

C-26693

**REGULAR ARBITRATION**

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**In the Matter of the Arbitration**

**between**

**UNITED STATES POSTAL SERVICE**

**and**

**NATIONAL ASSOCIATION OF LETTER  
CARRIERS, AFL-CIO**

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**Grievant: Class Action**

**Post Office: Lancaster, California**

**USPS Case No: F01N-4F-C06017920-**

**NALC Case No: F05079**

**BEFORE: Donald E. Olson, Jr., Arbitrator**

**For the U.S. Postal Service: Wayne Marshall**

**For the NALC: Manuel L. Peralta, Jr.**

**Place of Hearing: Lancaster, CA**

**Date of Hearing: September 7, 2006**

**AWARD: The grievance is arbitrable. Further, the grievance is sustained.**

**Date of Award: September 23, 2006**

**PANEL: Pacific Area**



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**Donald E. Olson, Jr.  
Arbitrator**

**RECEIVED**

**OCT 16 2006**

**VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS**

## OPINION OF THE ARBITRATOR

### PROCEDURAL MATTERS

This proceeding was conducted in accordance with the provisions set forth in Article 15 of the parties' 2001-2006 National Agreement. A hearing was held before the undersigned on Thursday, September 7, 2006, in the postal facility located at 1008 W. Avenue J2, Lancaster, California. The case numbers assigned this dispute were **F01N-4F-C06017920** and **F05079**. The hearing commenced at 9:30 a.m., and concluded later in the afternoon.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to make opening statements, to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. There was a challenge to the substantive arbitrability of the dispute. The parties submitted the matter on the basis of evidence presented at the hearing and oral closing arguments, as well as arbitration case citations submitted in support of the parties respective positions.

Mr. Wayne Marshall, Labor Relations Specialist, represented the United States Postal Service, hereinafter

referred to as "the Employer." Mr. Manuel L. Peralta Jr., Regional Administrative Assistant, represented the National Association of Letter Carriers, AFL-CIO, hereinafter referred to as "the Union." The parties introduced two (2) Joint Exhibits, both of which were received and made a part of the record. The Union introduced four (4) Exhibits, all of which were received and made a part of the record. The Union made a request that the arbitrator retain jurisdiction in this matter for a reasonable time after issuance of this opinion and award, if the grievance is sustained. The Employer made no objection to this request. The parties requested an opportunity to submit additional case citations related to the issue of arbitrability. The arbitrator received the Union's citations on September 14, 2006, and the Employer's citations on September 18, 2006, at which time the hearing record was closed. The arbitrator promised to render a written opinion and award within thirty (30) calendar days after the hearing was closed.

#### **ISSUE(S)**

The issue(s) to be determined are:

Is the grievance arbitrable? If so, did management inadequately staff the Lancaster Post Office in violation of the National Agreement, which incorporates postal handbooks and manuals? If so, what is the appropriate remedy?

## **RELEVANT PROVISIONS OF THE 2001-2006 NATIONAL AGREEMENT**

### **ARTICLE 1 UNION RECOGNITION**

#### **Section 1. Union**

The Employer recognizes the National Association of Letter Carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level - City Letter Carriers.

#### **Section 2. Exclusions**

The employee group set forth in Section 1 above does not include, and this Agreement does not apply to:

1. Managerial and supervisory personnel;
2. Maintenance Employees;

#### **Section 6. Performance of Bargaining Unit Work**

A. Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

1. in an emergency;

### **ARTICLE 3 MANAGEMENT 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;

## **ARTICLE 5**

### **PROHIBITION OF UNILATERAL ACTION**

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

## **ARTICLE 8**

### **HOURS OF WORK**

#### **Section 1. Work Week**

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars.

#### **Section 2. Work Schedules**

A. The employee's service week shall be a calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday.

B. The employee's service day is the calendar day on which the majority of work is scheduled. Where the work schedule is distributed evenly over two calendar day, the service day is the calendar day on which such work schedule begins.

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hour, except as provided in Section 1 of this Article. As far as practicable the five days shall be consecutive days

within the service week.

## **ARTICLE 11 HOLIDAYS**

### **Section 6. Holiday Schedule**

A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.

B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so.

C. An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based on an extreme emergency situation and is excused by the Employer.

D. Qualified transitional employees will be scheduled for work on a holiday or designated holiday after all full-time volunteers are scheduled to work on their holiday or designated holiday. They will be scheduled, to the extent possible, prior to any full-time volunteers or non-volunteers being scheduled to work a nonscheduled day or any full-time non-volunteers being required to work their holiday or designated holiday. If the parties have locally negotiated a pecking order that would schedule full-time volunteers on a non-scheduled day, the Local Memorandum of Understanding will apply.

## **ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE**

## **Section 4.Arbitration**

### **A. General Provisions**

6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. . . .

## **ARTICLE 17 REPRESENTATION**

### **Section 3. Rights of Stewards**

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.

## **ARTICLE 19 HANDBOOKS AND MANUALS**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

## **MEMORANDUM OF UNDERSTANDING**

### **Re: Article 8**

Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent

of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that bona fide operations requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists to protect the interest of those employees who do not want to work overtime, and the interests of those who seek to work limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties to agreement.

#### **RELEVANT PROVISIONS OF THE EL-312**

##### **211 Recruitment Strategies**

Recruitment is the development and maintenance of sufficient human resources. . . .

###### **211.1 Forecasting**

The installation head is responsible for forecasting the recruitment requirements in the installation in sufficient time to assure that there are qualified persons available for appointment, in so doing, consideration must be given to the:

- a. Number of anticipated vacancies.
- h. organizational and/or operational change.
- i. Projected loss of current employees.

###### **232.2 Management Responsibility for Filling Vacancies**

Forecasting short-term and long-term recruitment requirements is one of management's most important responsibilities. Within budgetary restrictions, a determination must be made as to which vacancies are operationally essential. Adequate lead time

must be provided for internal job postings and for external recruitment when internal sources do not identify a sufficient number of eligible, qualified applicants.

#### **BACKGROUND**

This class action grievance arose at the Main office of the Lancaster, California Post Office on or about December 1, 2005. It was at this time that the Union alleged management at that postal facility violated several provisions of the 2001-2006 National Agreement by failing to adequately staff the installation, which in turn caused virtually all letter carriers at that facility regardless of their desire to work overtime or not, to be mandated to work overtime daily for the greater part of 2005. A Formal Step A meeting was held on December 2, 2005, to discuss the merits of the dispute. At the conclusion of that meeting the Employer issued its written decision denying the grievance. At this stage of the grievance procedure, the Employer contended that Article 3 of the National Agreement clearly gave management the right to hire and to determine the personnel by which it conducted its operations. Thereafter, the Union appealed the dispute to the Step B Dispute Resolution Team, which was received by that body on December 9, 2005. The Union claimed in its appeal that the Main Office of the Lancaster Post Office was understaffed, and that because of this fact the staffing

situation had an adverse effect on the letter carriers, in that they were continually required to work in excess of 12 hours per day and sixty (60) hours in a week. Moreover, letter carriers not on the ODL were repeatedly required to work overtime not only on their own assignments, but also off their assignments, as well as on their non-scheduled days. Further, the Union alleged that Article 17 was continually violated, and annual leave was often canceled in violation of the parties' LMOU. In addition, the Union argued that carriers were constantly forced to work their holiday schedules. As a remedy for this claimed violation(s) of the National Agreement, the Union requested that local management comply with its obligations under the EL-312, the M-39, and the ELM. Furthermore, the Union requested that local management hire an additional eighteen (18) career city letter carriers. Moreover, the Union sought a cease and desist order pertaining to the claimed violations of the National Agreement, and cited provisions of the EL-312, the M-39, and the ELM.

The Step B Dispute Resolution Team met thereafter, and rendered its original written decision on January 19, 2006, and a subsequent modified decision on February 8, 2006. The Dispute Resolution Team was unable to resolve the grievance, which resulted in an impasse. It was at this stage of the

grievance procedure that the Employer's Step B representative claimed the grievance was not substantively arbitrable, since the Union was only grieving the effect management's decisions had on employee's contractual rights pursuant to regulations not related or indirectly related to wages, hours or working condition. As such, the Employer's Step B representative contended there was no violation of Article 19 of the National Agreement. Moreover, the Employer maintained even if the grievance was arbitrable, the Union has failed to demonstrate a violation of the National Agreement, since Article 3 of that agreement gives the Employer the exclusive right to manage its operations, including the assignment of its personnel.

Likewise, the Employer claimed the Union had failed to prove a violation of the National Agreement as it pertains to staffing levels at the Lancaster Post Office. On the other hand, the Union's Step B representative reiterated the same arguments set forth by its Formal A representative. After the Step B impasse decision had been rendered, the Union appealed this dispute to arbitration.

#### **DISCUSSION**

This arbitrator has carefully reviewed the entire grievance file, pertinent testimony, and the parties closing arguments, as well as cited arbitration decisions furnished by the respective parties.

As a threshold matter, this arbitrator will address the arbitrability issue. This arbitrator notes that Article 15, Section 1 of the National Agreement provides that a grievance shall include, but is not limited to, the complaint of an employee or the Union which involves the interpretation, application of, or compliance with the provisions of the that Agreement, or any local Memorandum of Understanding.

In addition, it has long been held by the courts of this country that national labor policy favors arbitration. Moreover, in *United Steelworkers of America v. Warrior and Gulf Navigation Co*, 363 U.S. 574 (1960) involving a similarly broad arbitration clause as found in the 2001-2006 National Agreement, the Court held, in part:

An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

The Court in that case made it abundantly clear that a decision maker must rely on "only the most forceful evidence of a purpose to exclude a claim from arbitration."

Clearly, in the opinion of this arbitrator the rights claimed by the Employer under the management rights clause, pertaining to personnel and staffing levels at the Lancaster Post Office cannot reasonably obviate the Union's challenge

under Article 15 of the grievance procedure. In the final analysis, the issue surrounding compliance by the Employer with the collective bargaining agreement is a legitimate subject suitable for determination by this arbitrator.

Hence, this arbitrator concludes the grievance is arbitrable.

Thus, did management at the Lancaster Post Office inadequately staff that facility in violation of the National Agreement? Clearly, Article 3 of the National Agreement grants the Employer the exclusive right, subject to the provisions of the National Agreement, and consistent with applicable regulations, to direct employees of the Employer in the performance of official duties, to hire, assign, and retain employees, and to maintain the efficiency of the operations entrusted to it. However, these rights are tempered by other provisions of the National Agreement, specifically, Article 19, which mandates that all handbooks, manuals, and published regulations of the Employer, that directly relate to wages, hours, or working conditions as they apply to employees covered by that Agreement, shall continue in effect for the term of the Agreement, unless appropriate changes are made. (Emphasis supplied.) This arbitrator does not find Article 19 to be ambiguous, as to its intent.

Unquestionably, the language of Article 19 is straight forward.

The Employer has contended in this dispute that there is no substantive basis for this arbitrator to render a determination on an issue that is clearly outside the scope of his authority. In making that claim, the Employer seems to rely upon a conclusion reached by Arbitrator Mittenthal, dealing with Article 19 challenges by a union. In that case, according to the Employer, Arbitrator Mittenthal determined that not all Employer regulations are subject to challenge through Article 19, unless they directly relate to wages, hours, or working conditions, or are regulations that are not "fair, reasonable, and equitable." This arbitrator supports Arbitrator Mittenthal's rationale and conclusions reached in that case.

Nonetheless, this arbitrator is of the opinion that when the Employer knowingly condones understaffing at any of its facilities, this type of action has a direct impact upon the employees hours, and working conditions. (Emphasis supplied.) Moreover, this type of action by the Employer is contrary to its express obligations set forth in Handbook EL-312, which mandate that it is the installation heads responsibility to forecast recruitment of sufficient personnel to assure that there are qualified individuals available, as it pertains to

vacancies, if any. In the instant case, the OIC of the Lancaster Post Office on December 2, 2005, admitted to the Union that during the prior 6 month period staffing was short at that facility. In fact, the evidence of record supports that admission. For one thing, in September of 2004, there were 119 city letter carriers and four casual employees working at the Lancaster Post Office. A year later in September 2005, there were only 107 city carriers, and three casuals employed at that facility. All five (5) of those employees were classified as letter carriers, but performed no carrier duties whatsoever. As a matter of fact, the majority of those five employees were assigned duties falling within the jurisdiction of the APWU, and in some cases were working at other Employer postal installations in Lancaster, California. Meanwhile, during this same period the population of the city of Lancaster was growing at a significant rate.

Frankly, it is obvious to this arbitrator that the Main Office of the Lancaster Post Office was knowingly understaffed, which in turn necessitated the use of employees to work long hours daily, and, of course, beyond the standard eight (8) hour workday or forty (40) hour workweek, which is contrary to the express terms of MOU pertaining to Article 8. The evidence supports a finding that there was excessive amounts of overtime being assigned to both employees desiring

to work overtime, and to those who had no inclination to work any overtime. This condition covered an extended period of time. During this same period a number of grievances were filed, and later processed with the Employer making payment for violations of the National Agreement. However, regardless of the causes for inadequate staffing at the Lancaster Post Office, be it the fault of the Installation Head or the District, obviously the increased use of overtime to compensate for this understaffing situation in the carrier craft, was clearly uncontested or unrebutted by the Employer. This clear violation of overtime limitations had a detrimental effect upon the employees morale, as well as an impact on their domestic relationships with their families.

This fact notwithstanding, this arbitrator is of the opinion that any type of intervention by this arbitrator or other arbitrator's to direct the Employer in its hiring or staffing of personnel, or in the determination of workplace complements associated with the carrier craft, would be inappropriate, and outside the authority granted to this arbitrator by the 2001-2006 National Agreement. In brief, the remedy sought by the Union, which includes a request for this arbitrator to order the Employer to hire eighteen (18) career city letter carriers is beyond the power and authority granted to this arbitrator under the provisions set forth in Article

15, Section 4.A.6 of the parties' National Agreement.

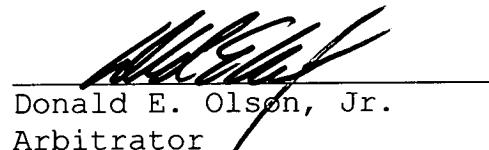
Nonetheless, this arbitrator has the authority and will direct the Employer (the District staff) to conduct a thorough review and study to evaluate the staffing and compliment requirements for letter carriers at the Main Office of the Lancaster Post Office, commencing on October 16, 2006, and concluding no later than November 17, 2006. Once this evaluation has been concluded the Employer is directed to share the results of this staffing review and study evaluation with the Union. In the event, specific remedial measures are found to be necessary, the Employer shall immediately implement same to assure the Main Lancaster Post Office is fully staffed in the carrier craft. Furthermore, the arbitrator will retain jurisdiction in this matter pending submission of the evaluation and proposed corrective measures involving excessive overtime being assigned to employee's in the letter carrier craft at that facility.

Thus, based upon the evidentiary record, pertinent testimony, and the parties' closing arguments, this arbitrator concludes management at the Lancaster Post Office inadequately staffed that facility in violation of the National Agreement, as well as pertinent postal regulations.

**AWARD**

The grievance is arbitrable. Moreover, the grievance is sustained. The Employer is directed to conduct a review of letter carrier staffing at the Main Lancaster Post Office, and to address problems of increased involuntary overtime work at that facility. This review will commence on October 16, 2006, and conclude no later than November 17, 2006. Furthermore, the Employer is directed to share its review with the Union. The arbitrator will retain jurisdiction of this dispute pending submission by the Employer of its review to the Union.

Dated this 23<sup>rd</sup> day of September 2006.  
Tacoma, Washington

  
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Donald E. Olson, Jr.  
Arbitrator