VOLUNTARY ARBITRATION PROCEEDINGS
Class Action
C8N-4M-C 16736
Fort Dodge, Iowa

C#01690

THE UNITED STATES POSTAL SERVICE, :

The Employer :

-and- : OPINION AND AWARD

THE NATIONAL ASSOCIATION OF LETTER CARRIERS, :

The Union. :

APPEARANCES

For the Employer:
Rodney A. Stone, Labor Relations Executive
Michael F. Keefe, Director, Customer Service

For the Union:
Charles J. Coyle, National Business Agent
Ed O'Leary, Witness
Dale Struecker, Witness

George E. Bowles,
Arbitrator
906 South Main Street
Plymouth, Michigan 48170
313/455-9400

Date of Opinion and Award: December 29, 1981

SUBMISSION

The hearing in this case was scheduled and conducted in a conference room at the United States Post Office, 205 South Eighth Street, Fort Dodge, Iowa, on October 1, 1981, beginning at approximately 10:00 a.m. The parties presented both evidence in the form of exhibits and testimony. Arguments were presented at the close of the taking of evidence, and post-hearing briefs were filed.

STATEMENT OF ISSUE:

Did the Employer violate the Agreement on April 8, 1980, when job number 44, a Reserve Regular, was reverted?

CITED CONTRACT PROVISIONS

ARTICLE III

"The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;
B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
C. To maintain the efficiency of the operations entrusted to it;
D. To determine the methods, means, and personnel by which such operations are to be conducted;
E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstances or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature."

ARTICLE VII EMPLOYMENT CLASSIFICATIONS

"Section 3. Employee Complements. 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. The Employer shall maximize the number of full-time employees and minimize the number of

part-time employees who have no fixed work schedules in all postal installations. 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. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made."

ARTICLE XLI LETTER CARRIER CRAFT

"Section 1. Posting

A. In the letter carrier craft, vacant craft duty assignments shall be posted as follows:

1. A vacant or newly established duty assignment not under consideration for reversion shall be posted within 5 working days of the day it becomes vacant or is established.

All city letter carrier craft full-time duty assignments other than letter routes, utility or T/6 swings, parcel post routes, collection routes, combination routes, official mail messenger service, special carrier assignments and night routers, shall be known as full-time Reserve Letter Carrier duty assignments. The term "unassigned regular" is to be used only in those instances where full-time letter carriers are excess to the needs of the delivery unit and not holding a valid bid assignment.

Positions currently designated in the letter carrier craft:
KP 11 Special Carrier, PS-5 (includes the duty assignment of Official Mail Messenger Service in the Washington, D.C. Post Office),
KP 11 Special Carrier, PS-5,
SP 2-261 Carrier Technician, PS-6,
Positions that may in the future be designated in the letter carrier craft.
Changes in the foregoing position titles shall not affect the application of this provision.

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

ESSENTIAL FACTS

At the time that position #44 was reverted there were

26 routes and 31 full-time regular letter carriers. The additional full-time positions were used for vacations and sick calls, or replacements. Introduced into evidence were Employer's Exhibits (1) through (21). The exhibits demonstrate, it is found, the reduction of carrier hours which were used each accounting period since the reversion. It is further found as a fact that all the part-time flexible letter carriers were working at least 40 hours a week for the six (6) months following the reversion. The Union analysis did not show whether as to the work hours of the part-time flexibles, if any, were working 8 hours within 10 the same five days each week and on the same assignment.

CONTENTIONS OF THE PARTIES

The Union points out that Article VII lays the responsibility for maximizing the number of full-time positions and minimizing the number of part-time positions on the Employer, and there are provisions in this Article to allow the Employer to combine craft duties and to make any other changes to keep the number of full-time employees at a maximum. Partial reliance is placed upon the language of Article VII, Section 3,

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

Reference is also made by the Union to Article VII, Section 1A(2),

> "Part-time employees...shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week."

The Union argues that this language puts the responsibility on the Employer to limit the hours of part-time flexibles to less than forty (40) hours per week.

The Union claims the evidence demonstrates that the reversion here took place to make the scheduling problems in Fort Dodge easier; this is said to be an outrage and a clear disregard of the language and intent of the National Agreement. It is reasoned that although 2,080 hours were saved by reversion, the duties of the assignment remained, and were being performed by part-time flexibles. If the Employer is allowed to revert because of minor scheduling inconveniences, it is reasoned, any part or all of the regular assignments in the Fort Dodge Post Office or elsewhere could be reverted.

The Employer urges that the Union failed to show the necessity of maintaining position #44. Even if the Union's claim is accepted that part-time flexibles have been working at least forty (40) hours per week during the six-month period following the reversion, the Agreement does not prohibit working part-time flexibles for forty (40) hours a week. The Union, it is said, ignores the test or benchmark the parties have included in Article VIII, as noted by Arbitrator Syd Rose. Arbitrator Rose pointed out in part:

> "'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.' All language has meaning. The above sentence starts with the word 'a'. The primary meaning of the word is to express the attribution of singularity. 'A' means one. (See Webster's New World Dictionary of the American Language, Black's Law Dictionary.) A is the form of indefinite article used before a consonant sound, and placed before nouns of the singular number, denoting an individual object or quality individualized...If it were the intention of the parties to combine the work schedules of three part-time flexible employees in order to meet the requirements shown in Section 3 in the third sentence, the Contract would have so stated. The Contract does not say 'the combined work hours of three part-time flexibles over a six-month period'. The Contract says, '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 an assignment to a full-time position."

The Employer also argues that the reduction of hours demonstrates that the action was needed and in keeping with the provisions of Article III, which allows the Service to maintain the efficiency of its operations by determining the methods, means and personnel to do so.

Cited by the Employer, also, was an Opinion and Award by Arbitrator Elliott H. Goldstein, in Case Number C8N-4B-C 7819, arising in Traverse City, Michigan. There, the Arbitrator made a factual finding:

> "...The Union argues that Grievant Strasser was was paid forty hours per week for the entire five and a half years he functioned in the job slot involved herein. Moreover, the Union asserts that there was ample full-time employment sufficient to justify this slot. Central to the Union's position is the fact that, at least for the time immediately after the abolishment of the subject job, an additional part-time flexible was assigned as a letter carrier in Traverse City. No evidence, however, was presented by the Union to counter the Employer's straightforward documentation and testimony concerning substantial lack of work for the intended purpose of the job slot - the carrying of the prescheduled annual leave regularly taken by permanent full-time employees at Traverse City. The employer's data (showing peak vacation periods and substantial periods when no vacations occurred at all) was not disputed by the Union.
>
> ....Thus, I find credible management's facts and figures which show that for roughly an average of 25% of the time in the years in question, grievant Strasser could not be scheduled to cover for prescheduled annual leave. Moreover, I credit the testimony of the two management witnesses that, as a result of that fact, the scheduling of Strasser often involved make-work or split scheduling to give him time on the clock but not necessarily doing the jobs needed at this particular post office. In addition, I find persuasive the Employer's assertions that the actions taken herein were reasonable and complied fully with the mandates of the contract....".

DISCUSSION

Careful students of labor arbitration have noted that concepts of burden of proof recognized in the law are not generally applicable in arbitration proceedings. For example, Arbitrator and UCLA Law Professor Benjamin Aaron has noted that the basic

dispute is between the two principals to the Agreement, the Employer and the Union, but also at stake are both the matter of justice to an individual employee and the preservation and development of the collective bargaining relationship. Evidence is not evaluated simply and solely on the basis of some rigid standard or presumption. This is particularly so in contract interpretation where neither side has the burden of proof or disproof, but rather, assists the Arbitrator by offering guidance and history applicable in the situation.

Interestingly, the parties have themselves suggested a standard or frame of reference. Article VII, Employment Classifications, provides in part:

> "A part-time flexible employee working eight (8) hours within ten (10) on the same five days each week and the assignment over a six-month period will demonstrate the need for converting the assignment to a full-time position. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made."

This language indicates a sort of presumption which is a guide to the parties and to the Arbitrator, but it doesn't stand by itself, and evidence is needed to support it. The Union did not show an analysis or study of the work hours of the part-time flexibles, and so, did not show or establish if any one of them was working eight (8) hours within ten (10) on the same five days each week and on the same assignment during this six-month period. Nor, was there a showing what the staffing requirements were in the carrier craft at this office. The Employer evidence is unassailable as to the substantial saving of hours worked, which is evidenced in support of the wisdom of the Employer decision for reversion. Finally, the Employer testimony was clear and categorical that there were more full-time employees than could be properly utilized; there were numerous mornings when there were two carriers working one route - where only one carrier was needed.

So far as the weight of the evidence, the Arbitrator must find that the Employer Exhibits (1) through (21) demonstrate that adjustment of staffing was called for.

The Arbitrator finds that there was no Contract violation by the reversion.

GEORGE E. BOWLES, ARBITRATOR

A W A R D

THE ISSUE:
Did the Employer violate the Agreement on April 8, 1980, when job number 44, a Reserve Regular, was reverted?

THE ANSWER:
No. The grievance is denied.

GEORGE E. BOWLES, ARBITRATOR

George E. Bowles,
Arbitrator
906 South Main Street
Plymouth, MIchigan 48170
313/455-9400

Dated: December 29, 1981