

5244 (CIC-4E-C)

IN THE MATTER OF ARBITRATION BETWEEN)

OPINION AND AWARD)

American Postal Workers Union,)
AFL-CIO)

C 142

-and-)

Case No. CIC-4E-C 5244)
(Grievance of D. Persico))

U. S. Postal Service)
Youngstown, Ohio Area Local)

The hearing in the above-matter was held on June 9, 1982 before Bernard Dobranski, designated as arbitrator in accordance with the procedures set forth in the Collective Bargaining Agreement.

Appearances: Wayne Bertram
For the Union

Michael Jordan
For the Postal Service

Full opportunity to present evidence and argument was afforded the parties. The parties chose not to file post-hearing briefs.

ISSUE

The issue is whether the Postal Service violated Article 11 of the national agreement and Article VI, Holiday Work, of the local memorandum when the grievant was mandated to work overtime on February 15, 1982.

RELEVANT PROVISION OF THE LOCAL MEMORANDUM

ARTICLE VI HOLIDAY WORK Section 1

The Employer will determine the number and categories of employees needed for holiday work and a Holiday schedule shall be posted as of the Wednesday preceding the service week in which the Holiday falls. Further no recourse to the Article on overtime is to be utilized in any way in this Article.

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Relevant Provision of the Local Memorandum (cont.).

Section 2

The employer shall not use "Blanket" coverage with the intent of releasing employees as the mail volume warrants.

Section 3

- A. A "Holiday Volunteer" list shall be posted for each Holiday for those employees wishing to volunteer to work each Holiday.
- B. The "Holiday Volunteer" list shall be posted one week prior to the Monday preceding the posting of the Holiday schedule.

Section 4

If the Holiday Volunteer list does not produce a sufficient number of employees to work the Holiday, then Holiday scheduling shall be in the following order:

1. All casuals and Part Time Flexibles to the maximum extent, even if overtime is required.
2. Full time regular employees, by seniority, who have volunteered to work on their Holiday.
3. Full time regular employees, by seniority, who have volunteered to work on their regularly scheduled off-day where that day is the Holiday, or a designated Holiday for some other employee.
4. Full time regulars, by juniority, who have not volunteered to work their Holiday.
5. Full time regulars, by juniority, who have not volunteered to work their regularly scheduled off-day.

Section 5

The above shall also apply to "designated" Holiday scheduling.

BACKGROUND FACTS

The grievant, Debra Persico, was assigned to work Tour I in the Youngstown Post Office. On February 15, the grievant's designated holiday, she was mandated and scheduled to work. Another employee, K. Plant, whose designated holiday was February 13 and for whom February 15 was a non-scheduled day, was never asked by management to work on February 15. As a result, Persico filed the instant grievance. The grievance was processed through the various steps of the grievance procedure and is now before the arbitrator for resolution. (Joint Exhibit 2).

The parties agreed to the following stipulation at the hearing: Monday, February 15, was employee K. Plant's non-scheduled day and

Plant did not sign Joint Exhibit 4, the Holiday Volunteer List.¹ Before the negotiation of the 1981 local memorandum, the practice was to canvass the employees to work holidays. Persico was junior to Plant but both employees worked the same bid assignment. Monday, February 15, was the grievant's designated holiday and she was mandated to work that day pursuant to Article VI, Section B(4) of the local memorandum.

At the hearing, employees Plant and McCracken testified for the Union and Director of Mail Processing Wachak testified for the Postal Service.

Plant testified that the policy at the Youngstown Post Office before February 15 was for management to canvass employees to see if they wished to work on their non-scheduled day. After that, management would post the volunteer list for the designated holiday. However, it would still canvass employees to see if they wished to work on their non-scheduled days which were designated holidays for other employees. According to Plant, this canvassing procedure was followed for Veterans Day (even after the schedule was posted), Thanksgiving, Christmas and New Year's, although Plant's non-scheduled days were not involved in the latter three holidays. Moreover, an employee was canvassed to work on February 13, which was the employee's non-scheduled day and Plant's designated holiday.

¹ Joint Exhibit 4 contained the following heading:

Tour I
Holiday Volunteer List
Monday, Feb. 15th or
Designated Holiday

Plant also stated that she was not asked to work on February 15. However, she wished to work that day and would have done so if she had been asked. She did not sign the Holiday Volunteer list for that day because the list was only for employees who volunteered to work their designated holiday and not for employees like Plant who wished to work on their non-scheduled days. Management would come and ask you if you wished to work on your non-scheduled day and it was not necessary to sign the volunteer list.

Wachak testified that he was involved in the local negotiations that led to Article VI. It was included because the practice of canvassing did not always work -- employees would be missed or were not at home when telephoned. After the schedule was posted, however, some employees would claim they had wished to work. To avoid these problems, the parties during the 1980 negotiations agreed to post a list of those who wanted to work on a holiday, including non-scheduled employees. The Holiday Volunteer list used in this case is the kind of list contemplated in the 1980 negotiations.

In response to a Union question as to why Article VI, Section 4 of the local memorandum provided for a system of volunteering after the holiday list was exhausted, Wachak replied that this procedure was adopted because employees sometimes changed their minds. He also stated that he did not know if management canvassed employees to work on non-scheduled days after the local memorandum was signed.

On rebuttal, the Union presented the testimony of McCracken who was also involved in local negotiations. He explained that the requirement to post a notice was a Union proposal. The reason for it was to cure the problem of employees who wished to work being

reached through canvassing. The Holiday Volunteer list was designed only for employees who wished to work on their holidays or designated holidays and not designed for people who wished to work on their non-scheduled day, even if that day was another employee's holiday or designated holiday. The negotiated procedure was that once the holiday list was exhausted and employees were still needed, then the order described in Article VI, Section 4 would be followed.

It is upon these facts that the case now comes before the arbitrator.

POSITIONS OF THE PARTIES

Union Position

The Union contends that the local memorandum requires an order to be followed in selecting employees to work on holidays. That order requires that before an employee is mandated to work a holiday, volunteers, including employees who wish to work on their regularly non-scheduled days, must first be solicited or canvassed. The Postal Service interpretation urged here -- that not only employees who want to work their designated holiday but also those employees who want to work on their non-scheduled day have to sign the Holiday Volunteer list -- ignores Section 4 of Article VI.

In these circumstances, the Union contends that it would not be reasonable to expect Plant to sign the Holiday Volunteer list because February 15 was not her designated holiday. Rather, it was her non-scheduled day and the Holiday Volunteer list refers to employees who were being asked to work their designated holiday only. Plant wished to work her non-scheduled day and not her designated holiday.

The Union further contends that management historically would seek volunteers. Since the agreement was signed requiring management to post a notice, however, management feels it no longer has to do so. This is incorrect; the practice has always been to canvass the employees and the language negotiated in the local agreement did not change management's obligation to canvass non-scheduled people.

Moreover, the practice of the Postal Service since Article VI was negotiated has been to seek volunteers to work. For example, management canvassed non-scheduled employees to work on February 13. However, it did not ask for volunteers to work February 15. It is the Union contention that this practice should be continued because the employees are accustomed to it and expect it. To the extent that the arbitrator finds the language of the local memorandum ambiguous, this unchallenged past practice should control in the interpretation of the language.

Finally, an examination of the Holiday Volunteer list reveals nothing to show that a non-scheduled employee would be expected to sign that list if he or she wished to work another employee's designated holiday.

For these reasons, the grievance should be sustained and the grievant made whole for losses suffered, including the payment of an extra 50% pay for the day in question.

Postal Service Position

The Postal Service contends that its scheduling was proper under Article 11, Section 6 of the collective bargaining agreement and

under Article VI of the local memorandum. Article VI, Section 1 is all-encompassing and includes employees who were on their non-scheduled day as well as those on their holiday. Article VI also provides for a Holiday Volunteer list. Joint Exhibit 4 is the Holiday Volunteer list used in this case. There is nothing about the list which suggests that only those employees who wished to work their holiday or designated holiday should sign the list. Plant clearly did not sign the Holiday Volunteer list and for this reason she was not scheduled for that day. Accordingly, the grievant was properly scheduled to work on February 15.

The Postal Service also argues that under Article 30 of the national agreement the local memorandum must not be inconsistent with the terms of the national agreement. In other words, provisions bargained for in the local memorandum cannot violate the terms of the national agreement. The Union interpretation of Article VI, Section 4 that once the Holiday Volunteer list fails to procure sufficient volunteers you then go to the "pecking order" is in definite conflict with the national agreement. The Union wants the arbitrator to say that the Postal Service first must go to the Holiday Volunteer list and, if that list proves insufficient, then mandate the casuals and part-time flexibles and thereafter seek volunteers by canvassing, before it can mandate an employee like the grievant. This interpretation of the first phrase in Article VI, Section 4 is inconsistent and in conflict with Article 11, Section 6(B) of the national agreement which requires as many regular employees as can be spared to be excused from duty on a holiday or designated holiday. To make the local memorandum consistent with the national agreement, this

phrase must be eliminated.

Moreover, the Postal Service argues that Article VI is designed to create a procedure to deal with a particular problem. It does not deal with designated holidays but only holiday work and a holiday schedule which shall be posted. Moreover, the section states that there "shall be no recourse to the Article on overtime". From this, the conclusion can be drawn that the holiday work reference earlier in the paragraph is merely that, holiday work, and not a designated holiday.

In addition, the Union testimony concerning the canvassing of certain employees does not require the result urged by the Union. If an employee was canvassed on February 13, that bears no relation to February 15. There is no indication that any employees were canvassed for February 15 and there is no requirement under Article VI for such canvassing.

Finally, the Postal Service argues that the remedy requested by the Union is not within the arbitrator's authority to award. Under the agreement, the arbitrator's authority is confined to the agreement. Section 234.221 of the F-21 Handbook (Employer Exhibit 1) indicates that an employee only gets an additional 50% pay if he or she is not scheduled by the Wednesday before. In this case, the grievant was scheduled the Wednesday before the holiday or designated holiday. Moreover, the Union request in the grievance that the grievant be excused from her next mandatory holiday if she does not want to work the holiday violates the national agreement and the local memorandum because the junior employee who has not volunteered to work her holiday can be mandated to work that holiday.

For these reasons, the grievance should be denied.

DISCUSSION AND OPINION

For the reasons set forth more fully below, the grievance is sustained.

Critical to the resolution of this case is the interpretation of Article VI of the local memorandum. In this regard, the Union argues that the holiday volunteer list is designed only for those employees who wish to work on their holiday or designated holiday. It is not, however, for those employees who volunteer to work on their regularly non-scheduled day where that day is the holiday or designated holiday of another employee. In this latter situation, the non-scheduled employees must under the local memorandum be solicited by management to see if they wish to volunteer to work on that holiday or designated holiday. Because Plant was not canvassed to see if she wished to work on February 15, which was her regularly non-scheduled day and the grievant's designated holiday, the local memorandum was not complied with and the grievance should be sustained. On the other hand, the Postal Service asserts, among other things, that all employees who wish to work on a holiday, including employees who want to work on their non-scheduled days, have to volunteer. It rejects the notion that the local memorandum requires it to canvass employees to see if they wish to volunteer to work on their non-scheduled day which is another employee's designated holiday.

After careful evaluation of the evidence, it is my conclusion that the Union interpretation is the proper one, and, therefore, the

grievance should be sustained. My reasons are as follows:

First, the language of Article VI compels this conclusion. Section 3 of the Article requires that "[a] Holiday Volunteer list shall be posted for each Holiday for those employees wishing to work each Holiday." This list is to be posted one week before the Monday preceding the posting of the holiday schedule. Section 4 adds the requirement that "if the Holiday Volunteer list does not produce a sufficient number of employees to work the Holiday, then Holiday scheduling" shall follow a certain order, including scheduling employees who have volunteered to work their regular scheduled off-day when that day is the holiday or designated holiday of another employee. In other words, if the Holiday Volunteer list does not produce a sufficient number of employees to work the Holiday, then Section 4 specifies additional steps which must be taken before employees who have not volunteered can be mandated or required to work their holiday. This structure strongly suggests a secondary means or method of obtaining volunteers -- one which is in addition to the Holiday Volunteer list. If non-scheduled employees can only or must first volunteer by signing the Holiday Volunteer list, there is no reason to spell out another method for these employees to volunteer. Such an interpretation of Article VI would render Section 4(3) redundant and makes very little sense. Rather, the inclusion of Section 4(3) implies that the employer must still seek or identify volunteers from the non-scheduled group, even though these employees did not insert their names on the Holiday Volunteer list. The normal way this would be done, and the way urged here by the Union, would be by canvassing these employees. This is not to say that canvassing

is the only way the requirements of Section 4(3) may be accomplished. In the circumstances of this case, however, it is sufficient to say that what was done by the Postal Service did not comply with the requirements of Section 4(3). It is not until after the volunteers referred to in Section 4(3) are sought that junior employees can be mandated to work the holiday. Here, management made no attempt to ascertain if Plant wished to volunteer to work on February 15, her regularly scheduled off day which also was a designated holiday for the grievant, and therefore the grievance must be sustained.

Second, this interpretation is confirmed by the Postal Service's practice since Article VI was negotiated in the local memorandum. Plant persuasively testified that on February 13, which was her designated holiday, an employee who was not scheduled to work that day, was canvassed to work that date. Moreover, Plant indicated that on Veterans Day, Thanksgiving, Christmas, and New Years Day employees were canvassed. This testimony was also not contradicted by the Postal Service.² The fact that management continued to canvass employees even after Article VI was included in the local memorandum suggests that the language of the Article was not designed to change the canvassing practice, at least insofar as employees on their scheduled off-days were concerned.

Third, the interpretation adopted here is buttressed by the language of Joint Exhibit 4, the Holiday Volunteer list used in the

² When asked on cross examination whether management canvassed employees after the local memorandum was signed, Wachak stated that he did not know.

instant case, which states that it is a Holiday Volunteer list for Monday, February 15, or designated holiday. This language suggests that the list was designed to appeal to employees who wished to work on their designated holiday but contains no indication that employees who wished to work on their non-scheduled days which are designated holidays for other employees must also volunteer by signing this list.

Fourth, I reject the Postal Service argument that the interpretation adopted is inconsistent and in conflict with the national agreement. I have carefully examined Article 11, Section 6(B) of the national agreement and find no evidence of a conflict between its requirement that as many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or a day designated as their holiday and the interpretation given here to Article VI.

I also reject the Postal Service suggestion that the grievance should be denied because Article VI, Section 1 refers only to holiday work and not to designated holiday. Although the import of this argument is not very clear, I find it to be without merit. There is nothing in the provision which suggests that the reference at the beginning of Article VI renders untenable the interpretation of Section 4 adopted here.


Finally, the appropriate remedy in this case is to give the Postal Service the option of paying the grievant an additional 50% for the designated holiday she was improperly forced to work or excusing her from the next mandatory holiday if she does not want to work

that holiday. In fashioning this remedy, I reject the Postal Service argument that the arbitrator is without the authority to impose either of these remedies. This argument, based on Section 234.21 of the F-21, is inapposite to the facts of this case. Moreover, unless the remedy conflicts with some provision of the collective bargaining agreement -- which it does not in this case -- the arbitrator has the inherent power to fashion the appropriate remedy.

AWARD

For all the reasons set forth above, the grievance is sustained. As remedy, the Postal Service has the option to either pay the grievant an additional 50% for the February 15 designated holiday she was improperly forced to work or to excuse the grievant from her next mandatory holiday if she does not wish to work that holiday.

June 21, 1983
South Bend, Indiana


Bernard Dobranski
Arbitrator