

C 5904

In the Matter of the Arbitration between
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO -and-
UNITED STATES POSTAL SERVICE -and-
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

OPINION AND AWARD

BACKGROUND:

At the opening of the hearing, these Parties agreed that the matter in issue arose during the term of the 1975 National Collective Bargaining Agreement. These Parties also agreed that the grievance was properly processed through the steps of the grievance procedure provided in that Agreement, and that the American Postal Workers Union intervened and was afforded full party status in this proceeding.

A hearing before the Undersigned, duly designated Arbitrator, was held in Washington, DC on May 31, 1979. At that hearing, all the above-captioned Parties appeared and were represented by counsel. They were afforded full opportunity to present testimony, other evidence and argument in support of their respective contentions. By agreement, post-hearing briefs were filed.

THE ISSUE:

Although these Parties did not agree upon a definition of the matter in issue, from the contentions raised by the grieving Union and from the arguments submitted by the USPS and the APWU, it could be determined that the NALC was contending that the Postal Service

improperly interpreted the provisions of Article VII and Appendix A of the National Agreement by deciding to withhold various full-time duty assignments in the letter carrier craft at the Altoona, Pennsylvania Post Office, during the period from May of 1978 through until May of 1979, and ^{by} ~~not~~ filling those positions with part-time flexible letter carriers. The NALC was aware, at the time that it filed this grievance on approximately June 28, 1978, that the Postal Service was withholding these assignments in anticipation of the excessing of clerk craft employees, at the same installation, who the USPS intended to employ to fill in the vacancies created by the retirement of full-time carrier craft members of that postal installation's labor force. Whereas the NALC contended that the Postal Service could not withhold these vacancies and was required to fill them with part-time flexible carrier craft employees as they arose, the USPS and the APWU claimed that, in accordance with Appendix A of the Agreement, the Postal Service was obligated to act in this fashion under all the circumstances present during the period under consideration at the Altoona Post Office.

STATEMENT OF THE CASE:

As stated above, the grievance arose when the Postal Service failed to promote the part-time flexible carriers employed at the Altoona, Pennsylvania Post Office to fill vacant full-time duty assignments in the carrier craft.

Commencing in the Spring of 1978, there began a series of retirements by full-time carriers. Each of these retirements, except two which were stipulated to by the parties, created vacancies for unassigned reserve regular carriers who filled in for other regular full-time carriers who were on their scheduled vacations. Between the end of April

and mid-August of that year, at least six such full-time vacancies were created by these resignations..

When the Local Union officials inquired as to why part-time flexible carriers were not being promoted to fill the vacancies, pursuant to the provisions of Article VII, Section 3 of the Agreement, The Postal Service officials responded by indicating that the Altoona Post Office was scheduled to receive a multi-position letter sorting machine. When such a machine was in place and in operation, the Postal Service stated that it was expected that there would be a reduction in the number of clerks required at Altoona, and that these vacant positions would be utilized to provide full-time employment at Altoona for some of the clerks who would have to be excessed.

The NALC thereafter brought this grievance claiming that the withholding was improper and for too long a period of time. The NALC requested that, as an appropriate remedy, these part-time flexible carriers be promoted to full-time positions at once and be made whole for any losses suffered as a result of the alleged unwarranted withholding of their promotions to full-time positions when these positions had originally become available. During the course of the hearing, it was also suggested that, in the event that the Arbitrator should find that such withholding could be undertaken under the provisions of Appendix A, then the guidelines for implementing Appendix A in future disputes should be established in this determination.

PROVISIONS OF THE AGREEMENT REFERRED TO DURING THE HEARING:

Article VII, Section 3, states in pertinent part:

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...

Appendix A of the 1975 National Agreement, later incorporated as part of Article XII of the 1978 Agreement, provides for both the letter carrier craft and the clerk craft in pertinent part as follows:

APPENDIX A

A. Basic Principles and Reassignments

When it is proposed to:

...

5. Reduce the number of regular work force employees of an installation other than by attrition;...

B. Principles and Requirements

...

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.

OPINION:

Although, during the course of the arbitration hearing, the NALC argued that the quoted provision of Section 3 of Article VII imposed a duty or obligation upon the Postal Service to maximize the number of full-time employees and withholding the promotion of part-time flexibles to full-time duty assignments violated this provision of the Agreement, that provision does not provide much support for the ultimate position taken by the NALC. That Article in the Agreement, as was ac-

knowledged by one of the witnesses for the Letter Carriers Union, addresses the issue of how many full-time assignments are needed in a particular installation . The point at which the Union can require that the Postal Service convert certain part-time positions to full-time positions is detailed in this particular provision. In this proceeding, there was no dispute between the grieveing Union and the Service that full-time positions were vacant because of stipulated retirements. They had no dispute about the "maximization" of regular full-time duty assignments. No evidence was required to establish the existence of conditions which required such "maximization".

What really was in dispute was whether the Postal Service could delay filling such vacant full-time positions for a period of time in anticipation of an obligation imposed under Appendix A to provide employment within the area for certain full-time and part-time flexibles, where appropriate, who may be involuntarily reassigned.

In issue was the length of time that the Postal Service could wait to fill such positions and keep them vacant for this purpose. The NALC claimed that at the time that each regular carrier retired, during the period under review at Altoona, no specific employees had been declared excess and the USPS had not specifically proposed a reduction of the work force at that installation. For these reasons, at the time of each resignation, a full-time vacancy was created which should have been filled with the most eligible part-time flexible in the carrier craft.

The Postal Service took the position that it did not violate the National Agreement by withholding these positions as they became vacant by virtue of the series of retirements which took place between May of 1978 and May of 1979 because such action was the reasonable course to follow under the circumstances then existing at Altoona. The APWU

apparently concurred with this position contending that the Service could withhold vacancies, to meet its obligation under Appendix A to absorb excessed employees, as long as it was necessary to make provision to take care of such excessed employees. The APWU stated that the length of time that the USPS could withhold such vacancies would depend upon such factors as the expected rate at which such positions would be created through retirements or otherwise and the expected number of excessed employees who the Service would have to absorb in the area.

In 1972, Arbitrator J. Fred Holly had before him the grievance brought by the NALC on behalf of a part-time letter carrier at the Stillwater, Oklahoma Post Office. In that grievance, the NALC contended that this part-time flexee should have been promoted to cover the full-time city route made vacant by the retirement of a full-time carrier. The Union argued that the failure of the Postal Service to promote this grievant between the date of the retirement, in October of 1971, and the date of the grievance, February 14, 1972, was a violation of that grievant's contractual right to fill that vacancy.

Although Arbitrator Holly had before him a case which was limited to the application of Article VII, Section 3 of the National Agreement then in effect, the Arbitrator gave full consideration to the inter-action of Article XII of that same agreement with the proper application of the Article VII provision. Article XII, in that National Agreement, imposed upon the Regional Postmaster General the same obligation to withhold sufficient full-time regular positions within the area to take care of full-time regulars who might be involuntarily reassigned as was required by Appendix A of the 1975 Agreement in effect when the instant grievance was filed, and which is also required of that official

under the present National Agreement.

The Union, in the earlier case, contended that each full-time vacancy which arose had to be filled immediately because the existence of such full-time vacancy created a situation in which the Postal Service could "maximize" its regular full-time work force. The Stillwater Post Office took the position that the vacancy created by the retirement was withheld because it came into being at a time when the Employer was instituting Area Mail Processing throughout Oklahoma and it was recognized that this would result in displacement of employees in the clerk craft who would have to be assigned to other locations.

Mr. Holly, in his Opinion, found that to follow the Union's contention with regard to the requirement that the Postal Service immediately fill each vacancy as it occurred would render the terms of the then Article XII provision meaningless. Applying the usual principles of contract construction, Arbitrator Holly concluded that the parties did desire to give full meaning and effect to the provision requiring the Regional Postmaster General to withhold positions under certain conditions. He also found that the institution of the Area Mail Processing System was the type of situation which the parties had in mind when they made provision for withholding positions to cushion the impact of dislocation wherever possible by such action.

At that point in his Opinion Arbitrator Holly addressed himself to the question of for what period of time could the Postal Service withhold positions without rendering its obligation to "maximize" full-time employment meaningless. As to this issue, Arbitrator Holly concluded as follows:

The National Agreement does not contain specific guidelines for this determination. It is evident though that the parties intended to permit the

withholding of positions for the previously indicated purpose. Hence, it is apparent that withholding positions for the purpose of minimizing the dislocations of the AMP program was in keeping with this intent and was reasonable. In other words, when Management knew that the AMP program would result in the displacement of clerks it had the right to withhold vacated positions until the displacement occurred...

In effect, Arbitrator Holly applied a rule of reason based upon the facts and circumstances then existing to sustain the Postal Service's right, in that case, to withhold the vacated full-time carrier position in anticipation of the need to absorb a displaced member of the full-time clerk craft rather than immediately award the vacancy to the grievous part-time flexee member of the carrier craft. Arbitrator Holly did not find that the USPS had absolute discretion to determine in each instance when or if it would promote a part-time employee to a vacant full-time position or withhold that position to meet some future contingency.

The findings and conclusions of Arbitrator Holly are basically sound and based upon long accepted principles of contract language construction and interpretation. There is no question that Appendix A of the 1975 National Agreement imposed 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 regular full-time employees to avoid the dislocation of moving out of the area by bidding into such full-time positions when they were 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, because both labor and management recognized that full-time employees, in this instance, were

member of a career work force, with tenure and stability of employment to be protected wherever possible, with rights which superseded those with a less protected career status regardless of craft. That is obviously why the provisions of the earlier Article XII and those of Appendix A, pertinent to this proceeding, as well as those of the present Article XII, did not impose a restriction upon the Area Postmaster General to withhold vacant full time positions only for the benefit and protection of employees who are members of the same craft as that in which the vacancy exists.

Having said that, it is necessary to determine whether, in the instant case, it was reasonable for the Postal Service to withhold such vacant full-time positions for the period from May of 1978 until May of 1979. Without reviewing in detail all the evidence found in this record, it can be found that the Eastern Regional Office in Philadelphia published its intention of providing Altoona with a MPLSM on March 23, 1978. That equipment was initially foreseen as being installed and operational by August of 1978. For that reason, the proposed training program was explained to the clerk craft representatives as early as May or June of 1978. The NALC was aware in March as well that this equipment was coming to Altoona. The Union was also aware in May that the Local Postmaster was going to withhold positions in the carrier craft because of the anticipated excessing.

The evidence in this record also clearly established that the installation and operation of a LSM would create a reduction in the need for members of the clerical craft at Altoona and even if positions on the machine were made available to every clerk, the number of members of the craft who would or could successfully complete the required training would be, at best, half of those who entered such a training program. ✓

Resultant dislocation caused by the use of the MPSLM was not based upon speculation but rather upon the experience with the introduction of this machine at many other postal facilities. Calculations based upon the experience with manning this equipment elsewhere indicated that at Altoona, after all the MPLSM positions were eventually filled, some 16 or 17 clerks would still have to be excessed.

The actual experience of the Postal Service at Altoona, gained from the hindsight now available, established that it was definitely ascertained by February of 1979 some 22 clerks would be excessed from Altoona. By May of 1979, the Local Postmaster was able to revise that figure so only 20 clerks were to be declared excess. Of those 20, 11 were able to fill withheld carrier craft positions at Altoona rather than be forced to move to the Pittsburgh Bulk Mail Facility, approximately 120 miles from Altoona, or to some other installation even a greater distance from Altoona. In this way, in keeping with another provision of Appendix A, the Postal Service was able to comply with the following dictate:

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

While it was quite true, as the NALC argued, the specific individuals who were to be excessed or the number of such clerk craft positions which were to be excessed were not known as early as May of 1978, the evidence does support the Postal Service conclusion reached as early of May of 1978, that the introduction of this equipment would provide for a significant reduction in clerk craft positions and that withholding vacancies, as they occurred and in whatever craft these vacancies might occur, would be the prudent course to follow if the career status rights, in this instance of the clerk craft employees,

were to be protected as contemplated by the provisions of Appendix A of the National Agreement.

The automation of the operations involved in mail processing as well as mail delivery continues apace. The reassignment and dislocation of career employees appears to be an almost daily occurrence. Whereas in the case here under review the members of the carrier craft who were filling part-time flexible positions were deprived of the opportunity to bid for and fill permanent full-time positions in their craft, under some other circumstances it might very well be that members of the clerk craft, also occupying positions for a good number of years as part-time flexees, might be delayed in bidding for full-time positions because jobs of this nature were appropriately withheld to provide opportunities for dislocated or excessed full-time carriers to fill vacant full-time positions at their home installation. We are all aware of technological innovations which may impact upon the present methods of mail delivery.

Because, as stated above, it must be found that, under the circumstances existing in this case, with the impact of the introduction of the MPLSM definite and ascertainable and with the knowledge that this equipment would be installed and operated at Altoona within the foreseeable future, the Area Postmaster General acted in a reasonable fashion under the discretion afforded pursuant to the provisions of Appendix A of the 1975 Agreement.

A W A R D

The grievance filed in Case No. NC-E-16340 is hereby denied.



Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
December 7, 1979