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UNITED STATES POSTAL SERVICE

-and-

AMERICAN POSTAL WORKERS UNION,
AFL-CIO

: CLAIMED SENIORITY IMPASSE
: ARISING IN LOCAL NEGOTIATIONS

: AWARD ISSUED:

: October 13, 1973
RECEIVED,

JUL 12 1974

BACKGROUND

DIRECTOR, OFFICE OF LABOR RELATIONS
CENTRAL REGION

This case is before the undersigned Arbitrator for decision pursuant to Article XV of the July 20, 1971 National Agreement between the U. S. Postal Service and seven Postal Unions, including four which later were merged to become the American Postal Workers Union (APWU), AFL-CIO.

The issue here raised by the APWU at the national level is whether a proposal submitted by its local in the New York Metropolitan Area, for local negotiation pursuant to a procedure set forth in the 1971 National Agreement, properly was negotiable. The local proposal in essence would have required that "within tour" temporary work assignments of Clerks, to meet varying work loads at various defined work locations (including assignments from one work floor to another), be made on the basis of moving junior employees first so that senior Clerks would remain on their usual assignments at their normal work locations.

A hearing was held in Washington, D. C., on June 11, 1973, and the parties had full opportunity to present evidence and argument. Thereafter the Postal Service and APWU filed briefs setting forth their respective positions.

a. The Fact Setting

There is little dispute as to the basic facts raising the present issue. Appendix C of the 1971 National Agreement listed various items for further negotiation between the parties, commencing August 16, 1971, including an issue designated as "local implementation." As a result of their negotiations on this last subject, the parties ultimately agreed upon the following (which is reproduced as Article XXX in the APWU printed version of the 1971 National Agreement):

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"Local Implementation

"The parties recognize that it is impractical to set forth in this Agreement all detailed matters relating to local conditions of employment and further negotiations regarding local conditions will be required with respect to local installations, post offices, and facilities. Accordingly, designated agents of the Unions signatory to this Agreement and the representatives of the Employer shall negotiate such matters on a local level, and any agreement reached shall be incorporated in memoranda of understanding. No such negotiations or memoranda of understanding shall be inconsistent or in conflict with this Agreement, nor deprive any employee of any rights or benefits provided for under this Agreement.

"Local negotiations shall commence on February 1, 1972. If agreement is not reached at the local level within 30 days, the issues remaining in dispute shall be referred for impasse resolution to the regional level.

"Impasses at the regional level which are not resolved by May 1, 1972, shall be referred for settlement to the national level. Unresolved impasses at the national level may thereafter be submitted to arbitration at the national level at the option of a Union or Unions signatory hereto or the Employer if agreement has not been reached by June 15, 1972.

"For the purposes of providing such arbitration, the following procedure shall be followed: The Unions and the Employer shall each name one arbitrator. The two arbitrators thus selected shall seek to agree upon a third neutral arbitrator. In the event they fail to do so within 5 days, the neutral arbitrator shall be appointed by the American Arbitration Association. The cost of the neutral shall be shared equally by the Unions and the Employer."

(Underscoring added.)

Pursuant to this provision local negotiations subsequently were initiated in New York City between the New York Metropolitan Area Postal Workers Local Union and representatives

of the New York City Postmaster. The Local Union representatives submitted the following initial proposal with respect to "Seniority Rights":

"D-1 Movement of clerks within a defined work area shall be made on a seniority basis.

"D-2 Movement of clerks from one defined work area to another shall be made on a seniority basis.

"D-3 The right of all distributors in Incoming divisions to work in their defined work areas by service seniority is recognized at all times, as well as the right of all distributors in Outgoing divisions to work on their scheme assignments by service seniority is recognized at all times.

"D-4 Service seniority shall prevail at all times in movement of clerical employees from one work floor to another work floor and from one division to another division.

"D-5 These instructions are equally applicable and shall govern all full-time and part-time clerks."

Following review of this proposal the New York City Postal Service spokesman advised the Local Union representatives that it was not negotiable, under the above quoted agreement

concerning local implementation, because its objectives were inconsistent with the 1971 National Agreement and specifically Articles III and VII. The Postal Service spokesman suggested that the Union submit a revised proposal to correct this problem. A new local Union proposal then was submitted as follows:

- "1. Movement of clerks from one general work area to another during a scheduled tour of duty shall be made on a seniority basis according to need in all stations.
- "2. The right of all distributors in incoming divisions to work in their defined work areas by service seniority is recognized at all times, as well as the right of all distributors in outgoing divisions to work on their scheme assignments by service seniority is recognized at all times.
- "3. When clerical employees are detailed between defined work areas for one hour or less, service seniority should generally be observed.
- "4. When clerical employees are detailed between defined work areas for periods in excess of one hour, service seniority must be observed.
- "5. Service seniority shall prevail at all times in movement of clerical employees from one work floor to another work floor and from one division to another division. The general work areas at the terminal points are: (Note: See Pages 3-6)

"6. Service seniority shall prevail at all times in movement of clerical employees at 24 hour carrier delivery stations in assignment to a specific detail or from a specific detail to distribution work and in movement from one floor to another. General work areas at these carrier stations are:

Up Mail	First Class
Up Mail	Flats
Incoming	Parcels
City	First Class
City	Flats
Outgoing	Parcels

"7. These instructions are equally applicable and shall govern regular clerks and part-time fixed schedule clerks."

The revised Local Union proposal also was said by the New York Postal Service representatives to be inconsistent with the National Agreement and so not properly subject to local negotiation. This impasse later was considered at regional and national levels and then the parties seemingly proceeded to submit the interpretive problem to this Arbitrator for decision under Article XV. There was no discussion between the parties concerning possible modification of Items 1 through 7 of the revised local proposal, either separately or as a whole, to eliminate claimed inconsistency with the 1971 National Agreement.

The following provisions of the 1971 National Agreement seem relevant:

"ARTICLE III - MANAGEMENT RIGHTS

"SECTION 1. POSTAL SERVICE RIGHTS. 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 circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be a recurring nature.
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"ARTICLE VII - EMPLOYEE CLASSIFICATIONS"SECTION 2. EMPLOYMENT AND WORK ASSIGNMENTS.

- "A. Normally work in different crafts, occupational groups or levels will not be combined into one job. However, in order to maximize full-time employment opportunities and provide necessary flexibility, management may after studied effort to meet its requirements by combining within craft or occupational groups establish full-time or part-time scheduled assignments by including work within different crafts or occupational groups.
- "B. In the event of insufficient work on any particular day or days in full-time or part-time employee's own scheduled assignment, management may assign him to any available work in the same wage level for which he is qualified, consistent with his knowledge and experience, in order to maintain the number of work hours of his basic work schedule.
- "C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

"D. The number of casual employees who may be employed in any period, other than December, shall not exceed 8% of the total number of employees as covered by this agreement, except as to employees employed pursuant to Public Policy Employment Type Programs.

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"ARTICLE XII - SENIORITY

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"SECTION 2. PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS.

"A. The parties agree to abide by the terms and conditions of Article XII (Reassignments), Article XIII (Assignment of Ill or Injured Regular and Substitute Employees), Article XXII (Posting), and the Supplemental Agreements on Seniority, as stated in the Agreement between the United States Post Office Department and the seven (7) national exclusive unions, contained in POD Publication 53, dated March 9, 1968, with the following understanding:

To insure a more efficient and stable work force, an employee may be designated a successful bidder no more than five (5) times during the duration of this Agreement, unless such bid:

- "1. is to a job in a higher wage level,
 - "2. is due to elimination or reposting of his duty assignment, or
 - "3. enables an employee to become assigned to a station closer to his place of residence.
- "B. Rural carriers are covered by the provisions of A, above, except with respect to those seniority provisions in Section 1007 of the Postal Reorganization Act which are intended to prevail.

"SECTION 3. INTENT.

- "A. The parties recognize that it is impractical to set forth in this Agreement all the matters relating to local implementation of the above seniority provisions of this Agreement, and that, in some cases, it may be necessary for the local parties to incorporate local implementation in memoranda of understanding. Such understandings, however, shall neither conflict with this Agreement, nor deprive an employee of any rights or benefits provided for under this Agreement. Such local memoranda of understanding shall be subject to the grievance and arbitration procedure.
- "B. Because of the importance of seniority, reassignments, and posting to both the Employer and the Unions, the parties agree to establish a joint committee to study the complexity and interrelationships of the issues, to define the differences, and to recommend alternatives for consideration of both parties at least sixty (60) days prior to the termination of this Agreement.

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"ARTICLE XIX - SCOPE OF AGREEMENT

"This 'Working Agreement' constitutes the entire Agreement between the parties and correctly expresses all of the rights and obligations of the parties except for those specific subjects which the parties have formally agreed to continue negotiating after this 'Working Agreement' is concluded. The parties acknowledge that each had the opportunity to make demands and proposals with respect to all collective bargaining subjects. Each party agrees that for the life of this 'Working Agreement' the other parties shall not be obligated to bargain with respect to any subject not covered in the 'Working Agreement' or reserved by formal understanding as a subject for continued negotiation during the term of this Agreement."

(Underscoring added.)

It also is relevant that the 1968 Agreement, between the seven craft Unions and the United States Post Office Department, included in its Article VII detailed procedures covering local negotiations, including negotiations with Local Unions not affiliated with the National organizations representing the particular crafts covered by the 1968 National Agreement. Article VII-13 of the 1968 POD National Agreement stated:

"Both parties, when formulating proposals or counter-proposals, shall consider that Articles I through V of this Agreement are not subject to local negotiation, except that the local agreement should identify the parties to that agreement. Furthermore, both parties shall consider that they may not negotiate provisions that:

- "a. Are in conflict with law.
- "b. Are in conflict with regulations of the Department or Government agencies such as the Civil Service Commission and the Department of Labor, which have appropriate jurisdiction under Executive Order 10988.
- "c. Repeat, reword, paraphrase or conflict with the National Agreement and National Supplements. (This is not to be interpreted to mean that local negotiations shall be restricted to only those options provided in articles in the National Agreement and National Supplements.)
- "d. Are not within the administrative discretion of the installation head."

b. The Contentions

1. The Union

The Union asserts that the local proposal here under review clearly implements the 1971 National Agreement. There could hardly be any question, it suggests, that application of seniority in making within tour work assignments represents a legitimate implementation of the Seniority provisions. Thus, says the Union, there is no reason to go beyond the precise terms of the 1971 Agreement in order to sustain the Union. Indeed, where the Agreement is clear, the fact that proposals were made and rejected in negotiations does not permit the Arbitrator to go outside the Agreement.

Even were extrinsic evidence to be used, however, the Postal Service in the 1971 national negotiations unsuccessfully sought a clause prohibiting local negotiation concerning seniority, before agreeing to the present Article XII, Section 3. And, says the Union, this provision "specifically provides that local matters of seniority are negotiable."

Furthermore, the Union emphasizes that the New York Metropolitan Area Union local proposal does not differ essentially from what had been done for more than 10 years in the Manhattan Post Office. The Union's local agreement with the New York Post Office, effectuated under the 1968 National Agreement, and thus applicable until negotiation of the 1971 National Agreement, included the following:

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"D. REASSIGNMENT WITHIN TOUR:

- "1. Movement of clerks from one general work area to another during a scheduled tour of duty shall be made on a seniority basis according to need in all stations.
- "2. The right of all distributors in incoming divisions to work in their defined work areas by service seniority is recognized at all times, as well as the right of all distributors in outgoing divisions to work on their scheme assignments by service seniority is recognized at all times.
- "3. When clerical employees are detailed between defined work areas for one hour or less, service seniority should generally be observed.
- "4. When clerical employees are detailed between defined work areas for periods in excess of one hour, service seniority must be observed.
- "5. Service seniority shall prevail at all times in movement of clerical employees from one work floor to another work floor and from one division to another division."

Since the 1968 POD National Agreement specified that no local agreement should "conflict" with the National Agreement, the Union reasons that the parties already in effect had found no impropriety in a local understanding such as sought in the present Union proposal. 13

The Union notes that 1972 local negotiation for Clerks and Mail Handlers in the Bronx Post Office produced agreements for observance of seniority in certain within tour assignments. Also 1972 local APWU negotiations in Philadelphia produced agreement that "temporary" movement of employees from their assignment to other work units would be done "by juniority". Likewise the 1972 Pittsburgh local negotiations produced agreement dealing with assignments within tours, and also to the effect that "Clerks moved out of the unit, state secondary or other work center shall be transferred on a juniority basis." 14

Finally, the Union notes that while Articles III and VII of the 1971 National Agreement contemplate certain rights relative to work assignments, nonetheless "neither Article III or Article VII prohibits movement on a seniority basis in the circumstances contemplated by the proposal of the Union." Thus the Union proposal properly must be regarded as a "local detail" of seniority. 15

2. Postal Service

The Postal Service has no doubt that the disputed New York Metropolitan Area Postal Workers' proposal conflicts with the 1971 National Agreement, since Article III of that Agreement recognizes the employer's exclusive right to assign employees to various positions within the Postal Service so long as such action is consistent with applicable laws and regulations and the provisions of the 1971 National Agreement. It stresses that Article VII, Section 2-B and -C include provisions specifically covering (1) assignment of scheduled employees "on any particular day or days" to available work "in the same wage level" in order to maintain the number of hours in an employee's basic work schedule, and (2) assignment of employees in an occupational group to work in the same wage level in order to deal with fluctuating workloads in various areas.

The Postal Service particularly emphasizes that one Union proposal in the negotiations leading to the 1971 National Agreement stated: "When temporary assignments must be made, including details within a work shift, and employees do not seek the details, junior employees shall be detailed." This proposal was not adopted. The same proposal was advanced again by APWU during separate craft negotiations commencing August 16, 1971 and again was rejected. (While the Union asserts that these proposals really were under a heading of "posting," it is apparent that they were not addressed at all to a posting problem.) Since these specific Union proposals were not embraced by the negotiators, and Article XIX of the 1971 National Agreement constitutes a "zipper clause," the Postal Service reasons that local negotiations aimed at the same objective as the 1971 Union proposals are in conflict with the 1971 National Agreement.

Thus the Postal Service deems the local Union proposal here to be plainly inconsistent with relevant provisions of the 1971 National Agreement. It urges that local agreements under the 1971 National Agreement are in a different posture from local agreements negotiated under the 1968 Post Office Department National Agreement, and cites portions of three Opinions of Arbitrators in cases under the 1971 National Agreement to the effect that the August 12, 1970 Act of Congress created an entirely new collective bargaining relationship so that the parties in effect were writing on a "clean slate" when they negotiated in 1971.

The Postal Service brief distinguishes the pre-1971 practices and local agreements as follows:

"Article VII.D. of the 1968 Agreement sets forth provisions for the review of local agreements and the steps to be taken in the event of a conflict with 'law, the Postal Manual or the National Agreement, and supplements thereto.' Conflict with the 1968 Agreement, however, must not be confused with conflict or inconsistency with the 1971 National Agreement. Although the seniority provisions of the 1968 Agreement were adopted in 1971, they were adopted following a rejection of a demand substantially identical to the local demand here at issue. Thus, given the unachieved demand and the Scope of the Agreement clause (Article XIX), the local demand in issue is inconsistent or in conflict with the 1971 National Agreement, whereas it may have been a proper subject for local negotiations under the past national agreements.

"This variation in the scope of local implementations between that under the 1971 National Agreement and local negotiations under prior agreements evolved, in part, from major differences in the relationships between the parties noted above. Fundamentally, the Postal Reorganization Act (Public Law 91-375) moved collective bargaining in the Postal Service from the system created by Federal Executive Orders (primarily Executive Order 10988) to the private sector system of labor relations governed by the National Labor Relations Act, as amended. One of the major practical differences manifested by that change is that prior to the 1971 Agreement local unions had independent and direct bargaining relationships with individual post offices. This resulted from the multi-tier system of recognition, and in some situations a local union not affiliated with the union parties to the national agreement was to be found negotiating locally under that agreement. (See Article VII.A.7, 1968 Agreement) The authority to negotiate under these circumstances is quite different than the authority under the 1971 National Agreement which permits local unions to negotiate only as the 'designated agents of the Unions signatory to the Agreement.'

"Thus, both the substantial differences in the contract authority for local implementation between the 1968 and the 1971 Agreements, and the change in the bargaining relationship between the local unions and the post offices, render the practices and events prior to the creation of the new Postal Service in 1971 valueless in interpreting the 1971 National Agreement."

FINDINGS

The extent to which local parties are authorized to negotiate their own agreements in the context of a bargaining relationship governed by a single master, national, or basic agreement--covering multitudinous operations in many different locations--is a matter of first rank importance to all concerned. A master agreement hardly can treat all of the myriad local problems in adequate detail and where local implementations are not authorized expressly they nonetheless seem inevitably to arise in practice. Seasoned negotiators usually are inclined to recognize, in any event, that local agreements or practices should not be permitted to vary or subvert basic terms of the master agreement, since this would tend to defeat a principal purpose of bargaining on this basis rather than in smaller units. Thus it is not uncommon for master agreements to recognize that local agreements and practices are permissible only to the extent not inconsistent with the master agreement.

The negotiators of the 1971 Postal Service National Agreement seemingly embraced this general approach as sound when they wrote the "Local Implementation" provisions, in what now appears as Article XXX in the APWU printed version of the 1971 National Agreement. This being the first national agreement negotiated under the Postal Reorganization Act, moreover, the precise language which the negotiators used in treating the subject should have been a matter of considerable significance to all representatives of all parties.

In the present case, of course, there actually are two key provisions governing "local implementation," under the 1971 National Agreement, both of which must be given proper application. The later and more comprehensive provision

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(Article XXX) provides at least the procedural context in which the present seniority issue arose and in which it must be decided. The Arbitrator finds, however, that decision of the substantive seniority issue in this case must be based primarily upon the scope of local seniority implementation, as defined in Article XII, Section 3-A, giving due regard to the context in which this provision was adopted. Thus the present Opinion does not seek to determine or define the full scope or range of permissible local agreements (on matters other than seniority) under Article XXX since, at least arguably, there might be more flexibility delegated to the local parties thereunder in dealing with matters other than those governed by Article XII, Section 3-A.

Sound decision of the present case requires that the revised local Union proposal be viewed as an entity. Had the parties undertaken detailed discussion of each item in the seven-point proposal, some possibly might have been modified or withdrawn. This did not happen and neither party now suggests that such detailed discussion should have taken place, was contractually required, or in fact could have produced any meaningful compromise consistent both with the National Agreement and the objective of the local proposal. Notably, too, Article XXX states that local "negotiations" shall not be "inconsistent or in conflict with" the 1971 National Agreement. This somewhat unusual provision seemingly authorizes a refusal to negotiate with respect to a local demand "inconsistent" with the 1971 National Agreement, even though full negotiation might result in modifications which would eliminate the conflict. (It is unnecessary to elaborate on this here, since not an issue under the presentations.)

The essential thrust of all items in the disputed local proposal, in any event, is that "seniority" must control in making assignments of Clerks during scheduled tours of duty, with "junior" employees assigned first to work areas or details other than those for which originally scheduled, or to which originally assigned on the tour. Since this proposal is put forward as an application of seniority under Article XII of the 1971 National Agreement, Article XII, Section 2, constitutes a first point of reference. Insofar as relevant, this incorporates into the 1971 National Agreement certain clearly defined pre-existing agreements, as follows:

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" ... Article XII (Reassignments), Article XIII (Assignment of Ill or Injured Regular and Substitute Employees), Article XXII (Posting), and the Supplemental Agreements on Seniority, as stated in the Agreement between the United States Post Office Department and the seven (7) national exclusive unions, contained in POD Publication 53, dated March 9, 1968 ... "

This specification of pre-existing agreements to be embodied in the 1971 National Agreement makes no reference to then existing local agreements concerning applications of seniority. Under Article XII, Section 3-A, moreover, the parties left no doubt that there would have to be "local implementation" of "the above seniority provisions of this Agreement." This clearly contemplated new local negotiations, after the 1971 National Agreement was executed, and proceeded to spell out that any resultant new local understandings should not "conflict with this Agreement."

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While the Union suggests that the disputed local proposal represents a local "detail of seniority," and thus is a conventional application of seniority principles, there is no support for this assumption. Instead, it is unusual for length of service to be the controlling factor which Management must observe in all instances of temporary work assignments during a given tour or shift, among employees who are filling the same job or who have bid successfully for the same "duty assignment." The Union points to no language in any of the 1968 Agreement seniority provisions (incorporated by Article XII, Section 2) which truly may be said to be "implemented" by the disputed local proposal. While that proposal may constitute an effort to apply seniority principles, it seeks to do so on a subject not treated in, or relevant to, these seniority provisions.

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The Arbitrator also can find nothing in Article XII of the 1971 Agreement which limits the exercise of Management discretion under Article III in making and changing temporary work assignments within scheduled tours of duty, to meet fluctuations in workload and like operating contingencies, among employees regularly assigned to fill the same job or duty assignment. The fact that supervisors often, or nearly invariably, in practice may tend to assign junior employees to other duties or areas first does not establish that this always is feasible, even if it represents a generally sound practice. Perhaps it should be noted also that Article VII, Section 2-B and -C include language which seems to contemplate that certain types of work assignments "on any particular day" may be made in Management discretion, consistent with the employees' knowledge, experience, and capabilities.

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To inject a rigid requirement that seniority always be observed (in reverse) in making within tour work assignments among Clerks filling the same job or duty assignment,

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thus hardly would seem to "implement" any specific seniority provision incorporated by Article XII, Section 2 of the 1971 National Agreement. Article XII, Section 3-A, in so many words, authorizes only "local implementation of the above seniority provisions of this Agreement."

When this key language was adopted the top negotiators recognized their practical inability to negotiate a new national framework of seniority policies and procedures, which forced them to adopt the "terms and conditions" of specifically identified provisions under the 1968 Post Office Department Agreement. In Article XII, Section 3-B, moreover, they simultaneously established a joint committee to study issues of seniority, reassessments, and postings, and to make recommendations no later than 60 days before expiration of the 1971 National Agreement. When these major provisions finally were adopted, moreover, the Postal Service continued to reject the Union proposal which would have made seniority the controlling factor in within tour work assignments.

Under such circumstances it would not be reasonable to hold that the permissible area of local implementation on seniority matters under Article XII, Section 3-A, extends beyond implementation of the specific seniority provisions listed in Article XII, Section 2-A, so as to include a proposal such as the present.

Nonetheless note must be taken of the fact that, under the 1968 POD National Agreement (and for some years before 1968), the New York Metropolitan local had obtained a local understanding essentially the same as that sought in the presently disputed proposal, even though the 1968 National Agreement also provided that local parties had no authority to

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negotiate provisions in conflict with the National Agreement and National Supplements. This limitation in the 1968 Agreement, however, was modified by the parenthetical sentence:

"(This is not to be interpreted to mean that local negotiations shall be restricted to only those options provided in articles in the National Agreement and National Supplements.)"

The 1968 Agreement also established an elaborate procedure under which regional POD and Union representatives, independently, might review local agreements to ascertain whether there was conflict with existing law, postal regulations, or the National Agreement. This procedure never was invoked in respect to the earlier New York Metropolitan local agreement on within tour assignments, so it arguably could be inferred that the parties in 1971 already had recognized that such a restriction on the making of within tour work assignments did not conflict with the 1968 National Agreement seniority provisions. 32

In seeking to rebut this inference the Postal Service in part stresses excerpts from opinions by Arbitrators Aaron, Ruben, and Gamser, the implication of which appears to be that the parties were (in the words of Arbitrator Aaron) "writing on a clean slate" in their 1971 negotiations, with the result that earlier practices are of no value in dealing with interpretive problems under the 1971 National Agreement. 33

Without detailed review of the full text of cited decisions, this Arbitrator is not disposed to give weight to 34

selected expressions from the opinions of other arbitrators, nor is there any need to rely on earlier generalizations in deciding the present case.

The review procedure in the 1968 National Agreement has no counterpart in the 1971 Agreement. Article XXX of the 1971 Agreement, instead, flatly states that "no such negotiations or memoranda of understanding shall be inconsistent or in conflict with" the 1971 Agreement. This leaves no doubt that any local understanding inconsistent with the 1971 National Agreement must be held invalid and unenforceable, even if not determined to have been invalid or unenforceable under the 1968 Agreement.

It also is notable that Article XII, Section 3-A of the 1971 Agreement speaks only of local "implementation" of the "above seniority provisions," and does not authorize extending application of seniority into areas not treated in such seniority provisions. This is in marked contrast to Article VII-A-13-C of the 1968 Agreement, which indicates that local negotiations are not restricted to only those options provided in Articles in the National Agreement and National Supplements.

These differences in approach to local negotiations may be explained largely by the changed approach to collective bargaining which flowed from the Postal Reorganization Act. In 1971 the seven craft unions, as exclusive bargaining representatives, were in a position to negotiate a master agreement which would be applicable to all localities within the agreed bargaining units. Moreover, the provisions for local negotiations to implement the 1971 National Agreement deal only with negotiations between representatives of the Postal Service and "designated agents of the Union's signatory to this Agreement," in contrast to 1968.

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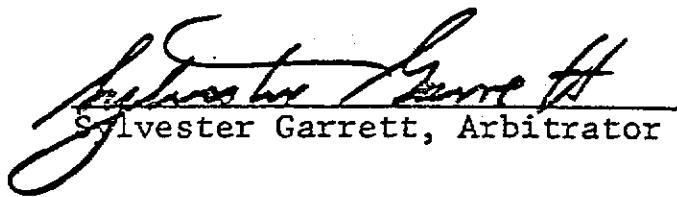
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Finally, giving due regard to the vast number of local agreements involved under the 1968 Agreement, the nature of the 1968 review procedure, and its contractual context, this Arbitrator cannot believe that a failure to invoke the 1968 procedure as to some particular local agreement suffices to support a presumption that it involved no "conflict" with the 1968 National Agreement, much less with the 1971 Agreement. 38

In balance, therefore, the conclusion here must be that the disputed local proposal does not represent an implementation of any identifiable provision embodied in Article XII of the 1971 National Agreement (including the 1968 provisions incorporated therein) and so, under the language of Article XII-3-A, it must be deemed inconsistent with the provisions of Article XII. 39

AWARD

The grievance is denied. 40


Sylvester Garrett, Arbitrator