C# 17270
A-C

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration		
between	GRIEVANTS:	Temporary Employees as Auxiliary Assistance
NATIONAL ASSOCIATION OF LETTER CARRIERS	CASE NOS.:	HON-5G-C 15299/ 15300/ 15301
and		
UNITED STATES POSTAL SERVICE		

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Employer: Mr. Kevin B. Rachel

For the Union: Mr. Keith E. Secular

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: December 13, 1996

POST-HEARING BRIEFS: June 12, 1997

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that Transitional Employees shall be considered a source of auxiliary assistance under the "Letter Carrier Paragraph" of the December, 1984 Memorandum of Understanding on Article 8 of the parties' National Agreement. This interpretation is consistent with the principal purpose of the parties on entering into the Memorandum of Understanding. To the extent that available Transitional Employees are not used for auxiliary assistance before requiring involuntary mandatory overtime for full-time Letter Carriers, it is a violation of the parties' agreement. Consistent with the analysis in this report, the dispute is remanded to the parties for further negotiation with regard to the individual grievances that gave rise to the arbitration proceeding. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Date: September 8, 1997

Carlton J. Snow
Professor of Law

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION BETWEEN NATIONAL ASSOCIATION OF LETTER CARRIERS AND UNITED STATES POSTAL SERVICE (Temporary Employees as Auxiliary Assistance) (Case Nos.: HON-5G-C 5299/ 15300/15301)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from 1990-1994. A hearing occurred on December 13, 1996 in a conference room of Postal Headquarters located at 955 L'Enfant Plaza S.W. in Washington, D.C. Mr. Kevin B. Rachel, Labor Relations Counsel, represented the United States Postal Service. Mr. Keith E. Secular of the Cohen, Weiss, & Simon law firm in New York City represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. A reporter for Diversified Reporting Services,

Inc. reported the proceeding for the parties and submitted a transcript of 89 pages. The advocates fully and fairly represented their respective parties.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no challenges to the substantive or procedural arbitrability of the dispute. At the close of the hearing on December 13, 1996, the parties left open the record until the end of the year so that the Union could consider submitting additional evidence regarding the use of casual employees as auxiliary workers. On December 30, 1996, the Union indicated its desire to submit additional evidence. On April 24, 1997, the parties informed the arbitrator that additional hearing time would be unnecessary but that the parties left open for themselves the option of submitting and commenting on additional, previously exchanged exhibits in conjunction with their post-hearing briefs. The arbitrator officially closed the hearing on June 13, 1997 after receipt of the final brief in the matter.

II. STATEMENT OF THE ISSUE

The parties stipulated that the issue before the arbitrator is as follows:

> Did the Employer violate the parties' National Agreement by failing to use NALC Transitional Employees for auxiliary assistance? If so, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

MEMORANDUM OF UNDERSTANDING

Re: Article 8

In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime.

IV. STATEMENT OF FACTS

In this case, the Union challenges management's interpretation of the term "auxiliary assistance" in relationship to Transitional Employees. The dispute is based on three consolidated grievances which arose in Portland, Oregon. In each of the three cases, an issue arose concerning whether full-time carriers who had not signed the Overtime Desired List could be required to work mandatory overtime despite the availability of transitional employees. The parties are in agreement regarding a number of the facts.

Article 8.5 of the National Agreement sets forth basic overtime provisions. In December of 1984, the parties executed a Memorandum of Understanding regarding Article 8, and different provisions affected the respective crafts. Within the Memorandum of Understanding is what came to be characterized as the "Letter Carrier Paragraph." (See Joint Exhibit No. 1, p. 269.) The purpose of the paragraph was to protect Letter Carriers who did not desire to work overtime and to provide the maximum amount of overtime to those who wished to work. The contractual provision states:

> In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime. (See Joint Exhibit No. 1, p. 269, emphasis added.)

Subsequently, the parties entered into a series of agreements implementing the "auxiliary assistance" rule.

The agreement allowed workers on a quarterly basis to indicate their overtime preferences. It provided that full-time Letter Carriers desiring overtime could sign one of three types of lists. The first is a "work assignment" list, indicating that a carrier desires overtime work but only on the carrier's own route. The second is a "10-hour" list, indicating an interest in overtime on any route but only up to 10 hours a day. Finally, a carrier may sign the "12-hour" list, indicating an interest in overtime up to 12 hours a day on any route. (See Tr. 61.) In Article 8.5.C.2.b, the Employer contractually obligated itself to distribute overtime opportunities equitably.

If use of Overtime Desired Lists fails to provide sufficient qualified personnel to meet the Employer's needs, Letter Carriers not signing a list may be required to work overtime. Junior employees are to be used first whenever available. Moreover, management retained the discretion to decide from which category of employees to fill its overtime needs. There is no established "pecking order." The Employer may choose part-time flexible workers, transitional employees, or casual workers before consulting the Overtime Desired Lists or vice versa. (See Tr. 63-65.) If, however, a Letter Carrier does not desire to work overtime, the "Letter Carrier Paragraph" is applicable. Management committed itself to using auxiliary assistance, "when available, rather than requiring the employee to work mandatory overtime." (See Joint Exhibit No. 1, p. 269.)

In June of 1988, the parties signed a Joint Statement on Overtime. It detailed the administration of Overtime Desired Lists. In the Joint Statement on Overtime, the parties agreed that:

> The 'letter carrier paragraph' of the 1984 Overtime memorandum obligates management to seek to use auxiliary assistance, when available, rather than requiring a regular letter carrier not on the Overtime Desired List to work overtime on his/her own assignment on a regular scheduled day. (See Union's Exhibit No. 6, p. 3.)

A Memorandum of Understanding in December of 1988 further required that determining the availability of auxiliary assistance must be based on a "rule of reason." The agreement stated:

> The determination of whether management must use a carrier from the ODL to provide auxiliary assistance under the letter carrier paragraph must be made on the basis of the rule of reason. (See Union's Exhibit No. 4, p. 1.)

The parties' agreement did not define the term "auxiliary assistance," but it has been used to refer to assistance in either the office or on the street that might be given to a letter carrier in order to complete a route. (See Tr. 63.) At a Step 4 grievance settlement in October of 1991, the parties agreed that "auxiliary assistance" includes using part-time flexible workers at an overtime rate. The parties stated that:

> During our discussion, we agreed that the term 'auxiliary assistance' as used in the Letter Carrier paragraph of the Article 8 MOU does include the use of part-time flexibles at the overtime rate. (See Union's Exhibit No. 5.)

In 1992, terms and conditions of employment for

Transitional Employees came into existence pursuant to an interest arbitration award. (See Joint Exhibit No. 1, pp. 241-261.) Article 8.5 of the parties' agreement does not apply to Transitional Employees. (See Joint Exhibit No. 1, pp. 21-23.) Transitional Employees are not eligible to sign Overtime Desired Lists and are not protected from working mandatory overtime by the December, 1984 Memorandum of Understanding.

Nor can a February, 1996 arbitration decision by Arbitrator Mittenthal be ignored. In this award, Arbitrator Mittenthal upheld management's position. He concluded that the parties' collective bargaining agreement and prior arbitral awards failed to limit the number of hours Transitional Employees may work each week. Arbitrator Mittenthal concluded that:

> Nothing in this MOU language demonstrates that the parties meant to establish strict limits on the number of hours TEs may work per week in a unit after they have been properly hired. (See Union's Exhibit No. 7, p. 12.)

By filing this complaint, the Union sought a cease and desist order, administrative leave, and monetary compensation. Management denied the grievance on July 20, 1994. When the parties were unable to resolve their differences, the matter proceeded to arbitration at the national level.

V. POSITION OF THE PARTIES

A. The Union

The Union contends that the term "auxiliary assistance" in the "Letter Carrier Paragraph" of the December, 1984 Meorandum of Understanding covers Transitional Employees. It is the Union's position that the "Letter Carrier Paragraph" imposes a duty on the Employer to avoid assigning mandatory overtime to Letter Carriers, whenever possible. Accordingly, the term "auxiliary assistance" refers to any employe available to replace the regular Letter Carrier, according to the Union.

The Union finds support for this contention in the fact that traditionally the term "auxiliary assistance" referred to any employee used for replacement when overtime is not assigned to a regular carrier. Moreover, the parties who negotiated the Letter Carrier Paragraph" allegedly understood the term to refer to any employee who was available to perform work that, otherwise, would be assigned to a regular Letter Carrier as involuntary overtime. Additionally, the Union alleges there is no evidence that, in practice, the parties ever limited the definition of "auxiliary assistance."

The Union also finds significance in the fact that Transitional Employees generally assume vacancies left by career part-time flexible employees and are permitted to work overtime to the same extent as career employees under Article 8. That fact and the overtime memoranda allegedly indicate that Transitional Employees are "available" within the meaning of

the "Letter Carrier Paragraph." Consequently, the Union argues that, since Transitional Employees are available to replace regular Letter Carriers on overtime, TEs should be considered a form of auxiliary assistance to be used before requiring involuntary overtime of career carriers.

The Union also maintains that the Interest Arbitration Award covering Transitional Employees does not exempt them from the operation of the "Letter Carrier Paragraph." According to the Union, management's reliance on the theory that Transitional Employees are not to be treated presumptively like career employees is faulty, since this argument recently has been rejected in arbitration. Further, the fact that the Interest Arbitration Award covering Transitional Employees did not include the December, 1984 Memorandum of Understanding in the list of applicable memoranda is of no significance, according to the Union. This is so because the Memorandum of Understanding is designed as a protection for career employees and was not intended to give rights or benefits to Transitional Employees, according to the Union.

Additionally, the Union argues that casual employees should also be considered a source of auxiliary assistance. The Union argues that this always has been the case. There allegedly never has been a national level dispute about the matter, and management failed to present contrary evidence. In the opinion of the Union, the Employer's position is unsupportable and cannot be the basis of an interpretive decision. Accordingly, the Union concludes that the grievance should be sustained.

B. The Employer

The Employer argues just as eloquently that the Memorandum of Understanding on which the Union relies does not apply to Trasitional Employees. This is so, according to the Employer, because the general framework of conditions of employment covering Transitional Employees treats them distinctly and usually different from career employees. For this reason, the Employer contends that only provisions which specifically mention Transitional Employees can be considered to apply to their employment. The Employer is quick to point out that the Memorandum of Understanding containing the "Letter Carrier Paragraph" is silent regarding Transitional Employees.

The Employer argues that the Union's theory of the case with regard to the inclusion of Transitional Employees within the meaning of "auxiliary assistance" is unpersuasive for a number of reasons. First, drafters of the "Letter Carrier Paragraph" could not have had Transitional Employees in mind when creating the agreement because such a category of employees did not yet exist. Moreover, when such a category came into existence, great care was taken to detail the applicability of existing contractual provisions and Memoranda of Understanding to Transitional Employees. Specifically, management argues that, with regard to Article 8 of the parties' agreement, several provisions were expressly identified as applying to Transitional Employees. Accordingly, in the face of silence, the presumption allegedly must be against the applicability of the disputed provisions to Transitional Employees. The

December, 1984 Memorandum of Understanding on which the Union relies was not among those listed as covering Transitional Employees. Accordingly, the Employer believes that accepting the Union's argument would be inconsistent with the 1992 interest arbitration award on the subject.

Additionally, the Employer asserts that the failure of the parties' agreement to give career carriers preference over Transitional Employees in overtime assignments supports management's theory of the case. According to the Employer, this conclusion logically follows because, in 1994, the Union tried unsuccessfully to obtain this very result through negotiations. In fact, the APWU allegedly was successful in this regard, while the NALC was not. It is the belief of the Employer that the lack of any "pecking order" or preferences for overtime in the interest arbitration award strongly suggests that the use of Transitional Employees is not required.

The Employer also argues that the "Letter Carrier Paragraph" covers only the relationship with career Letter Carriers. It allegedly does not encompass any obligation to use casual workers or Transitional Employees whenever management deems it operationally efficient to work a regular carrier. As management sees it, arbitration awards by Arbitrators Mittenthal and Zumas support its theory of the case. Accordingly, the Employer argues that the grievance should be denied.

VI. ANALYSIS

A. Being Guided by the Purpose of the Parties

Disagreement in this case is rooted in the ambiguity of the phrase "auxiliary assistance" in the December, 1984 Memorandum of Understanding. When reading ambiguous contractual language, arbitrators rely on well-established interpretive principles to determine the mutual intent of the parties at the time they entered into their agreement. Contractual ambiguity often is caused by circumstances which arise in a continuing relationship that parties did not foresee at the time of contracting. In order to apply ambiguous contractual language to such a situation, it becomes necessary to rely heavily on the context and purpose for disputed language as a pivotal source of guidance.

The Employer argued in this case that Transitional Employees were not in existence at the time the parties negotiated the relevant Memorandum of Understanding. Hence, the Employer maintained that it is illogical to consider Transitional Employees as a form of auxiliary assistance. The arbitrator is required to determine rights of one group of employees based on their interaction with another group of employees who were not yet in existence at the time the agreement was signed. In such a situation, application of the agreement to unforeseen circumstances is not automatically precluded; but, rather, the purpose of the parties' agreement controls.

Restatement (Second) of Contracts suggests that, as a

rule in aid of interpretation, the principal purpose of the parties should be given great weight. It states:

> The purpose of the parties to a contract are not always identical; particularly in business transactions, the parties often have divergent or even conflicting interests. But up to a point, they commonly join in a common purpose of obtaining a specific factual or legal result which each regards as necessary to the attainment of his ultimate purpose. (See comment c, p. 88 (1981)).

The undisputed purpose of the "Letter Carrier Paragraph" in the December, 1984 Memorandum of Understanding was to protect full-time Letter Carriers from involuntary overtime where alternatives were available and feasible.

B. Application of the December, 1984 MOU to Transitional Employees

The Employer argued that, because the December, 1984 Memorandum of Understanding has not been made specifically applicable to Transitional Employees either by subsequent agreements or by interest arbitration, the parties, therefore, did not mean for it to cover Transitional Employees. It is the belief of the Employer that to conclude otherwise would be inconsistent with the 1992 interest arbitration award. Hence, the Employer concludes that it must prevail in this proceeding.

It is correct that the relevant Memorandum of Understanding has not been specifically adopted by any of the parties' agreements or arbitral awards. The unique nature of Transitional

Employees requires that contractual provisions will not be considered automatically applicable without demonstrated intent that the parties desired and agreed on such a result. What this means, however, is that one should not assume, absent a clear indication of incorporation, that benefits and rights received through the Memorandum of Understanding are also extended to Transitional Employees. It does not mean that Transitional Employees are presumptively excluded from consideration when there exists an impact on the rights of other employees.

The parties presented a considerable volume of evidence at the hearing concerning Transitional Employees and overtime. An especially insightful source of guidance was the Mittenthal Award of February 8, 1996. It states:

> If the TE fills a vacancy left by a PTF who in turn worked more than one delivery unit, surely the parties meant that TE to do what the PTF had done. That would have been true also under the December, 1992 MOU which permitted TE's to be hired to replace PTFs who converted to full-time regular status. <u>These TE's were expected to do what the PTFs did</u>. If a PTF had been assigned to two or more delivery units, the parties must have realized the TE would be assigned to the same units. It is difficult to believe the parties meant to embrace the kind of restrictive arrangement urged by NALC. (<u>See</u> Union's Exhibit No. 7, p. 14, emphasis added.)

Arbitrator Mittenthal's analysis in a national arbitration decision suggested that, as Transitional Employees replaced part-time flexible employees, they were expected to do what part-time flexible employees did. Part-time flexible employees are considered "auxiliary assistance." This strongly suggests that Transitional Employees should be so considered.

As the parties know, this is not the first dispute involving Transitional Employees. In an earlier dispute, the Employer advanced arguments that are not irrelevant in this dispute. (See Case No. Q90N-4Q-C 93034611.) In the earlier case, the Employer argued that:

> Management, which had not given all overtime to Transitional Employees, believed that Transitional Employees are employees under the National Agreement and were eligible for overtime assignments. (See Union's Exhibit No. 9, p. 20.)

It was Lord Kenyon who observed that "a man should not be permitted to blow hot and cold with reference to the same transaction, or insist, at different times, on the truth of each of two conflicting allegations, according to the promptings of his private interest." (See Loma Corpration, 1975 ARB 8068 (1975).)

In 1995, Mr. Anthony J. Vegliante testified in an arbitration hearing in his role as Manager of Contract Administration. He offered the following testimony:

> Q So let's go back to the hypothetical. My example, correct me, if I'm wrong, would not be a violation of either the award or the memo under the Postal Service's view if one TE was hired to cover the 40 hours and worked, in addition, 20 hours of overtime for 670 hours for the week, is that correct:
>
> A To say it's correct, I don't have the conditions that follow it. I mean, just to add 20 hours--let me give you an example. I'm working to cover one of the conditions on page 243, C1, 2, and 3 or 4. Say it's to cover a duty assignment held pending reversion.
>
> I'm working that duty assignment and that duty assignment may require overtime. If the overtime you're talking about deals with the work that the TE is doing, that it's permissible. If part-time flexible attrition--if I cover a part-time flexible position, that person who formerly held that

part-time flexible position, we had the ability to work him on overtime, he may work up to 12 hours in a day, he may work four hours or two hours in a day.

What this award says is we can cover that part-time flexible attrition. We take out the career part-time flexible, we put in a TE to do the same thing that that individual did to cover whatever work assignment he did. It doesn't make a lot of sense to have someone covering someone and he is limited or restricted in working the way that individual who had that job before him worked.

So when you apply Article 8 or you apply the overtime rules, you go through the various methods. There have been arbitration awards that dealt with the various methods. Management has the ability to use the overtime desired lists or to use other options. If I'm not mistaken, that is an award Mr. Mittenthal ruled on in an APW case. That is how it would be applied.

So if we get to a situation, we would use either the overtime desired list options or the other options we have available. What I'm saying is I'm working on a duty assignment and that duty assignment needs overtime, we would go through our available options and make a decision, so the individual could work 20 hours overtime. (See Union's Exhibit No. 10, pp. 69-71, emphasis added.)

The Employer also argued the applicability of a decision in the "4-hour" Work Rule case. (See Case No. E90N-6E-C 94021412.) According to the Employer, the "4-hour" Work Rule decision supported its contention that contractual provisions applicable to regular employees should not be presumed to be applicable to Transitional Employees. (See Employer's Exhibit No. 1.) This is especially true where great care has been taken to identify certain provisions of a particular article as applicable or inapplicable. Silence in such cases generally indicates an intention to exclude a category of employees.

It, however, once again is important to distinguish

between cases where a contractual provision confers a right or a benefit on Transitional Employees and those cases where transitional Employees merely impact rights and benefits of other employees. In the "4-hour" Work Rule case, the Union sought to confer a benefit on Transitional Employees for which the parties did not provide in their agreement. In the present case before the arbitrator, rights of Transitional Employees are not being increased or reduced in any manner. In the present case, it is a question of the impact of Transitional Employees on rights and benefits of regular carriers. An interpretation of the parties' agreement that considers Transitional Employees as "auxiliary assistance" allows regular carriers to receive the benefit of their bargain.

C. The Zumas Analysis

In National Agreements and Memoranda of Understanding between the National Association of Letter Carriers and the Employer, there exists no preference for full-time Letter Carriers on Overtime Desired Lists over Transitional Employees when requesting overtime. By contrast, there is an agreement between the Employer and the American Postal Workers Union which mandates that APWU career employees be given preference over Transitional Employees when requesting overtime. The National Association of Letter Carriers sought through bargaining at the national level to achieve a similar provision

in their 1994 agreement. They were unsuccessful, and the Employer believes the Union is now trying to achieve in arbitration what it failed to receive at the bargaining table.

As support for its theory of the case, the Employer relied on an award issued by Arbitrator Zumas in November of 1985. (See Case No. H1C-4K-C 27344/45.) This case involved a dispute between the Employer and the American Postal Workers Union. It concerned whether the Employer violated the parties' collective bargaining agreement by using casual employees before making use of full-time, regular workers on the Over-time Desired List. Arbitrator Zumas concluded that, if the parties had wanted to establish a preferential order, they would have bargained one into their agreement. In his award, he relied on an earlier analysis by Arbitrator Mittenthal regarding Article 8. Arbitrator Zumas quoted Arbitrator Mittenthal as follows:

> Given this history, it is obvious that the real purpose of this contract clause was to restrict mandatory overtime for full-time regulars. Article 8, Section 5 had nothing to do with any order of preference between full-time regulars and part-time flexibles. There is not a shred of evidence that this subject was ever raised during the 1973 negotiations which led to the current contract language. The Union's attempt here to enlarge full-time regulars' opportunity for overtime is the exact opposite of the 1973 negotiators' intent to reduce their exposure to overtime. (See Employer's Exhibit No. 3, p. 11, emphasis added.)

Evidence submitted to the arbitrator in this case failed to establish that the National Association of Letter Carriers is seeking to establish a preferential order through this grievance. Rather, the exact opposite is true. The

parties intended the "Letter Carrier Paragraph" in the 1984 Memorandum of Understanding to serve as a protection against involuntary mandatory overtime. This was a tangible result achieved by the parties at the bargaining table. To interpret the parties' agreement in a way that permits a manager to ignore Transitional Employees when determining the availability of employees for overtime work would deny NALC career employees the enjoyment of a benefit achieved at the bargaining table.

D. Casual Employees as Auxiliary Assistance?

An unexpected issue arose at the arbitration hearing regarding the applicability of the "Letter Carrier Paragraph" in the 1984 Memorandum of Understanding to casual employees. Consequently, the parties were granted an opportunity to submit additional evidence and argument in their post-hearing briefs regarding this issue. Management argued that the "Letter Carrier Paragraph" governs only the relationship among career employees. Accordingly, it is the position of the Employer that the paragraph is inapplicable not only to Transitional Employees but also to casual workers.

As the arbitrator stated earlier, purpose interpretation is relevant in this case. The purpose of the "Letter Carrier Paragraph" was to protect full-time Letter Carriers from involuntary overtime where alternatives were available and feasible. To exclude from consideration any relevant employee

would be inconsistent with the principal purpose of the "Letter Carrier Paragraph." In other words, the paragraph had an impact not only on career carriers but also on Transitional Employees. In the absence of a specific exclusion, it is logical to extend the same principles to casual workers. Casual employees should be considered a form of "auxiliary assistance."

E. The Issue of Availability

Although transitional employees are part of "auxiliary assistance," they, nevertheless, are subject to the discretion of management. As long as management can justify the reasonableness of its staffing decisions, its discretion is unassailable as is the case when evaluating the availability of full-time carriers who signed the Overtime Desired List. Management must act in good faith. To engage in opportunistic behavior is, of course, moving to the outer limits of good faith conduct. Such decisions are reviewable.

Corporate leaders recognize that reasonableness is a primary ingredient of wise decision-making in this area. As Assistant Postmaster General Fritsch stated to regional managers:

> Although we agree that management should approach the "availability" issue here in terms of reasonableness, anything more than a de minimis effect on cost and/or service would indicate the assistance is not available. (See Employer's Exhibit No. 2, p. 7, emphasis added.)

What management recognizes is that the "availability" issue is bounded by reasonableness. "Reasonableness," of course, is a conclusory term. There may be times when people disagree about the propriety of decisions asserted to have been made in good faith. The parties have agreed on a system of neutral review in order to test whether or not a decision exceeded the bounds of reasonableness. The Employer is well aware that decisions about "availability" must be firmly rooted in reasonableness and good faith and that such decisions may be tested for arbitrariness in a neutral forum.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that Transitional Employees shall be considered a source of auxiliary assistance under the "Letter Carrier Paragraph" of the December, 1984 Memorandum of Understanding on Article 8 of the parties' National Agreement. This interpretation is consistent with the principal purpose of the parties on entering into the Memorandum of Understanding. To the extent that available Transitional Employees are not used for auxiliary assistance before requiring involuntary mandatory overtime for full-time Letter Carriers, it is a violation of the parties' agreement. Consistent with the analysis in this report, the dispute is remanded to the parties for further negotiation with regard to the individual grievances that gave rise to the arbitration proceeding. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: September 8, 1997