

C#09340

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
between) GRIEVANT: APWU
UNITED STATES POSTAL SERVICE)
and) CASE NO. H1C-NA-C 120
AMERICAN POSTAL WORKERS UNION)
and)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, Intervenor)
)

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service: Nancy T. Forden
Attorney, Office of
Labor Law
R. Andrew German
Assistant General Counsel

For the APWU: Darryl J. Anderson
Attorney (O'Donnell
Schwartz & Anderson)

For the NALC: Keith E. Secular
Attorney (Cohen Weiss &
Simon)

Place of Hearing: Washington, D.C.

Date of Hearing: April 19, 1989

Date of Post-Hearing Briefs: June 9, 1989

AWARD:

A part-time flexible properly converted to full-time flexible under the 1981 Memoranda is thereafter properly counted as a "full-time employee" for purposes of satisfying the 90% staffing requirement under Article VII, Section 3A. To this extent, the grievance is denied.

When part-time employees are entitled to conversion to full-time status under both the Memoranda and Article VII, Section 3A at the end of a given accounting period, the Postal Service must first convert pursuant to the 90% staffing requirement in Section 3A and thereafter convert pursuant to the Memoranda. To this extent, the grievance is granted.

Date of Award: September 5, 1989



Richard Mittenthal, Arbitrator

BACKGROUND

This grievance involves the Postal Service's obligation under Article VII, Section 3A of the National Agreement to staff the larger postal installations with "90% full-time employees." The issue is whether Management, in fulfilling this obligation, may properly count as "full-time employees" any part-time flexible who has attained full-time flexible status under the relevant 1981 Memoranda of Understanding on maximization. The Postal Service says full-time flexibles should be part of this count; the Unions say they should not.

The regular work force in a postal installation consists of full-time employees and part-time employees. The size of these groups, in relation to one another, has been a continuing source of disagreement between the parties. This relationship has been governed by Article VII, Section 3 for some years. This section, entitled "Employee Complements", reads:

"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 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.

"D. 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." (Emphasis added)

The Unions became dissatisfied with these arrangements. They believed that full-time employees should constitute even more than 90% of the work force and that more part-time employees should be converted to full-time status. They pressed for such changes in the 1978 negotiations. The best they could achieve was a Memorandum of Understanding, attached to the 1978 National Agreement, which stated that the parties "commit themselves to the maximization of full-time employees in all installations" and "agree to establish a National Joint Committee..." which "shall develop criteria...for...additional

full-time duty assignments with regular or flexible schedules." The Joint Committee discussions led to an agreement between the Postal Service and APWU on experimental maximization criteria. But the Postal Service and NALC were unable to reach agreement.

NALC grieved and its complaint was arbitrated at the national level (Case No. N8-NA-0141). The Postal Service argued that the arbitrator had no authority to remedy the parties' inability to develop maximization criteria. The arbitrator held that "the [1978] Memorandum was intended as a means of expanding the complement of full-time employees beyond the 90% figure set forth in Article VII, Section 3." He explained that this Memorandum "was not a conditional commitment" but rather "a firm and definite commitment to greater maximization during the life of the 1978 National Agreement." He ruled that the parties' impasse was a failure to comply with this commitment and hence a "contract violation". He ordered, by way of remedy, further negotiation between the Postal Service and NALC which, if fruitless, would likely result in a national arbitrator imposing maximization criteria upon the parties.

The Postal Service and NALC met in July, August and September 1980 in an attempt to resolve the problem. NALC sought criteria which would assure enough conversions to achieve something beyond the 90% full-time figure in Article VII, Section 3A. Management insisted on flexible schedules for any additional full-time employees. They may have agreed on some points but there were substantial areas of disagreement. NALC asked that the grievance be returned to arbitration and it was scheduled to be heard.

Shortly before the hearing, however, the parties met again and agreed to the following Memorandum of Understanding and Letter of Intent on January 29, 1981:

Memorandum of Understanding

"Where a part-time flexible has performed letter carrier duties in an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months (excluding the duration of seasonal periods or seasonal routes defined in Article XLI, [Section] 3R of the National Agreement), the senior part-time flexible shall be converted to full-time carrier status.

"This criteria shall be applied to postal installations with 150 or more man years of employment.

"It is further understood that part-time flexibles converted to full-time under this criteria will have flexible reporting times, flexible non-scheduled days and flexible reporting locations within the installation depending upon operational requirements as established on the preceding Wednesday." (Emphasis added)

Letter of Intent

"This letter memorandum sets forth our mutual intent regarding the attached Memorandum of Understanding relating to maximization.

* * *

3. Conversions required pursuant to this Memorandum of Understanding shall be in addition to (but not duplicative of) conversions that may be required pursuant to existing provisions of the National [Agreement]... The criteria established by this Memorandum of Understanding are supplementary to, not in limitation or diminishment of, existing criteria in the National Agreement.

* * *

5. Employees converted to full-time positions pursuant to this Memorandum of Understanding may bid on assignments posted for bids by employees in the craft, and shall be full-time regular city letter carriers under the National Agreement.

* * *¹

(Emphasis added)

The Postal Service and APWU later, in the course of the 1981 negotiations, agreed to substantially the same Memorandum of Understanding and Letter of Intent. These documents differ from what has already been quoted only with respect to the Memorandum's first paragraph and the Letter's item number 5. Those provisions had to be adapted to the APWU craft situation and read as follows:

¹ Portions of the Letter of Intent are not relevant to the instant dispute and have been omitted.

Memorandum of Understanding

"Where a part-time flexible has performed duties within his craft and occupational group within an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time status." (Emphasis added)

Letter of Intent

"4. [Number 5 in the NALC Letter] Employees converted to full-time positions pursuant to this Memorandum of Understanding may bid on assignments posted for bids by employees in their craft, and shall be full-time regular employees under the National Agreement."

Apparently there was no mention in either of these Memorandum negotiations, Postal Service-NALC or Postal Service-APWU, as to whether the new full-time flexible employees would be counted as "full-time employees" in satisfying the 90% staffing requirement in Article VII, Section 3A. The Postal Service, from the very inception of the Memos, has considered full-time flexibles to be "full-time employees" for purposes of determining compliance with the 90% requirement. When the APWU learned of this, it filed a national level grievance in Step 4 on October 16, 1984. It appealed the matter to arbitration on April 23, 1985. NALC intervened and became a party to this case on March 16, 1989.

DISCUSSION AND FINDINGS

The question here is how to characterize part-time flexibles who have been converted to full-time status pursuant to the 1981 Memoranda. The Postal Service says they become, upon conversion, "full-time employees" for purposes of determining compliance with the 90% staffing requirement. The Unions disagree. Both sides believe their positions are supported by the language of Article VII, Section 3 and the Letters of Intent and by the bargaining history behind the Memoranda.

Post-Conversion Status of Full-Time Flexible

Article VII, Section 3 states that the Postal Service "shall staff" each of its larger facilities "with 90% full-time employees." That requirement apparently must be met at the end.

of each accounting period. If it is not met, if this figure falls below 90%, Management must convert a sufficient number of part-time employees to full-time status so that the "full-time" force will be no less than 90%. To this point at least, there is no dispute between the parties.

An example would be helpful to illustrate the problem. Assume a postal facility has 300 employees within the several bargaining units. There are 260 full-time regulars, 10 full-time flexibles, and 30 part-time people at the end of an accounting period. Assume that no conversion of any part-time employee under the Memoranda is then necessary. Under Article VII, Section 3A, this facility must have 270 "full-time employees" (i.e., 90% of 300). The Postal Service claims that full-time flexibles are "full-time employees" within the meaning of Section 3A, that this facility does in fact have 270 "full-time" people (i.e., 260 plus 10), and that therefore no conversion is required under Section 3A. The Unions assert that full-time flexibles are not "full-time employees" within the meaning of Section 3A and that Management in this example must convert 10 part-time people to "full-time" status.

The "regular work force", according to Article VII, Section 1A, consists of just "two categories of employees." There are "full-time" people who are assigned "regular" schedules. There are "part-time" people who are assigned "regular" or "flexible" schedules. Everyone in the several bargaining units must fall into one or the other category. The 1981 Memoranda did not create a new category. They simply expanded the "full-time" category by creating full-time employees with "flexible" schedules, thereafter known as full-time flexibles. Hence, notwithstanding the terms of the Memoranda, there are still just "two categories of employees."

What this means is that in administering the 90% staffing requirement, employees must be designated as either "full-time" or "part-time." No other possibilities exist. There is no reason to believe that any group of employees was to be placed in a special category in which they would be considered neither "full-time" nor "part-time." The Unions urge that full-time flexibles should not be counted as "full-time employees" for purposes of Article VII, Section 3A. Their position thus must be that full-time flexibles be counted as "part-time" people while the Postal Service insists they be counted as "full-time" people.

When the issue is stated in this manner, as it must, the

answer seems clear. A full-time flexible is, apart from scheduling and a few lesser matters², treated like a full-time regular and receives the benefits of a "full-time" employee. The full-time flexible bears a much closer resemblance to "full time" people than to "part-time" people. Prior to the Memoranda, the parties knew what the consequences of converting someone from part-time to full-time under Article VII had always been. They knew that this conversion meant one more "full-time" person and one less "part-time" person in making the necessary employee count for the 90% staffing requirement. That was true when the conversion was prompted by the Section 3A staffing requirement itself. That was also true when the conversion was prompted by Section 3C or 3D. Surely, that should be true as well for a conversion prompted by the Memoranda.³ Absent any discussion on this point in the Memoranda negotiations, the Postal Service had good reason to believe that the person converted to full-time flexible would become a "full-time employee" for purposes of the employee count under Section 3A.

The Memoranda state that when an employee is converted pursuant to their terms, the conversion would be to "full-time status." These words are perfectly clear. The emphasis on "status" supports the idea that one of the parties' main objects was the transition of the converted employee from "part-time" rights to "full-time" rights. This difference is very real. The Unions accepted the benefits which flow from "full-time status." They must likewise accept the burdens which flow from such "status." Where the parties wished to modify "full-time status" by providing "flexible" rather than "regular" schedules, they specifically said so. But nowhere in the Memoranda or the Letters of Intent did the parties say that full-time flexibles were not to be counted as "full-time employees" for purposes of the 90% staffing requirement.

² For example, full-time regulars who do not have a posted duty assignment can be treated by Management as unassigned regulars and compelled to accept vacant duty assignments for which no one has successfully bid. Full-time flexibles, even though they do not have a specified bid assignment, cannot be treated as unassigned regulars.

³ One can challenge this analogy on the ground that conversion under Section 3A, 3C and 3D resulted in a full-time regular while conversion under the Memoranda results in a full-time flexible. But, for the reasons expressed in this opinion, I do not regard this as a significant distinction.

The Letters of Intent state that the Memoranda "criteria" for conversion to full-time flexible "are supplementary to, not in limitation or diminishment of, existing criteria." The Memoranda simply introduced another means, beyond those already provided by Article VII, for transforming part-time people into "full-time" people. All of these "criteria", whatever the source document, describe the conditions which trigger a conversion. When the Memoranda "criteria" are met, one or more new "full-time" people come into being. At some later accounting period, these same "full-time" people affect the results achieved by the application of the Section 3A "criteria." But that would be no different than the effect the Section 3C or 3D "criteria" would always have had on the Section 3A "criteria." As "full-time" people are established, no matter what the conversion "criteria", they must necessarily reduce the need in the future for "full-time" conversion under the 90% requirement in Section 3A. My view of the Memoranda "criteria", accordingly, does not serve to "limit" or "diminish" the Section 3A "criteria."

I find that a part-time flexible properly converted to full-time flexible under the Memoranda is thereafter properly counted as a "full-time employee" for purposes of satisfying the 90% staffing requirement.

Conversions Required Simultaneously
By Memoranda and Article VII, Section 3A

The prior discussion addressed the status of the full-time flexible following a proper conversion. But that is not the only question raised by the Unions. They also argue that the Postal Service is acting incorrectly where conversions are required at the same time under both the Memoranda and under Article VII, Section 3A. They claim that Management in this situation is violating the following stricture in the Letters of Intent:

"....Conversions required pursuant to this Memorandum...shall be in addition to (but not duplicative of) conversions that may be required pursuant to existing provisions of the National Agreement..."
(Emphasis added)

The best way of explaining the problem may be through another example. Assume a postal installation has 300 bargaining unit employees, 270 of whom are "full-time" people. Management is then in compliance with the 90% staffing requirement. Assume that 5 of these "full-time" people retire before the end of the next accounting period and that no one else has been hired. Ordinarily, that would call for

Management to convert 5 employees from part-time to "full-time" in order to satisfy the 90% requirement. But assume further that the Memoranda, at the same time, demands the conversion of 1 part-time flexible to full-time flexible. The Postal Service's view evidently is that it can comply with the 90% requirement by converting 1 employee under the Memoranda and just 4 employees under Section 3A. The Unions disagree. They contend that such a response by Management would make the conversion under the Memoranda "duplicative of...conversions required..." by Section 3A and hence a violation of the Letters of Intent. They urge that Management must, in these circumstances, convert 5 employees under Section 3A and then convert 1 employee under the Memoranda.

What the parties contemplated is plainly shown by the quoted language in the Letters of Intent. They meant to protect the conversion rights already established in Section 3A, 3C and 3D and to make the conversion right established by the Memoranda something "in addition to..." what had already existed. A certain order of conversions was thereby created. Management first had to convert as many part-time people as necessary to comply with Sections 3A, 3C and 3D. Only then was Management expected to convert a part-time flexible who met the Memoranda "criteria." This latter conversion was intended to be "in addition to..." the other conversions.

To rule differently would make the Memoranda conversions "duplicative of..." the Section 3A conversion. That is, the part-time flexible who was moved to full-time flexible would simply be taking the place of some other part-time person who would otherwise have been entitled to full-time status under the 90% requirement. Hence, in the above example, Management would have to convert 6 rather than 5 part-time people. These findings are consistent with the underlying purpose of the Memoranda, namely, to help expand the complement of full-time employees beyond the 90% figure in Section 3A.

AWARD

A part-time flexible properly converted to full-time flexible under the 1981 Memoranda is thereafter properly counted as a "full-time employee" for purposes of satisfying the 90% staffing requirement under Article VII, Section 3A. To this extent, the grievance is denied.

When part-time employees are entitled to conversion to full-time status under both the Memoranda and Article VII,

Section 3A at the end of a given accounting period, the Postal Service must first convert pursuant to the 90% staffing requirement in Section 3A and thereafter convert pursuant to the Memoranda. To this extent, the grievance is granted.



Richard Mittenthal
Richard Mittenthal, Arbitrator