

SIX (6) MONTH TRIAL PERIOD

MAXIMIZATION

ARTICLE VII, SECTION 3 C# 02978

In the Matter of the Arbitration between	:	Case No. NC-E-9358
NATIONAL ASSOCIATION OF LETTER CARRIERS,	:	Toms River, New Jersey
AFL-CIO	:	
	:	
-and-	:	<u>OPINION AND AWARD</u>
UNITED POSTAL SERVICE	:	
	:	
	:	

APPEARANCES:

For the Union - James L. Kestell, Esq.
Denis F. Gordon, Esq.

For the USPS - Charles Loveless, Esq.
R. Andrew German, Esq.

BACKGROUND:

Pursuant to the provisions of the National Agreement, between the above-captioned Parties, having an effective date of July 21, 1975, the Undersigned was duly designated to serve as Arbitrator to hear and decide an issue which arose under said Agreement.

The hearing was begun in Washington, DC on April 18, 1978, and the second and concluding day of hearing was June 28, 1978. At the hearing, both Parties were represented by counsel, as indicated above, and they were given full opportunity to present testimony, other evidence and argument in support of their respective contentions. A verbatim transcript was made. By agreement, post-hearing briefs were submitted and they were received in timely fashion.

THE ISSUE:

At the opening of the hearing, the Parties each attempted to define the issue. Neither version was deemed acceptable by the other side. However, from the conflicting contentions raised in the arguments presented, the Undersigned believes that a general statement of the issue can be set forth as follows:

Whether the USPS violated Article VII, Section 3 of the National Agreement by failing and refusing to maximize full time positions at the Toms River, New Jersey Post Office? If so, what shall the appropriate remedy be?

PROVISION OF THE AGREEMENT IN ISSUE:

Article VII, Section 3, of the July 21, 1975 National Agreement reads as follows:

Section 3. Employee Complements. The Employer shall man 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.

STATEMENT OF THE CASE:

On the opening day of the hearing, the Union appeared to argue that, at Toms River, there were some fourteen part-time flexible employees at work and that the work load at that installation and the hours in which these flexees and 89 day casuals were employed to fulfill the carrier requirements at Toms River indicated that the Postmaster was not maximizing the number of full time employees by converting all of these fourteen flexee assignments to full-time regular carrier jobs.

The Employer responded by indicating that the Postmaster at Toms River was restricted in his ability to convert some or all of these flexee positions because he was required, under the provisions of Appendix A of the National Agreement, to make provision to employee, on a cross-craft basis, certain clerks who had been excessed. With this obligation paramount, the Postal Service argued the Postmaster had to wait until all the excessed clerks had been positioned, as required by Appendix A, or had once again returned to the clerk craft, before consideration could be given to converting any part-time carrier positions to full-time regular jobs.

The hearing was adjourned to enable the Parties to assess the position of these clerks as well as any other considerations in order to resolve the issue presented by the grievance. When the hearing resumed on June 28, 1978, apparently the members of the clerk's craft had either returned to clerk duties or had otherwise no longer presented the Postmaster with the same problem of cross-craft utilization which allegedly was present on the first hearing day. Just prior to the June 28th date, two new full time regular positions were created at Toms River. In addition, sometime between the first and second hearing date, six clerks were no longer employed as carriers and six of the original fourteen grievants, or part-time flexees at Toms River, had become regular carriers. These reversions to the clerks' craft or elimination of clerks from carrier slots apparently also took place in June of this year. One additional grievant had retired in the interim and another had been removed. Thus, only four of the original fourteen grievants remained without full-time regular carrier assignments.

The Union then argued that, despite the fact the majority of the original fourteen part-time employees, on whose behalf the grievance had been filed, were now full-time regular carriers, the grievance was still very much a viable one. In the interim, according to the Union, the statistical data on workload and hours it found would provide evidence that the Postmaster was still in violation of Section 3 of Article VII by his continued failure to maximize the number of full-time regular carrier positions at his Post Office.

OPINION OF THE ARBITRATOR:

Impartial Arbitrator Sylvester Garrett, in a Clerk Craft case, which he decided on January 26, 1976, Case No. AB-N-3744, et al., Taunton, Mass., had occasion to examine the purpose, intent, and appropriate application of Section 3 of Article VII. Both Parties in the instant case cited that Award and claimed that it provided support for the position which it advanced. The Undersigned is of the Opinion that, in major part, the disposition of this case can be determined by reference to the views expressed by Arbitrator Garrett in the earlier case.

He stated the following with regard to the appropriate application and administration of the Section under review:

The words "maximize" and "minimize" necessarily imply that a standard of practicability should govern in evaluating the relevant circumstances in any given postal installation to determine the extent to which maximization should be achieved. This in no way suggests, moreover, that the Postal Service is not ultimately responsible for maintaining the efficiency of its operations. The right and duty of the Service to maintain efficiency is delineated clearly in Article III of

of the National Agreement "subject to the provisions of this Agreement." Nothing in the second sentence of Article VII, Section 3 suggests that the Postal Service thereby is required to maximize the number of full-time employees in any given postal installation if the consequence is a significant increase in labor cost. It follows that the Postal Service is not required by this provision to convert part-time flexible employees to full-time status where this would produce demonstrable increased costs, such as in unavoidable increased idle time during scheduled tours of regular employees or in overtime pay.

To the Undersigned that statement clearly indicates that the Employer has the duty to maximize full-time positions, since the language of Section 3 states that he "shall" do so. However, the Employer may be permitted to avoid a total maximization of his full-time work force if such action could be justified by some "standard of practicability." Arbitrator Garrett went on to suggest one of the criteria of practicability could be that to maximize the full-time force would cause significant increased costs, increased idle time during scheduled tours, or have a detrimental impact upon the efficiency of the operation. During the course of the hearing in this case, the Service suggested that another basis for not converting certain part-time flexible positions to full-time status would be the adverse impact that such conversion would have upon management's flexibility in meeting its responsibility, recognized in the National Agreement, to "direct the workforce." The Undersigned is of the opinion that this additional consideration would also be encompassed within a "standard of practicability."

In this case, just as in the Taunton, Mass. Case, to which reference is made above, the Union appears to be asking the Arbitrator, "to determine, from a review of total work requirements in light of all relevant conditions, the optimum number of full-time regular... assignments which reasonably can be filled in the future..."^{1/}

In response to that request in the earlier case, Arbitrator Garrett opined that he would only be able to do so if the evidence presented clearly demonstrated a "flagrant violation of Article VII. Section 3 has been established, or where the evidence shows manifest failure to deal realistically with some specific, identifiable work assignment."^{2/} He found that the evidence presented in the case before him did not point the way in such a clear manner. He did find however, in the documentation provided by the Union, a clear inference that one or possibly more part-time flexees might be converted without impairing efficiency. He found that the Postmaster should have scheduled, at least on a temporary basis, additional full-time assignments when the Union presented a prima facie case for further maximization.

1/ AB-N-3744, et al., p. 13

2/ Ibid, p.13

After making such findings, Arbitrator Garrett returned the grievance to the parties for local settlement. He also directed that the Postmaster should seek to schedule at least one part-time flexible position on the basis of 8 hours within 10 per day on an experimental basis. After a six-month trial, if such an assignment proved not to impair efficiency, then the position was to be converted to a full-time regular position. The Postmaster was also directed to continue making such temporary assignments on the same basis until maximization to the extent required by Section 3 of Article VII was achieved.

Arbitrator Garrett did not find, in his case, that the data presented by the Union established, in the light of all relevant considerations, that the Postmaster had flagrantly overlooked his obligation to maximize full-time positions. The data before him only suggested that one position might be ripe for conversion. There was a continuing obligation and as conditions affecting the work force changed the Postmaster's ability to convert more positions without loss of efficiency might be increased.

In the instant case, although the data submitted by the Union did not establish, as the Union claimed, that some fifteen additional part-time flexible carrier positions could immediately be converted to full-time regular positions, the data regarding hours worked in the carrier craft by regulars, flexees and casuals through the period ending May 18, 1978, certainly created a strong inference that the Postmaster at Toms River could re-establish his present carrier work schedules and create at least four additional full-time assignments on a temporary basis with only a minimal, if any, impact upon efficiency or impairing required flexibility. The Award below will direct that the Postmaster take such action within thirty days after receipt of this Award. If those four temporary assignments, after a six-month trial period do not produce any adverse impact upon efficiency, the conversion of these positions to full-time regular jobs should be accomplished. Thereafter, in keeping with the continuing obligation imposed by Section 3 of Article VII, the Postmaster should, along with the Union at the local level, review the possibility of converting additional assignments to full-time in the carrier craft for six-month trial periods with a subsequent assessment of the impact of these assignments upon efficiency and the need for flexibility as indicated above.

The data presented by the Union did establish that, at this installation, an inordinate amount of the carrier craft work load is being carried at straight time and on overtime by part-time flexible employees and 89 day casuals. An alteration of the work force, in the carrier craft, to reflect the obligation to maximize the utilization of full-time regular employees should be accomplished through the implementation of the terms of the Award below.

AWARD

Within thirty days after receipt of this Award, the Postmaster at Toms River shall review with the Local Union a work schedule in the carrier craft which shall provide for the scheduling of four additional part-time flexible positions on the basis of eight hours within ten per day on the same five days each week. These additional assignments shall be for a six-month period. If, after a six-month trial period, it can be established that such scheduling has had an adverse impact upon the efficiency of the operation or has resulted in undue increased costs, then these assignments may be discontinued. If no significant inefficiencies or costs result from such scheduling, those four positions shall be converted to full-time regular positions. Thereafter, or sooner if circumstances warrant, the Postmaster shall meet again with the Local Union for the purpose of reviewing and implementing further scheduling of additional part-time flexible positions in the same manner with the end in view of meeting the obligation to maximize the number of full-time employees as contemplated in Section 3 of Article VII of the National Agreement.



Howard G. Gamser, Arbitrator

Washington, DC
October 12, 1978