C # 02006

USPS - NALC CONTRACTUAL GRIEVANCE PROCEEDINGS
CENTRAL REGION
ARBITRATION OPINION AND AWARD

In The Matter of Arbitration Between: THE UNITED STATES POSTAL SERVICE Hazel Park, Michigan Post Office -and- NATIONAL ASSOCIATION OF LETTER CARRIERS AFL-CIO Branch 3893	* * * * * * * * * *	Case No. C8N-4B-C 34114 Decision Issued February 11, 1983

APPEARANCES

FOR THE EMPLOYER

D. James Shipman	Manager Arbitration Services
Vern Bemus	Postmaster
Howard Byrne	Director, Employee and Labor Relations

FOR THE UNION

Fred W. Herman	Regional Administrative Assistant
Don Roll	Branch President
Louie Hill	Grievant

ISSUE: Article XLI Section 3 O -- Employee's demand for right to bid on routes of junior employees; claim that route was abolished.

Jonathan Dworkin, Regional Arbitrator
16828 Chagrin Boulevard
Shaker Heights, Ohio 44120

This dispute arose at the Hazel Park, Michigan Post Office. It involves interpretation and application of Article XLI, Section 3 O of the 1978-1981 National Agreement. That contractual provision establishes that senior letter carriers whose routes or other full-time duty assignments are abolished may be able to bid for and capture full-time assignments held by junior craft employees. The privilege of seniority created by Article XLI, Section 3 O is not self-executing. Local negotiations are required before it can become effective in any particular station. The contractual provision states in part:

> The following provision without modification shall be made a part of a local agreement when requested by a local branch of the NALC during the period of local implementation; provided, however, that the local branch may on a one-time basis during the life of this Agreement elect to delete the provision from its local agreement:
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> "When a letter carrier route or full-time duty assignment other than the letter carrier route(s) or full-time duty assignment(s) of the junior employee(s), is abolished at a delivery unit as a result of, but not limited to, route adjustments, highway, housing projects, all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time duty assignment(s) was abolished shall be posted for bid in accordance with the posting procedures in this Article."

On November 14, 1978, a local agreement was negotiated between Management of the Hazel Park Station and Branch 3893 of the

National Association of Letter Carriers. Item 21 of that agreement contains the language required for implementation of the Article XLI, Section 3 O seniority benefit.

On July 30, 1981, a grievance was initiated on behalf of a Hazel Park Letter Carrier. The grievance claimed that a recent adjustment had effectively abolished the Employee's route, and it demanded that all routes held by junior letter carriers be posted for bid. Management resisted the Union's claim. It conceded that the adjustment significantly changed the Employee's assignment, but it denied that the route had been abolished. In Management's view, since Grievant's route was not abolished, Article XLI, Section 3 O did not apply and the Employer was not obligated to introduce the kind of disruption that posting junior employees' assignments would entail.

The dispute remained unresolved in the preliminary Steps of the grievance procedure. The matter was appealed to to Regional Arbitration, and a hearing was convened on June 18, 1982 in Royal Oak, Michigan. At the outset of the hearing the Representatives of the parties stipulated that the appeal to arbitration was procedurally correct and that the Arbitrator was authorized to receive evidence and issue an award on the merits of the controversy.

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Witnesses in the arbitration described the Hazel Park Post Office as a small suburban facility which operates fifteen regular routes and one auxiliary route. Eighteen full-time carriers and

four part-time flexible carriers comprise the craft at the station. The seniority of the full-time carriers ranges from three years to thirty years. Grievant's twenty-three years of service places him in the tenth position on the craft seniority roster. Eight employees, each of whom has a full-time route assignment, are junior to Grievant.

Prior to the occurrence leading to this controversy, Grievant held Route 3016 -- an assignment he secured through the contractual bidding procedure. His area of deliveries encompassed five streets -- Morehouse, Annabelle, Woodward Heights, Hoover and Hughes. The street portion of Grievant's daily schedule contained four hundred sixty-three possible delivery stops. In addition, the Employee's responsibilities included a number of relay, parcel post and collection duties. The attached Exhibit A pictures Grievant's route as it formerly existed.

On July 25, 1981, Grievant's route underwent a very substantial adjustment. Two streets, Hoover and Hughes were removed. The result was that one hundred twenty-two potential stops were eliminated. Six new delivery segments, consisting of two hundred sixty-one stops were added to the route, increasing the possible deliveries from four hundred sixty-three to six hundred two. The added delivery burden was balanced by the removal of some of Grievant's relay, parcel post and collection duties. Exhibit B is a drawing of Grievant's route after it was altered.

Two days before the adjustment was scheduled to become effective, Management posted the following notice:

Effective Sat., July 25, 1981:

Rts. #10 and #16 will exchange rt. numbers. #10 will consist of old #10 plus Hi Annabelle and Morehouse and 9½ and the collections. Reporting time will be 9:00 AM

#16 - Aux will be Hoover and Hughes plus the PP and relays for Rts. 6 - 7 - 9 - 10 - 11. The reporting time will vary.

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As soon as Grievant saw the posted notice, he demanded the right to bid for routes held by junior employees. He insisted that his route had not undergone a normal adjustment. During his twenty years of service he had observed numerous adjustments. They usually resulted in adding or deducting a few stops in a route. Occasionally they entailed shifting an entire street. But neither Grievant nor the Union had seen adjustments which so completely altered a route. The Employee's new assignment was wholly different from the old. Even the identifying number was changed. In Grievant's view, the route that he had obtained by by bidding was no longer recognizable. It had been extinguished -- done away with -- abolished. The Employee insisted that Management's action triggered Article XLI, Section 3 O, and that he had a contractually guaranteed privilege to bid for another assignment. He believed that the Postal Service's refusal to allow him to bid for another assignment, constituted a unilateral reassignment of a senior employee and an unequivocal violation of contractual language.

In presenting its position, the Union reiterated Grievant's allegation. Its position is that this is a factual dispute which centers upon the meaning of the word, "abolish." The Union concedes that if the facts demonstrate that Hazel Park Supervision did no more than adjust the Employee's route, then it would be proper to deny the grievance. But, the Union contends that the facts do not indicate that an adjustment occurred. It is argued that Management actually placed the substance of Route 3016 into a new auxiliary assignment and removed Grievant to what, in substance, was actually Route 3010. The Union perceives that action as constituting an exchange of routes, not an adjustment. The Union admits that the Postal Service had the prerogative to abolish Grievant's route, but it maintains that when that occurred, the Employer was contractually required to open for bid all of the routes held by junior employees.

Management does not deny that the scope of the changes in Grievant's assignment was unusual. It insists, however, that the route was not abolished as that term is comprehended by Article XLI, Section 3 O of the Agreement. In his opening statement, the Representative of the Postal Service clearly set forth the Employer's position: "What happened was that we changed Grievant's route. We changed it substantially. We took away a chunk of his old route and added a substantial portion of another route to his. But we didn't abolish it. It is within our recognized prerogatives to change routes. We do it all the time." In essence, the Postal

Service contends that the authority to adjust routes -- even substantially -- is an established aspect of Management's Rights.

The Employer regards the benefit established by Article XLI, Section 3 O as having specifically defined scope and purpose. Sometimes highways, housing developments, eminent domain projects, and the like make such extensive inroads upon a delivery area as to require that a route be cancelled. When a route becomes diminished in that way, remaining portions may be absorbed into other routes or they may become parts of auxiliary routes. When that happens, it is conceivable that a senior employee could be displaced from a permanent assignment. If such employee did not have the right to require Management to open another permanent assignment for him to bid into, he could be assigned anywhere at any time according to a supervisor's discretion. The Postal Service argues that Article XLI, Section 3 O is designed only to restrict Management's discretion in those kinds of circumstances, allowing a senior employee the opportunity to "bump" into a permanent assignment held by a person with less seniority.

Management concludes that Article XLI, Section 3 O has no application to this dispute. Grievant's route was not done away with. The Employee was not displaced. He was not placed at the mercy of Supervision with respect to daily assignments. His route was drastically changed, but it is argued that neither dictionary definitions nor contractual language support the view that "drastically changed" is equivalent to "abolished." The Postal Service

points out that if the negotiators for the Letter Carriers wanted to provide bidding rights for employees whose routes were significantly altered through adjustments, they could and should have accomplished that end at the bargaining table, not in arbitration.

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The Postal Service buttressed its argument by highlighting contractual provisions negotiated by other crafts. Particular attention was directed to Article XXVII, Section 1 F of the National Agreement which governs the clerk craft. That Section defines "abolishment" as follows:

> Abolishment. Abolishment is a management decision to reduce the number of occupied duty assignment(s) in an established section and/or installation.

Management reasons that the parties contemplated the same definition when they drafted Article XLI, Section 3 O. That theory would lead to a finding that Grievant's route was not abolished because there was no reduction in occupied positions. His assignment remained permanent and full-time.

The Arbitrator finds that the Postal Service's argument in this respect is inconsistent with the contention that if the letter carriers had intended to include drastically changed routes within the concept of abolished routes, they should have done so at the bargaining table. The same argument could be turned around. If

the Postal Service had wanted to include the same definition of "abolishment" that it negotiated with the clerks, that was a proper subject for bargaining. More to the point, it is to be recognized that the portions of the Agreement which pertain to clerks concerns an entirely different craft represented by an entirely different Union. The collective bargaining provisions applicable to clerks was negotiated with the American Postal Workers Union. The letter carriers portion of the Agreement was negotiated with the National Association of Letter Carriers. Portions of the Agreement which pertain exclusively to one craft or another are not interchangeable. They need not even be consistent. Although they are included in a single written document, they are separate and distinct collective bargaining agreements. In the Arbitrator's opinion, Article XLI, Section 3 O must stand alone as the governing provision of this dispute.

The connection between an employee's seniority and the right to bid for a preferred vacancy is clearly established by Article XLI of the Agreement. Equally clear is the fact that once an employee has been designated the successful bidder and obtains a route he has no guarantee that the route will remain unchanged year after year. The Postal Service has the authority to adjust routes to promote efficiency. That managerial authority supersedes any claim of an employee to a fixed immutable assignment.

Management's right in that regard is not questioned by the Union in this case. It is admitted that the Postal Service had the

prerogative to adjust Grievant's route. However, the Union claims that what occurred was not an adjustment, but an abolishment.

In the Arbitrator's opinion, the Union correctly argues that the issue in this dispute is a factual one. It is necessary that the individual circumstances of the alteration of Grievant's route be carefully evaluated, giving full recognition to both the Employer's authority to adjust routes and the Employee's right to bid for a new assignment if his route was abolished rather than adjusted. The kind of analysis which will lead to the award means that this controversy will be resolved on its own factual content. The Arbitrator is compelled to point out that such an award would have little precedent value and that, in all probability, each case of this kind will have to turn on its own unique facts.

A review of the facts of this case strongly indicates that the Postal Service's characterization of the change in Grievant's route as an "adjustment" is more an exercise in semantic gymnastics than adherence to reality. The attached Exhibits A and B tell most of the story. Grievant's route was not simply adjusted, it was substantively extinguished. Most of it was transferred to an auxiliary route. Grievant retained but two short streets of the assignment he had successfully bid for. What had been, for the most part, Route 3010, was transferred to Grievant's route. An actual reassignment occurred. The Employee became the carrier of a route he had not bid for and he was divested of the route he had obtained through the bidding procedure. Supervision's posted memorandum

stated as much. It notified the affected employees that Grievant's route would now consist of "old #10" plus a few portions of Grievant's former route. Supervision went further. Presumably to retain consistency, it identified Grievant's new assignment as Route No. 3010. The Employee would no longer carry 3016 which was turned into an auxiliary route. The facts reveal that the Postal Service actually adjusted Route 3010 and then transferred Grievant to that adjusted assignment. Grievant's old route was extinguished and then reconstructed into an auxiliary route. In the Arbitrator's opinion, the Employer's action constituted abolishment of Grievant's old route, and the Article XLI, Section 3 O required the posting of all routes held by employees junior to Grievant.

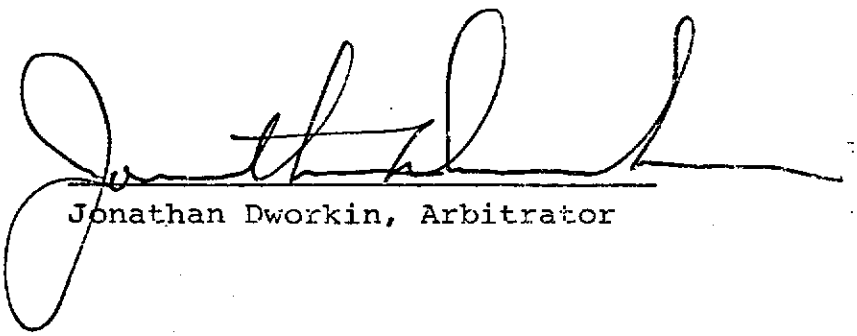
In its final argument, the Postal Service contended, with unquestionable logic, that to sustain the grievance would create an unreasonable, unnecessarily costly, disruptive burden that would be grossly disproportionate to any benefit that the Employee would receive. That reasoning is sound. Sustaining this grievance will cause the potential displacement of eight employees, most of whom have carried their particular routes for a number of years. Presumably, those employees have become familiar with their assignments and are able to perform them expeditiously, with the best service to customers and at the least cost to the Postal Service. The award in this case will open those routes to be seized by senior employees. Conceivably some if not all of the small work force at Hazel Park will have to learn new routes. A potentially enor-

mous disturbance will come about to accommodate the wishes of one dissatisfied employee. However, the Arbitrator is not entitled to weigh the results of ordering compliance with the Agreement against the benefits of ignoring the Agreement. It is always more expeditious for management to retain full control of its business operation. Whenever collective bargaining intervenes, inconvenience, imperfections, and even costly awkward impediments to production often result. But it is the obligation of an arbitrator to apply the provisions of a collective bargaining agreement even in the face of such potential loss.

AWARD

The grievance is sustained.

Decision Issued:
February 11, 1983



Jonathan Dworkin, Arbitrator

EXHIBIT A

FORMER ROUTE

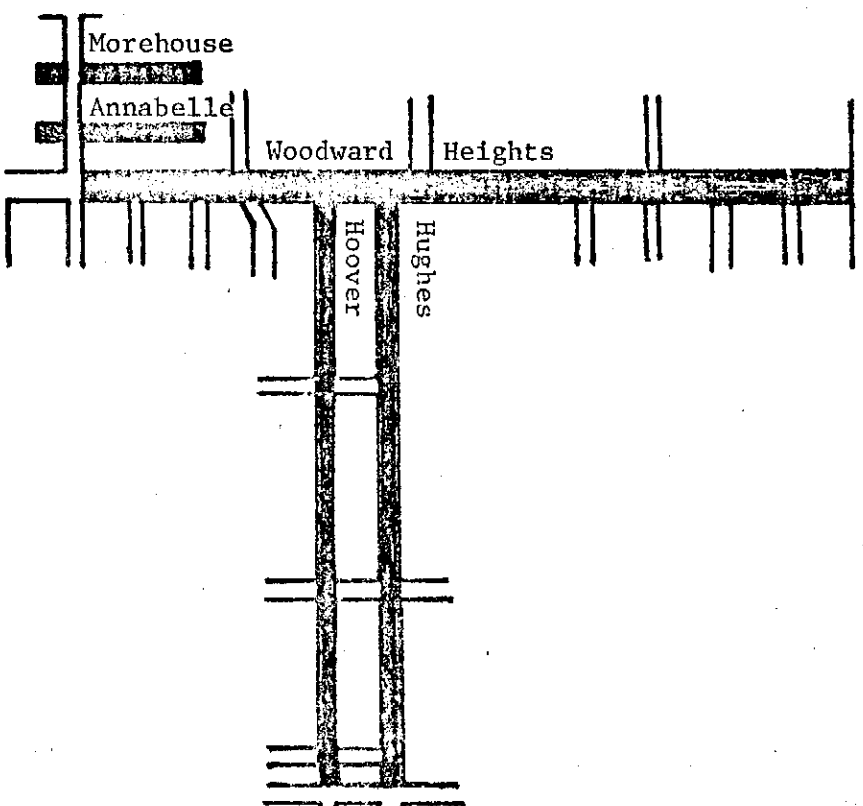


EXHIBIT B

CURRENT ROUTE