It is our understanding that the issue to be arbitrated in this case is whether the Postal Service violated Article XXXIV and the M-39 Handbook by removing the 'withdrawal of mail' duties, which the Union characterizes as 'soft time,' from the carrier assigned to a route which may increase the amount of 'casing and delivery' duties, which the Union characterizes as 'hard time.' Based on the foregoing understanding of the issue and your statement in your letter and in your conversation with Dennis Weitzel that the NALC is not presenting any jurisdictional issue and is not challenging the validity of the Postal Service's assignment of the function to employees other than the carrier on an assigned route, we will proceed to schedule this case as soon as possible."

Article XXXIV of the National Agreement reads, insofar as here relevant:

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"The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

"The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union or Unions concerned through qualified representatives will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the national President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.

"The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union or Unions concerned as far in advance as practicable.

"Within a reasonable time not to exceed 10 days after the receipt of such notice, representatives of the Union or Unions and the Employer shall meet for the purpose of resolving any differences that may arise concerning such proposed work measurement systems or work or time standards.

"If no agreement is reached within five days after the meetings begin, the Employer may institute or change such systems or standards."

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While the agreed issue in the January 24, 1977 letter also refers to possible violation of the M-39 Handbook, the NALC now places its reliance solely on the claimed violation of Article XXXIV. Its brief states the following versions of the agreed issue:

- "1. Did substitution of an 'equal' amount of casing (hard) time for eliminated withdrawal of mail (soft) time change pre-existing conditions upon which casing and personal needs standards were predicated, so as to require application of Article XXXIV?
- "2. Does the Article XXXIV requirement that work and time standards be 'fair, reasonable and equitable' preclude substitution of an 'equal' amount of casing time for withdrawal time without considering the resultant increased workload, hardship, onerousness and monotony of the job to letter carriers?
- "3. Should the Postal Service be required to comply with Article XXXIV in determining the amount of casing time and/or rest time which should be substituted for eliminated withdrawal of mail time?

The 6 grievances here resulted from local implementations of a portion of MIPSOP (Methods Improvement Plan and Standard Operating Procedures) in late 1974 and early 1975. The following MIPSOP provisions are particularly relevant:

"3. Receipt of Principal Letter Dispatch

Carriers should not sweep distribution cases upon reporting for work. Rather, they should proceed directly from the time recording area to their cases and without delay begin casing mail which is already at their cases. Priorities have been established for various procedures by which the first receipt of mail from the distribution unit reaches the carriers. These procedures are listed in the order of decreasing cost effectiveness. (NOTE: Letters are placed on the ledge with stamps down and to the right so that the carrier may pick up a handful with the left hand and begin casing without repositioning the letters.):

- a. Preferred Procedure: Letter-size mail is placed on the left side of the carrier case ledge one row high.

- "b. Second Priority: Letter-size mail, trayed separately for each route with stamps down and to the right, is placed on the carrier case. If this is not possible, the tray cart or other appropriate container used to transport trays should be placed as close to the carrier cases as possible with the trays identified by route. Empty trays, if needed for later use, may be stored under the carrier's case.
- c. Third Priority: Letters, faced and loose-packed in No. 3 sacks for individual routes, with each sack identified by route number, are at the carrier's case when he reports for work. Empty sacks, if needed for relays when casing is completed, may be stored under the carrier's case.
- d. Fourth Priority: Mail, which is tied in bundles, is placed on the carrier's case.
- e. Fifth Priority: Sacks containing bundles of mail and identified by route number are transported to the carrier's case. Carriers dump the sacks, check the bundles, and place the letters on the ledge. If empty sacks will be needed when casing is completed. they may be stored under the carrier's case.

#### "4. Receipt of Morning Close Out Dispatch

When mail is distributed elsewhere for a delivery unit, the morning close out dispatch is typically very light and received loose in trays or tied in bundles. If mail is trayed with each route separate and identified, it should be taken to the carriers' cases. Otherwise, carriers may withdraw it from a central point.

#### "5. Receipt of Principal Flat Dispatch

- a. Preferred Procedure: Flat mail, faced and loose in trays, is placed at the carriers' cases so that the carriers can put a tray on the case ledge and sort directly from the tray, picking up approximately six inches of flats at a time.
- b. Second Priority: Flat mail, faced and loose in trays and identified by route number, is placed as close to the carrier's work area as possible where carriers can readily obtain them. If empty trays will be needed later, they may be stored under the carrier's case.
- c. Third Priority: Flat mail, faced and loose in hampers, is placed as close to carrier's work area as convenience permits.
- d. Fourth Priority: Flat mail, faced and tied in bundles identified by route number, is placed by the carrier's case. After the ledge is loaded with tied bundles, the bindings are removed.

- "e. Fifth Priority: Flat mail, faced and loose packed in No. 3 sacks, is placed as close to the carrier's case as possible. If empty sacks will be needed after casing, they may be stored under the carrier's case.
- f. Sixth Priority: Flat mail, faced, tied in bundles and loaded in sacks for each route, is placed close to the carriers' cases.

#### "6. Carrier Withdrawal of Letters or Flats

Carriers may be authorized to make up to two withdrawals from the distribution cases prior to leaving the office, plus a final clean-up sweep as they leave the office.

#### "7. Mail Available on Return to Office

Mail received or distributed while carriers are on their routes should be on the carriers' cases when they return to the office. Carriers having undertime when they return may be required to withdraw and case mail available at that time. If undertime occurs frequently, the delivery unit manager must determine the cause and take corrective action."

In each of the present grievances the initial sweep of distribution cases by Carriers upon reporting for work apparently was eliminated. In one instance, at least, a sweep for flats, upon returning to the office after delivering the route, also was eliminated. And in some instances other trips away from the Carrier's case--between the commencement and conclusion of casing for the route--also were curtailed or eliminated.

The amount of such "withdrawal" time, per day, thus eliminated varied from route to route. The Union here urges that the average per route saving ranged from 13 minutes to about 4 per day and that in the ensuing route adjustments Management necessarily (in accordance with established policy) added an equivalent amount of "casing and delivery time" to each such route. For reasons detailed later in this Opinion, it is this action which the Union deems to contravene the requirements of Article XXXIV.

As far back as 1952 the Post Office Manual provided in Ch. IX, Art. 85(d)--

"Carriers' cases must be located as conveniently as possible with respect to the letter and paper distributing cases, and kept free of personal effects. Insofar as practicable mail will be withdrawn from distributing cases and placed on carriers' cases by clerks or mail handlers, especially for the first morning delivery. When not practicable to

do that, excessive time must not be consumed by carriers in making too frequent withdrawals of mail. Ordinarily, two withdrawals of letter mail and one of paper mail each trip are considered to be sufficient. Errors in distribution and mark-ups must be promptly redistributed, and every arrangement practicable should be made to enable carriers to make a final pull of cases containing such mail, also other first-class mail and daily papers just prior to the time of leaving to serve their routes. Stools may be used by carriers in the performance of their office work. Carriers should not be required to examine insufficiently addressed mail."

(Underscoring added.)

In the August 31, 1964 M-18 Handbook the following  
appeared under Part 123.41g:

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"g. Line 4, Withdrawing Mail, insofar as possible mail will be withdrawn from distribution cases and placed on carriers' desks by clerks or mail handlers, especially that mail received early in the morning. If necessary for the carrier to

withdraw mail from distribution cases or remove mail from sacks or hampers, actual time used will be recorded. Two withdrawals of letter mail and one of papers for each trip, with a final pull just prior to leaving time, should be sufficient. On the day of inspection record actual time used by the supervisor in withdrawing mail if the carrier normally pulls his own mail."

The 1966 M-41 Handbook, in Part 2, Section 212.11,  
directed Carriers (in preparation for casing) to:

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"Withdraw letter mail from city distribution cases unless mail has already been placed on carrier's case ledge by a mail handler or clerk."

The June 14, 1974 M-39 Handbook stated in Part  
222.21(2):

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"So far as possible, mail will be withdrawn from distribution cases and placed on carriers' desks by clerks or mailhandlers, especially that mail received early in the morning. If necessary for carrier to withdraw mail from distribution cases or remove

mail from sacks or hampers, actual time will be recorded. Two withdrawals of letter mail and one of papers for each trip, with a final pull just prior to leaving time, generally are sufficient. On the day of inspection, record actual time used by the examiner in withdrawing mail if the carrier normally pulls his own mail. NOTE: The actual time used by examiner for withdrawal of mail will be added to the carrier's net office time on the day of inspection."

This same language appears in the June 30, 1976  
M-39 Handbook.

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Despite the existence of these provisions for some years, the actual practice as to withdrawal of mail apparently varied widely from one installation to another throughout the Postal Service. It is clear in any event that, before implementation of MIPSOP, almost all withdrawals of mail were performed by Carriers in two of the installations (Goldsboro, NC, and Mt. Washington, Cincinnati, Ohio) treated in the testimony in the present case. At present the Carriers in these two installations now make only one or two withdrawals during the course of the morning, plus the "hot swing."

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CONTENTIONS1. NALC

The NALC now stresses that in the LCRES case (NB-NAT-6462) Assistant Postmaster General Braughton testified that when a methods change reduced the work of an individual Carrier, a subsequent route adjustment expectably would "add the amount of work necessary to compensate for the amount of work lost." Braughton also indicated that such a route adjustment required making a "judgment" as to how much time the Carrier should be allowed for making the deliveries added to the route. In light of these statements by Assistant Postmaster General Braughton, the NALC brief now urges that--

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" ... The penultimate question in this case is whether, consistent with the guarantee of Article XXXIV that all 'time and work standards shall be fair, reasonable and equitable,' and arrived at through the designated procedures, a 'judgment' so central in changing or establishing work and time standards can be made by the Postal Service entirely unilaterally, outside Article XXXIV, and without considering, from the standpoint of the carrier, the fairness, reasonableness and equity of the resultant increase in job monotony and work and effort load.

"The ultimate question is whether the Postal Service should be ordered to comply with Article XXXIV in determining how much casting time and/or personal needs time should be added to compensate for eliminated withdrawal time."

The principal precedent now cited by the NALC here is the decision of Arbitrator Gamser in the M-39 Handbook Case (N-NAT-2992), where the Arbitrator stated--

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"... The Union's contentions add up to the claim that the Service cannot require more speed, skill and effort be expended by the carrier after his route is adjusted to account for a change in duties caused by the introduction of the new centralized markup system. That claim has merit.

"The work load for the carrier, during his 8-hour tour, must not be materially increased by the addition of new work designed to take up the unutilized time now available that was saved by the introduction of the centralized markup. If the adjustment, made after the introduction of the new markup system, does add to the previous workload required of the individual carrier, then a grievable event occurs."

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NB-S-4334 et al

The principle thus recognized by Arbitrator Gamser, says the NALC, was "endorsed" in the Chairman's Opinion in LCRES when he there summarized the NALC argument based on the Gamser decision. 16

The NALC notes that, elsewhere in the M-39 Handbook decision, Arbitrator Gamser had rejected a USPS claim that it could modify established practices as to coffee breaks by substituting "reasonable allowances" therefor, and had said-- 17

" ... If the Service proposes to alter the previous practice or adjust the time allowances for such breaks, it can always do so by following the provisions of Article XXXIV or by making a new agreement with the Union on this subject."

This sentence, says the NALC, does not vitiate or contradict Gamser's earlier statement that the introduction of Centralized Markup could not be made the basis for increasing a Carrier's work load. This analysis, says the NALC, is-- 18

" ... compatible with that of the Impartial Chairman in LCREs, Case No. NB-NAT-6462, pp. 9-11, inasmuch as it does not read the Gamser decision as construing Article XXXIV absolutely 'to prohibit a unilateral increase in work load,' regardless of proved justification and reasonableness, but rather as forbidding an unconsented increase outside the parameters of Article XXXIV. That, as we understand it, is the holding of the Impartial Chairman in the casing award, Case No. NB-NAT-3233, 'Changes in Casing Time and Work Standards.'"

Against this background of claimed precedent the  
NALC principally argues that-- 19

1. Decision here does not depend upon proof that  
individual routes, when viewed as a whole, were or were not  
overburdened. 20

2. Substitution of additional casing work for the  
eliminated withdrawals invalidated the Personal Needs Allow-  
ance Standard and further invalidated the Casing Standards. 21

3. Management's "judgment" that addition of an  
"equal" amount of casing and delivery time is necessary to  
"compensate" for eliminated withdrawal time (and its concep-  
tion of how much is "equal") constitutes a "work or time  
standard" for purposes of Article XXXIV. 22

All other things being equal, it seems clear that substitution of casing time for withdrawal time increases the monotony and onerousness of the casing. According to the NALC, the determination that a "like amount" of casing and delivery time may be added to a route in lieu of eliminated withdrawal time--and the "equivalence concept"--is "per se a work and time standard" which cannot be applied except in accordance with Article XXXIV. The NALC brief proceeds--

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" ... It is equally plain, we submit, that increased effort and workload results from disregard, in determining equivalence, of the difference between tasks governed by a hard time standard and tasks subject to a soft-time, self-paced, measure. On both counts, the Postal Service formula for substituting additional casing and delivery work for transferred incidental work is invalid."

The NALC brief concludes by asking an Award directing USPS-- " ... immediately to comply with Article XXXIV by instituting adequate work or time studies, subject to observation by NALC's experts, showing, inter alia, the impact of the substitution upon the monotony, burden, work and effort of the carrier's job by comparing representative conditions as they existed in 1971 with representative conditions after the changes" so as to provide a basis for new

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work and time standards under Article XXXIV. Meanwhile, USPS should be barred from using the 18 and 8 casing standard even as a rough guide during route inspections and any route adjustments, disciplinary actions, or the like, based upon substitution of casing time for withdrawal time should be declared invalid.

## 2. USPS

The MIPSOP effort to standardize operating methods in respect to withdrawal of mail reflects a legitimate exercise of Management authority to operate the Postal Service, as delineated in Article III. 25

The NALC position here, indeed, goes to the heart of the route adjustment system "long agreed upon by the parties." 26 The USPS urges--

" ... The Service's right to adjust letter carrier routes to as close to eight (8) hours of work as possible is meaningless if the Service cannot require carriers to case and deliver mail during periods when the carriers would otherwise have nothing to do because changes in operating methods eliminate pre-existing letter carrier work. Indeed, as the Impartial Chairman correctly perceived at the hearing, the NALC 'really [is] trying to ask [the Impartial Chairman] to write a new set of guidelines for inspecting routes. '"

The NALC's "hard time/soft time" argument in any event clearly was rejected in the LCRES Opinion. The Service elaborates on this as follows--

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"In LCRES, the NALC's assertions with respect to the substitution of 'hard' time for 'soft' time were made in the context of its general claim that there exists between the parties to the National Agreement an implied 'effort bargain.' Perhaps because its 'effort bargain' theory was so thoroughly rejected by the Impartial Chairman in LCRES, the NALC initially shied away from casting its argument in those terms in the instant case. Nevertheless, the critical place of that theory in the NALC's position here could not be concealed, and it eventually was revealed in the remarks of NALC Counsel as he responded to the Postal Service's assertion that the variations in practices in post offices around the nation made it impossible to conclude that the Postal Service has contracted for a uniform level of effort by letter carriers:

But I think it vital to prevent a situation in which management can by altering one side of the equation, the effort side, destroy the substance of a bargain.

I have never understood how it's possible to say that the parties have a bargain that they will pay \$10 for the labor of a man for a period of one hour where that man has to do twice as much work in that hour as he did before.

If he has to expend twice as much effort and do twice as much work in the hour for the \$10, that's not a bargain. (Tr. 63).

"The point, of course, is that this case involves little more than the NALC's effort to relitigate portions of the LCRES case which it lost the first time around. Counsel for the NALC admitted his desire for relitigation of LCRES in his opening remarks (Tr. 7, 8, 25, 27-28), and even though the issue here ultimately was limited, in factual terms, to the facts and circumstances related to the withdrawal of mail, the NALC's theory of this case, and its instant objective, were no different at the conclusion of the hearing than they were when the hearing began."

The Service greatly stresses, in any event, that there is no way of distinguishing, as a practical matter, between "hard" time and "soft" time. There are too many

variables, and in the last analysis this would be a subjective judgment, as the testimony of the NALC witnesses confirms. And where any individual Carrier believes that implementation of MIPSON has affected his work unfairly, he can seek a remedy in the grievance procedure.

The Service rejects the NALC interpretation of the Gamser Opinion in the M-39 Handbook Case, and stresses that in his LCRES Opinion the Chairman did not in fact embrace the interpretation of the Gamser Opinion.

Finally, the Service emphasizes that the withdrawal of mail by Clerks constitutes a method "long agreed to by the parties," which involved no work measurement or time standards. It adds that--

"... this method long had been followed in Los Angeles, pursuant to the long standing instructions from Headquarters. The Manual provisions on this subject, under Article XIX of the National Agreement, are fully recognized as effective and there is no basis to find that such a provision, in practice, cannot be extended to offices where it was not already observed."

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FINDINGS

It is difficult here to define clearcut interpretive issues under Article XXXIV of the National Agreement. In part, perhaps, this may result from a failure in the NALC presentation to grasp the essential nature of the route evaluation process embodied in the M-39 Handbook.

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In addition, both presentations seem to overlook the significance of major earlier developments, for present purposes. In particular, the June 4, 1975 decision in Case NB-NAT-3233 ruled that--by changing the established case configuration and the definition of a "letter"--the USPS had changed basic conditions underlying the 18 and 8 casing standards. That Award then directed the Service to proceed to develop new standards for casing, in full compliance with Article XXXIV.

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For various reasons, such action was not taken pending decision of the LCRES case. Meanwhile, the parties executed an August 1, 1975 letter agreement providing:

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"The parties agree that the casing standards to be used in the evaluation of city letter carrier routes under the current route evaluation system shall continue to be eighteen (18) per minute for letters, eight (8) per minute for flats, on standard six or seven shelf cases, with appropriate wing

cases. Letters are to be defined as that mail which will fit vertically without bending or folding between the two closest shelves on the carrier's case. Routes already inspected, and on which adjustments have been held in abeyance because of the recent award in case no. NB-NAT-3233, may be adjusted as long as the inspection information is still essentially current. Failure to make standards may be treated as just cause for discipline in cases of unsatisfactory effort.

"This Agreement shall not be construed as an admission by either party that the foregoing standards are fair, reasonable or equitable and shall not prejudice the position of either party as to the proper interpretation of Article XXXIV or the merits of any claims pending thereunder.

"This Memorandum of Understanding shall apply on an interim basis, pending the implementation in any particular office of any new work or time standards held valid under the provisions of Article XXXIV, or the invalidation under Article XXXIV of any proposed new work or time standards as part of a new system."

(Underscoring added.)

The Chairman's subsequent (August 6, 1976) Award  
in LCRES took note of the above letter agreement, but  
specified:

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"Unless the parties otherwise agree, the  
USPS within 60 days following the date of  
this Award shall begin to conduct the work  
or time studies required under the Award  
in Case NB-NAT-3233."

Given these facts it is clear that the outmoded  
18 and 8 casing standards ultimately will have to be replaced  
in accordance with Article XXXIV. The rights of individual  
Carriers meanwhile presumably are protected by the above-  
quoted August 1, 1975 letter agreement. Thus it is hard to  
see what useful purpose now might be served by an effort to  
determine how much time working under such invalid standards  
may be substituted for work not covered by any time standards  
at all. This, of course, is entirely apart from the mani-  
fest practical difficulties which would attend any such effort.

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It also seems most pertinent, for present purposes,  
that any individual Carrier who feels that his or her route  
is overburdened as the result of an adjustment (whether  
"minor" or following a route inspection) is entitled to file  
a grievance seeking relief. This right not only was recog-  
nized in Case NB-NAT-2992, and reaffirmed in the LCRES  
Opinion, but also is conceded here by USPS. Where any such  
grievance is filed, following an inspection and adjustment,

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the ultimate issue under the M-39 Handbook necessarily is whether the resultant work load for the route as a whole is "fair and equitable" in light of all relevant circumstances. If only a minor adjustment were involved (without an inspection) the issue would be whether the M-39 principles governing this simple type of adjustment had been applied properly.

Since the old casing standards must be replaced and no Carrier route properly may be overloaded under the M-39 Handbook, in the meantime, it is difficult to visualize a significant Article XXXIV issue in this case. Nonetheless, detailed analysis of the parties' various arguments seems to be required, if only because of their widely divergent views as to the significance of the LCRES decision.

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### 1. Status of MIPSOP

In LCRES, as here, the NALC indicated a belief that the adoption of MIPSOP, in itself, produced a change in time or work standards because MIPSOP almost universally required an increase in effort on the part of Carriers. Thus it may be useful here to repeat relevant paragraphs from the LCRES Opinion:

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"The Impartial Chairman sees no violation of the National Agreement in the adoption of MIPSOP by the Postal Service. There should be no question that the Service may eliminate unnecessary functions and institute improved methods and equipment in its effort

to improve efficiency. Under Article III the Service has full authority to prescribe standard methods or procedures for the performance of Carrier work, as long as no violation of the Agreement, if applicable, or any Manual, bulletin, or regulation (protected under Article XIX) results. No doubt the application of a new method or procedure may have an impact upon work standards or upon the work of individual Carriers. The possibility of such an impact cannot, however, preclude the adoption of the program, since the M-39 Manual procedures for adjusting routes should protect the interests of individual Carriers adequately and the grievance procedure also is available in case of failure to apply such safeguards adequately. Indeed, this is the procedure followed by the Union successfully in Case N-NAT-2992.

"While casing time standards may have been affected substantially by implementation of MIPSOP, this specific problem already has been dealt with in the June 4, 1975 Opinion and Award of the Impartial Chairman. MIPSOP embodies no work or time standards and is fully separable from LCRES. Thus it may continue in effect subject to the existing safeguards for individual Carriers provided in the National Agreement and various applicable Manuals and Postal Regulations."

(Underscoring added.)

2. The Claimed Precedent in  
the M-39 Handbook Case

As in the LCRES case, the NALC again relies heavily on a claimed holding by Arbitrator Gamser in the M-39 Handbook case (NB-NAT-2992) to the effect that "... changes such as centralized mark-up cannot lawfully be used as the basis for increasing Carriers' work load." 39

This argument seems to repeat, in slightly different form, an argument previously rejected in the LCRES case. While it is unnecessary to repeat here the relevant analysis set forth in LCRES, a few additional words now may be helpful to reduce the possibility of continued misunderstanding. The key sentences in the Gamser Opinion, so much stressed by NALC, read:

"The work load for the carrier, during his 8-hour tour, must not be materially increased by the addition of new work designed to take up the unutilized time now available that was saved by the introduction of the centralized markup. If the adjustment, made after the introduction of the new markup system, does add to the previous workload required of the individual carrier, then a grievable event occurs."

This passage in the Gamser Opinion apparently was addressed to "minor" or "simple" route adjustments (without inspections). It states only that--in the situation described-- "a grievable event occurs." The effort to read this as saying that a violation of Article XXXIV "occurs" seems to be essentially an exercise in wishful thinking.

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Arbitrator Gamser was fully aware that, under the Agreement and the M-39 Handbook, a grievance could be filed by any Carrier who believed that a route adjustment made his or her individual work load too heavy. There is no reason to believe that he had anything other than this in mind when he referred to the occurrence of a "grievable event." Finally, even if this portion of his Opinion were intended to have the meaning urged by the NALC, it would be unsound and insupportable under the policies and procedures embodied in the M-39. Thus it hardly could be deemed to constitute a binding precedent in this case.

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### 3. The Absence of a "Pace-Effort Bargain"

It is possible that this case reached arbitration because of a feeling that Article XXXIV embraced or enshrined a "pace-effort bargain" so as to bar any increase in required effort by any individual Carrier. Although the LCREs Opinion flatly rejected this NALC argument, there was reason to believe at the hearing in this case (as the USPS brief emphasizes) that the NALC still was relying on some such theory of collective bargaining as the foundation for its interpretation of Article XXXIV.

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In any event, it seems worth emphasizing again that there in fact was no generally applicable concept of "pace" or "effort" in the Postal Service in 1971 which could be applied to all phases of a Carrier's work in handling a route. What was in effect in 1971 was the M-39 Handbook, which provided a system for adjustment of individual Carrier routes with the stated objective of placing each route on as nearly an 8-hour per day basis as possible. In seeking to adjust individual routes to achieve this objective under the M-39, it was not possible to rely on specific work or time standards in respect to most of the Carrier's work--standards actually existed only in respect to elements of office time, and among those only the casing standards were of major consequence. As for street time, the infinite variety of relevant conditions affecting deliveries, and the great variation in physical capacities of individual Carriers, required a sophisticated exercise of supervisory judgment in seeking to develop a fair and equitable evaluation of the work load for any given route.

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Some Carriers might have been able in 1971 to meet the 18 and 8 casing standards with ease, while not being able to perform very well in making deliveries. Others could have had difficulty meeting the casing standards, but performed most efficiently on the street. The number and types of deliveries, as well as the terrain, no doubt varied widely from route to route. In the end each route was to be constructed so that it was "on as nearly an 8-hour daily basis as possible" (Section 243.11 of the 1974 M-39 Handbook). Given these circumstances, it is impossible to discern any definable measure of pace or effort in 1971 which could have

been applied uniformly so as to achieve, or maintain, the same work load as among all routes--or even on the same route as conditions changed from year to year.

While the M-39 Handbook undoubtedly provided procedures and policies for determining proper work load for individual routes in 1971, therefore, it did not embody any known or definable "pace-effort" bargain in respect to route adjustments. As far as the present parties are concerned, part of the "bargain" struck in adopting Article XXXIV was recognition that the existing M-39 procedures and policies--including time standards for some phases of Carrier work--would continue in effect until modified or replaced (in whole or in part) by a new work measurement system or by time or work standards developed in accordance with Article XXXIV.

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#### 4. Possible Impact of Elimination of Some Withdrawal Time Upon Casing Standards

While it is difficult, if not impossible, to visualize a clear distinction between "hard" and "soft" aspects of Carrier work, capable of general application and ready acceptance by most Carriers, there is no need here to indulge in a semantical exercise. As this case has developed, the real problem appears to be that work covered by standards (casing) has been substituted, in part, for work not covered by standards (withdrawal of mail).

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For purposes of the present discussion, it may be assumed--without deciding--that casing represents "hard" time for the Carrier and that mail withdrawal is "soft." It also may be assumed that the elimination of opportunities to leave the case to withdraw mail somewhat increases the strain and burden of continuously casing mail for perhaps 2 hours or more. (The Postal Service rightly emphasizes that the elimination of the initial withdrawal of mail could not have such an impact.)

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Given these assumptions, or inferences, the NALC suggests that detailed studies now should be made under Article XXXIV to determine how much "hard" time properly may be substituted for "soft" time.

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This suggestion appears to assume that it somehow is appropriate to treat casing time as if it were entirely separable from the rest of the Carrier's daily work. Obviously, however, mail which is cased also must be delivered by the Carrier and there are no time standards covering the delivery phase of the work. Under the M-39 Handbook, it is the work load for the entire workday which must be considered in determining whether, or how, a route should be adjusted. Even were this not so, there is no reason in this record to find that the total amount of daily casing normally required of Carriers as a group was increased, by the protested implementation of MIPSOP, to a point beyond the upper limit of the range to which the casing standards long had applied up to negotiation of the 1971 National Agreement. As the Service emphasizes, Post Office Department policy for years had noted the desirability that the bulk of the day's mail should be at the case, ready for casing, when the Carrier began to work.

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Finally, in both Case NB-NAT-3233 and LCRES, the USPS was directed to develop new casing standards in compliance with Article XXXIV. If any such standards are to be "fair, reasonable and equitable" they necessarily will have to be based on current conditions affecting the casing of mail, and include appropriate allowance for required rest and relief.

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### 5. Disposition of the Issues Stated by the NALC

Since the NALC has sought to define the basic issue here in three separate questions, it may be useful to conclude this Opinion with a brief comment concerning each.

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- A. Does the substitution of an "equal" amount of casing (hard) time for eliminated withdrawal of mail (soft) time change pre-existing conditions upon which casing and personal needs standards were predicated, so as to require application of Article XXXIV?

A negative answer to this question is required primarily because there is no showing that any defined or definable change occurred in the basic conditions which underlay the casing standards. Since at least 1962 the policy of the Post Office Department was that withdrawals of mail should be performed by Clerks or Mail Handlers to the extent

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(NEW)

feasible. MIPSON sought only to assure that this policy was made effective in those offices where it previously had not been applied. There thus is no basis to assume that the casing standards--as they existed in 1971--did not contemplate situations in which Carriers made only one or two withdrawals of mail during the course of casing. There is no evidence at all that the implementation of MIPSON so greatly increased the amount of required casing time as to exceed the range of required casing time throughout the USPS, as it existed in 1971.

- B. Does the Article XXXIV requirement that work and time standards be "fair, reasonable and equitable" preclude the substitution of an "equal" amount of casing time for withdrawal time without considering the resultant increased work load, hardship, onerousness and monotony of the job to letter Carriers?

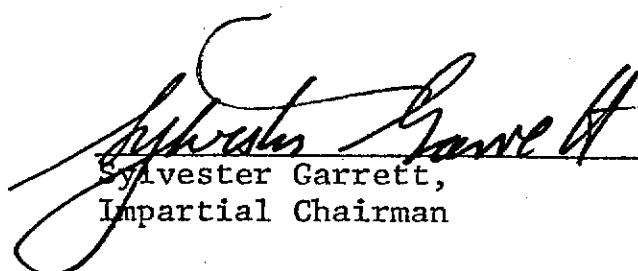
This question seems to overlook the fact that any Carrier who believes that the work load of his or her route is too heavy, following an adjustment, may file a grievance. Such a grievance must be processed in light of the principles and procedures established in the M-39 Handbook and specifically the requirement that the total work load for any route must be "fair and equitable." For this reason, together with those noted earlier in this Opinion, a negative answer to this question is required.

- C. Should the Postal Service be required to comply with Article XXXIV in determining the amount of casing time and/or rest time which should be substituted for eliminated withdrawal of mail time?

This question must be answered in the negative since, 55 for reasons already set forth, it misconceives the nature of the route evaluation system established in the M-39. It also should be said, perhaps, that the standard allowances for personal time embodied in the M-39 seem to bear no relationship to the relative volume of casing required for any given route. The new casing standards, to be developed in compliance with the LCRES decision, presumably will give due consideration to Carriers' needs for personal relief.

AWARD

The grievances are denied. 56



Sylvester Garrett,  
Impartial Chairman