

C#12210

REGULAR ARBITRATION PANEL

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* In The Matter of Arbitration Between *
* * * * *
* UNITED STATES POSTAL SERVICE *
* * * * *
* and *
* * * * *
* NATIONAL ASSOCIATION OF LETTER CARRIERS *
* * * * *
* AFL-CIO *
* * * * *

GRIEVANT:
Class Action

POST OFFICE:
Owensboro, KY

CASE NO:
USPS# E7N-2J-C 44821
NALC# CA 42391

BEFORE: Thomas J. DiLauro, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Don Johnson, Labor Relations Representative

For the Union: Irv Lambert, Advocate

PLACE OF HEARING: Owensboro, KY

DATE OF HEARING: June 29, 1992

AWARD: The Union's request to convert five PTF letter carrier positions to full-time regular status is granted as set forth in the foregoing Opinion. Its request that such conversion take place retroactively to April 23, 1991 is denied and is to be implemented prospectively, again, as set forth in the foregoing Opinion.

DATE OF AWARD: JUL 18 1992


Thomas J. DiLauro

BACKGROUND:

A Step 1 meeting was heard on April 23, 1991 between the parties to discuss a Union complaint that the Postal Service was not filling vacant full-time duty positions. It claimed that five vacant full-time carrier positions at the Owensboro, KY Post Office should be filled by converting five senior part-time flexibles (PTFs) to full-time regular status to fill the positions. Management contended the positions in question are being held in abeyance due to the possible future excessing of clerks due to automation.

The grievance was processed through the various steps of the grievance procedure without resolution and was appealed to arbitration on March 3, 1992. This arbitrator was selected by the parties to render a final and binding decision. To that end, a hearing was held on June 29, 1992 at which time the parties were given the opportunity to present testimony, exhibits and argument in support of their respective positions.

ISSUE:

Has the Postal Service's invocation of the provisions of Article 12 of the agreement, in withholding the filling of full-time regular letter carrier by PTFs letter carriers,

exceeded the bounds of the "rule of reason"? If so, what is the remedy?

CONTRACT PROVISIONS:

ARTICLE 7 - EMPLOYEE CLASSIFICATIONS

Section 3. Employee Complements

A. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90 % full-time employees.

B. The Employer shall maximize the the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations.

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.

ARTICLE 12 - PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

Section 4. Principles of Reassignments

A. A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service. Reassignments will be made in accordance with this Section and the provisions of Section 5 below.

Section 5. Reassignments

B. Principles and Requirements

1. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

2. The Regional Postmasters General shall give full consideration to withholding sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned.

4. Unions affected shall be notified in advance (as much as six (6) months whenever possible), such notification to be at the regional level except under A.4 above, which shall be at the local level.

UNION POSITION:

The Union maintained that the issue in this case is whether the Postal Service used the "rule of reason" when it withheld the filling of full-time vacancies for well over fourteen months.

The Union noted that in October, 1989, the Postal Service made the Union aware of the fact that enhanced automation/mechanization could cause a possible excess of eighteen full-time regular clerks. The Postal Service informed the Union that, in order to minimize the possible impact on the existing workforce, it was going to withhold

sufficient full-time vacancies, in accordance with the provisions of Article 12, effective immediately.

The Union stated it was well aware of the provisions of Article 12, Section 5.B.2 in which the parties agreed to protect full-time employees whose jobs are affected due to a reduction in work force at a particular facility. Even though the Union had received no documentation from the Postal Service in October, 1989, it went along with the Postal Service's action.

However, after fourteen months the Union can no longer "go along" with the Postal Service's action. The Postal Service has excessed only three full-time regular clerks who assumed full-time regular carrier positions. Testimony indicated that the clerk craft has and still is working at a 17% overtime rate. Also, PTF letter carriers have and are working forty plus hours per week with a number of them working on hold-down positions. Testimony also revealed the impact on PTFs regarding such items as regularly scheduled hours, overtime and holiday pay, bidding rights, etc.

The Union argued that, if management is given the right to enforce one part of a contract for an indefinite period without impunity, then it is being allowed to make a sham of the negotiating process. Management has a duty and

responsibility to all of its employees and not just the protection of rights of employees in the clerk craft. In the instant case, the Postal Service met with representatives of the clerk craft and provided them with documentation never provided the letter carriers.

The Union maintained that enough is enough. It waited fourteen months for documentation from the Postal Service and was prepared to deal with it sending excess clerks to fill letter carrier positions. It argued that the "rule of reason" must prevail when the provisions of Article 12 supersede the provisions of Article 7. Except as noted, nothing has been done by the Postal Service since it invoked Article 12, in October, 1989, as its reason for not filling full-time vacancies. The Union has an obligation to all the employees it represents and, therefore, it asks that the grievance be sustained and five part-time flexible letter carriers be promoted to full-time regular positions effective April 23, 1991. It also asked that they be awarded any damages they suffered as a result of the Postal Service's action in this case.

POSTAL SERVICE POSITION:

The Postal Service maintained that it is and has been in compliance with the provisions of Article 12, Section 5 of the agreement.

It noted that there is no question that Article 12, Section 5 of the agreement imposes upon management an obligation to anticipate dislocations which might occur and to withhold full-time vacancies for the purpose of preserving as many opportunities for the regular full-time employees by bidding into such full-time positions when they are forced out of their regular positions.

Such a requirement was agreed to by the parties to several previous national negotiations, regardless of the craft or crafts represented on the union side of the bargaining table. Both labor and management recognized that full-time employees are members of a career work force with tenure and stability of employment to be protected whenever possible and with rights which supersede those employees with a less protected career status regardless of craft.

In support of its position, the Postal Service presented a national level arbitration case, N. H7N-3D-C 22267, rendered by Arbitrator Mittenthal in October, 1990. In that case, he decided that Article 12 takes precedence

over Article 7 of the National Agreement. Management has met and is meeting its obligation to protect as many full-time employees as possible. It might be in the position two or three months from this date that five full-time employees are excessed. If this grievance is sustained, it would mean that five regular full-time employees would be dislocated from this office. Therefore, the withholding of vacancies is proper and the Postal Service has met its obligation under Article 12 of the agreement. It asks that the grievance be denied.

OPINION:

The advocates are to be commended on their well prepared, presented and argued cases in support of their respective positions.

By letter dated October 18, 1989, the Postal Service informed representatives of the various postal unions that enhanced automation/mechanization in the Evansville, IN GMF would affect mail processing operations in Owensboro, KY. The letter indicated a possible excess of up to eighteen full-time regular clerks in the Owensboro facility and, in order to minimize the possible impact on the existing work force, the Postal Service was withholding sufficient full-

time vacancies within the area in accordance with Article 12 of the National Agreement.

By letter dated February 23, 1990, union officials were informed that the action of withholding vacancies within 100 miles of Owensboro was canceled but that it would continue to withhold all vacancies at the Owensboro facility pending an Area Mail Processing (AMP) feasibility study.

In November, 1990, the Postal Service excessed three regular full-time clerks who were allowed to transfer to the carrier craft, under the provisions of Article 12, as full-time regular letter carriers. In December, 1990, the Postal Service, as a result of a grievance, agreed to convert two PTF letter carriers to full-time regular letter carriers.

Testimony indicated that an AMP feasibility study did take place in March, 1990; however, the results of that study was never revealed to the letter carrier representatives. Local Union President Gary Winstead testified that they waited from February, 1990 through April, 1991, a period of fourteen months, to see the results of the feasibility study and never received those results. He further testified that, during the fourteen month period, the Owensboro facility hired a number of casuals and TEs to keep down the overtime in the letter carrier craft. Also,

of the ten or twelve PTF letter carriers, five were working hold-downs for an extended period of time and the other PTFs were working forty plus hours and, yet, the overtime rate for the carriers was running between 8% to 10%. Mr. Winstead also noted that during this same period, clerical employees' overtime rate was running at 17% and, in fact, the same situation still existed as of the date of this hearing.

Superintendent of Postal Operations Wendell Marsh's testimony regarding staffing at the Owensboro facility essentially agreed with the testimony and facts presented by the Union and its witness. His testimony was somewhat conflicting in that he stated an increasing amount of collection mail was being sent to the Bowling Green facility but at that same time it was increasing the workload at the Owensboro facility. He admitted that he even considered bringing back the three excessed clerks to the clerk craft; however, he noted he did not take such action and that recent events seem to indicate that the clerks' work is beginning to decline. Mr. Marsh noted that there is a possibility that the Owensboro facility may be looking at excessing clerks within the next year and most surely by 1995 when full automation/mechanization is accomplished.

Both parties presented arbitral authority to support their positions. The Union cited National Arbitrator Gamser's ruling (Case No. NC-E-16340) in December, 1979 wherein he noted that management has the right to withhold full-time vacancies subject to the "rule of reason" regarding the period of time the Postal Service could delay filling such vacant full-time positions in anticipation of the obligation imposed upon it by the provisions of Article 12. Arbitrator Gamser ruled that withholding of full-time carrier vacancies for twelve months was not a violation of Article 7, Section 3.

The Postal Service cited National Arbitrator Mittenthal's ruling (Case No. H7N-3D-C 22267) wherein he decided that the provisions of Article 12 takes precedence over Article 7 of the National Agreement. He noted that maximization does not demand the immediate filling of full-time carrier vacancies when Management is at the very same time obliged by Article 12, Section 5 to withhold those vacancies in order to protect clerks who are soon to be displaced because of some technological or operational change. In this case, management notified the affected unions by letter dated January 18, 1989 and started to fill full-time carrier vacancies (i.e., withheld assignments) in

early May, 1989 and had made thirteen conversions from part-time flexible clerk to full-time carrier by June 3, 1989.

In the instant case, the Union admitted that Article 12 is applicable to this case and that it accepted that fact without any documentary evidence from February, 1990 through April, 1991. It agreed that management has the right to withhold filling full-time vacancies under the provisions of Article 12 but maintained such right is subject to the rule of reason. It stated that fourteen months is far in excess of the "rule of reason" specified by Arbitrator Gamser.

As noted by Arbitrator Mittenthal, the language of Article 12, Section 5.B, "to give full consideration to withholding sufficient...positions", means that management must seriously entertain the idea, the pros and cons of withholding, with the object of minimizing "dislocation." He disputed Arbitrator Gamser's referral to withholding as an "obligation" or a "requirement" rather than a "right". However, he accepted Arbitrator Gamser's interpretation because the parties had the opportunity to change their interpretation and did not do so during negotiations between 1979 and May, 1989.

Even if the language of Article 12, Section 5.B.2 is interpreted to impose an "obligation" or "requirement" upon

management does that mean when the Postal Service invokes that provision, as a reason for not filling full-time positions, that it supersedes for an indefinite period of time other provisions of the agreement to the detriment of other employees' rights? This arbitrator does not believe that was the intent of the language. To ascertain its intent, one must look to Article 12, Section 4.A. which states the primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service. Also, Article 12, Section 5.B.1 states that dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

In the instant case, the provisions of Article 12, Section 5.B. was invoked by the Postal Service at the Owensboro facility on October 18, 1989 in anticipation of automation/mechanization with the alleged resultant reduction in the clerical work force. Since that date only three clerk positions have been excessed and that took place in November, 1990. In the meantime, the Postal Service, in December, 1990, converted two PTF letter carrier positions to full-time regular letter carriers. Since that date, clerical employees have been working full-time with a 17%

overtime rate and letter carrier employees, including PTF letter carriers, have been working 40 plus hours per week. At least five PTF letter carriers have been working hold-down positions for an extended period of time.


The evidence regarding when the impending reduction in the clerical work force is to take place is not probative. The Postal Service has stated, since October, 1989, up to the date of this hearing, a period of some 32 months, that it was withholding filling full-time letter carrier positions to provide employment opportunities for full-time regular clerical employees who are about to be displaced. Testimony by the Postal Service's witness indicated that such changes were not even eminent and that possibly the effect of automation would not be fully felt until 1995.

The Union noted in its closing argument that, if management is allowed to enforce one part of an agreement without impunity for an indefinite period, they are then making a sham of the negotiating process and violating the rights of other employees under the same agreement. The Postal Service failed to provide sufficient evidence for the continued enforcement of Article 12 in this case. There were only vague estimations of when a reduction in force is to take place and none of these estimations were evidenced by any documentation.

Consequently, the only conclusion to be drawn is that the workload will continue into the indefinite future. Therefore, the Union's request that five PTF letter carrier positions be converted to full-time carrier positions, by converting the senior part-time flexible carriers to full-time regular status, is sustained. The conversion, however, is to be prospective and to become effective within thirty days of the date of this award.

AWARD:

The Union's request to convert five PTF letter carrier positions to full-time regular status is granted as set forth in the foregoing Opinion. Its request that such conversion take place retroactively to April 23, 1991 is denied and is to be implemented prospectively, again, as set forth in the foregoing Opinion.


Thomas J. DiLauro
Arbitrator
JUL 18 1992