

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration ) Grievant: Class Action  
 )  
between ) Post Office: Oakland Station  
 )  
UNITED STATES POSTAL SERVICE )  
and ) USPS Case No. C00C-4C-C04175803  
AMERICAN POSTAL WORKERS ) APWU Case No. 04-1526  
UNION, AFL-CIO )  
 )  
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BEFORE: Samuel Spencer Stone, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Linda Revetta, Labor Relations Specialist  
For the Union: Desmond J. Neurohr, Secretary-Treasurer

Place of Hearing: Pittsburgh, Pennsylvania

Date of Hearing: February 25, 2009

Date of Award: March 25, 2009

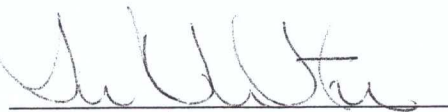
Relevant Contract Provision: Article 3; Article 7.2; and Article 19

Contract Year: 2006-2010

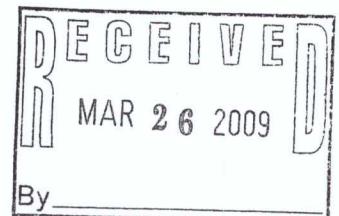
Type of Grievance: Contract

**Award Summary:**

The Employer violated the Agreement when it assigned the spreading of mail to Carriers and the Employer is hereby ordered to cease doing so and to compensate the Sales, Services and Distribution Associate class for the time Carriers did so at the affected Sales, Services and Distribution Associate class straight time rate and I hereby retain jurisdiction to effectuate the foregoing.



Samuel Spencer Stone, Arbitrator



### ADMINISTRATION:

The parties scheduled this case by letter dated November 6, 2008. A hearing was held on February 25, 2009. The grievance was filed as a Class Action by the Sales, Services and Distribution Associates.

### ISSUE:

Did the Employer violate the Agreement when it assigned the spreading of mail to Carriers?

### SUMMARY OF EVIDENCE ADDUCED FROM THE RECORD:

The parties entered into evidence as Joint Exhibit No. 3 a copy of the appeal to arbitration and related documents on USPS #C00C-4C-C04175803, APWU #04-1526.

The parties entered into evidence as Joint Exhibit No. 4 a copy of a part of the Joint Contract Interpretation Manual, dated June 2007, which provided in pertinent part as follows:

...

ARTICLE 7.2.B and 7.2.C

#### *WORK ASSIGNMENTS*

Generally, when the union establishes that an employee was assigned across craft lines or occupational groups in violation of Article 7.2.B or 7.2.C, a "make whole" remedy requires the payment (at the appropriate rate) to the available and qualified employee(s) who would have been scheduled to work but for the contractual violation.

...

The parties entered into evidence as Joint Exhibit No. 5 a copy of a part of the Joint Contract Interpretation Manual, dated June 2007, which provided in pertinent part as follows:

...

#### ***Changing Past Practices that Implement Separate Conditions of Employment***

If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the union appropriate notice.

Prior to making such a change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change.

Management changes in such "silent" contracts are generally not considered violations if 1) the company changes owners or bargaining unit, 2) the nature of the business changes or, 3) the practice is no longer efficient or economical. The first of these has rarely arisen in Postal Service cases involving its numerous bargaining units.

...

The parties entered into evidence as Joint Exhibit No. 6 a copy of the Employer's Standard Position Description for Sales, Services and Distribution Associate, which provided in pertinent part as follows:

STD POSITION DESCRIPTION

...

SALES, SERVICES AND DISTRIBUTION ASSOCIATE, PS-05

...

DUTIES AND RESPONSIBILITIES

...

12. Distributors primary and one or more secondary schemes of outgoing mail for dispatch based on knowledge of current distribution schemes.
13. May perform additional duties such as: maintain records of mails; face and cancel mail; make emergency carrier relays; label and tie out mail for dispatch and other related duties for distribution.

...

The parties entered into evidence as Joint Exhibit No. 7 a copy of the Employer's Standard Position Description for Carrier, which provided in pertinent part as follows:

STD POSITION DESCRIPTION

...

CARRIER. . .

...

DUTIES AND RESPONSIBILITIES

1. Routes or cases all classes of mail in sequence of delivery along an established route. Rearranges and relabels cases as required by route adjustments and changes in deliveries.
2. Withdraws mail from the distribution case and prepares it in sequence for efficient delivery by himself or a substitute along an established route.

Prepares and separates all classes of mail to be carried by truck to relay boxes along route for subsequent delivery.

...

The parties entered into evidence as Joint Exhibit No. 8 a copy of the Employer's Carrier Handbook, which provided in pertinent part as follows:

...

#### **116.4 Receipt of Morning Close-Out Dispatch**

... If mail is trayed separately and is identified for each route, it should be taken to the carriers' cases. Otherwise, carriers may obtain it from a central point, except that Delivery Point Sequence mail will be handled in accordance with the DPS procedures established for the unit.

...

#### **116.6 Carrier Withdrawal of Letters and Flats**

Carriers may be authorized to make up to two withdrawals from the distribution cases prior to leaving the office, plus a final cleanup sweep to include Delivery Point Sequence mail as they leave the office.

...

The parties entered into evidence as Joint Exhibit No. 9 a copy of the Employer's Carrier Handbook, which provided in pertinent part as follows:

...

#### **922.5 Making Time Entries**

##### **922.51 Actual Time Entries**

...

- b. Line 15, Withdrawing Mail. As much as possible, clerks or mail handlers withdraw mail (especially that mail received early in the morning) from distribution cases and place it on your desk. If it is necessary for you to withdraw mail from distribution cases or to remove mail from sacks, trays, or hampers, record the time. Two withdrawals of letter mail and one of papers for each trip, with a final pull just prior to leaving time, are generally sufficient. In units where local policy requires the carrier to withdraw Delivery Point Sequence mail while on office time, the time to actually withdraw this mail will be recorded. On the day of inspection, the actual time used by the examiner in withdrawing mail (1) is recorded - if

the carrier normally pulls his/her own mail and (2) is added to the net office time.

...

The parties entered into evidence as Joint Exhibit No. 10 a copy of the Field Operations Standardization Development AM SOP II Guidebook 2007, which provided in pertinent part as follows:

...

## **2 INTEGRATED OPERATING PLAN (IOP)**

...

**2-6 DPS Processing** - Mail Processing must stage DPS letters for transport in shelved or modified APCs so that individual trays do not have to be re-handled at the delivery unit.

...

## **3 CLERK OPERATIONS - FUNCTION 4**

**3-4 Empty Equipment** - . . .As clerks spread mail, empty equipment must be removed and placed in containers for return to the plant in a timely manner. . . .

...

### **3.6 SOP**

#### ***Sample Mail Spreading SOP for Function 4***

### **MAIL SPREADING STANDARD OPERATING PLAN**

The spreading of mail by clerical personnel is a critical item that must be performed efficiently, correctly, and in a timely manner in order for the delivery operation to meet their objectives.

...

**3.10 Staging and Spreading Mail** - Setup, staging and spreading of all mail types must be accomplished so that mail is presented to the carriers in a timely manner to insure delivery is able to maximize efficiency in office and street duties. All manual letters and flats must be spread by F4 personnel, reducing or minimizing carrier withdrawal time.

Pulldown is the withdrawal of mail from distribution cases in preparation for spreading the mail to carrier cases. Efficient pulling ensures improving the flow of mail and enhancing distribution. Carrier withdrawal of letter and flat mail should be eliminated wherever local conditions permit. . . .

...

#### **4 CUSTOMER SERVICE/DELIVERY FLOOR LAYOUT**

...

**4-5 DPS Staging Area** - DPS mail is not to be distributed to carriers. DPS is to be staged in the carrier line of travel to the exit. Carriers are to place DPS mail in rolling stock for transport to vehicles.

...

#### **5 CITY DELIVERY - FUNCTION 2B**

...

**5-5 DPS Mail** - DPS mail is not to be distributed to carriers. DPS is to be staged in the carrier line of travel to the exit. . . .

...

The Union entered into evidence as Union Exhibit No. 1 a copy of an arbitration decision styled *United States Postal Service and American Postal Workers Union, AFL-CIO*, Case No. A8-W-0656 (Richard I. Bloch, Arbitrator; April 7, 1982), which provided in pertinent part as follows:

...

“...[Article VII,] Section 2 deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable. . . .

Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. . . .” (At Pages 4, 5 and 6.)

...

The Union entered into evidence as Union Exhibit No. 2 a copy of an arbitration decision styled *United States Postal Service and American Postal Workers Union*, Case No. H8C-2F-C-7406 (Richard Mittenthal, Arbitrator; August 23, 1982), which provided in pertinent part as follows:

...

“...[Article VII,] Section 2 deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable. . . .”

...

“The principle seems clear. Where Management makes a cross-craft assignment, it must justify that assignment under the terms of VII-2-B or VII-2-C. If no such justification is provided, the cross-craft assignment is improper under the ‘inherent proscription. . .’ in VII-2. . . .” (At Pages 4 and 5.)

...

The Union entered into evidence as Union Exhibit No. 3 a copy of a letter dated October 25, 1995, from Reginald F. Yurchik, Grievance and Arbitration Labor Relations, United States Postal Service and Cliff J. Guffey, Assistant Director, Clerk Craft Division, American Postal Workers Union, AFL-CIO, regarding Case No. H90C-4H-C 95017889, which provided in pertinent part as follows:

...

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Without prejudice to either parties position on which is the primary craft for spreading mail to letter carrier cases, the parties agree that in those offices in which the clerk craft was spreading mail to letter carrier cases on April 29, 1992, without challenge by the Mail Handlers and the work was subsequently taken away from the clerk craft and assigned to letter carriers, the assignment is properly controlled by the dispute resolution procedures and should be performed by clerks.

...

The Union entered into evidence as Union Exhibit No. 4 a copy of an arbitration decision styled *United States Postal Service and American Postal Workers' Union*, Case No. C4C-4T-C 9023 (Copley) and C4C-4T-C 9024 (O'Bryan), (Thomas J. Erbs, Arbitrator; October 20, 1986), which provided in pertinent part as follows:

...

Since this Arbitrator has concluded, as have other arbitrators, that the spreading of the mail is a Clerk's function, the next decision to be made is whether the Postal Service complied with the provisions of Article 7.2 to protect the assignment that was made under the exceptions set forth therein. (At Page 9.)

...

The Union entered into evidence as Union Exhibit No. 5 a copy of an arbitration decision styled *United States Postal Service and American Postal Workers Union, AFL-CIO*, Case No. S7C-3S-C 3871 (Elvis C. Stephens, Arbitrator; March 4, 1989), which provided in pertinent part as follows:

...

Based on the language of the P-601, the 1987 Mail Handlers' contract, and the above cited arbitration awards, this arbitrator concludes that the work of spreading the mail to the carrier cases at the stations and branches is primarily that of the clerk craft. Using employees other than clerks to perform such work violates the contract and associated handbooks unless it can be justified under Article 7.2, or Article 3.F. (At Page 5.)

...

The Union entered into evidence as Union Exhibit No. 6 a copy of an arbitration decision styled *United States Postal Service and American Postal Workers Union, AFL-CIO*, Case No. E98C-4E-C 00007989 (D. Andrew Winston, Arbitrator; February 8, 2001), which provided in pertinent part as follows:

...

I find that in this case, the Service's assignment of mail spreading duties in the Ben Lomand Station in October 1999 to letter carriers violated the National Agreement for the following five (5) reasons.

First, I agree with the Union that a past practice was established beginning in the fall of 1997. . . .

...

Second, in light of the fact that a past practice had been created, the change imposed by the Service in October 1999, which the Service acknowledges was unilateral, violated Article 5 of the National Agreement. . . . (At Page 10.)

...

The Employer entered into evidence as Employer Exhibit No. 1 a copy of an arbitration decision styled *United States Postal Service and American Postal Workers Union and National Postal Mail Handlers Union*, Case No. H7C-NA-C-32 (Dana Edward Eischen, Arbitrator; April 24, 1998), which provided in pertinent part as follows:

...

...Accordingly, I find and hold that the Postal Service properly assigned the mail handler craft as the primary craft to spread mail to letter carrier cases when such mail has been previously identified and marked by carrier route numbers. (At Page 29.)

...

Previously, Sales, Services and Distribution Associates took what is now Delivery Point Sequence (DPS) mail from all-purpose containers (APCs) to the Carriers' cases for approximately twenty (20) years. Now, Sales, Services and Distribution Associates take the DPS mail from the APCs to pie carts which contain designated slots for each Carrier. Now, Carriers take the DPS mail from their respective designated slots on the pie carts to their respective cases and re-bundle the DPS mail in conjunction with casing the remainder of their mail. All non-DPS mail is spread to the cases by Sales, Services and Distribution Associates. There are no Mail Handlers at the Oakland Station.

Union witness, Ronald Komlenic, testified that Carriers spread the DPS mail from the pie carts to their respective cases. He also testified that Carriers perform a further breakdown of the DPS mail by bundling it in accordance with their loops. He further testified that Sales, Services and Distribution Associates spread all other mail and that they do so approximately one (1) hour to one and one-half (1-1/2) hours a day six (6) days a week.

Employer witness, Ronald Schwenning, Manager, Oakland Station, testified that Carriers withdraw mail from distribution stations. He also testified that the Carriers withdraw mail from the pie carts. He further testified that the Carriers take the DPS mail from the pie carts to their respective cases and bundle it.

#### DISCUSSION:

The Agreement provides in pertinent part as follows:

...

#### 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 . . . assign . . . employees in positions within the Postal Service. . .

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 7 EMPLOYEE CLASSIFICATIONS

...

### Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time scheduled assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

...

## 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. . . .

. . .

The Union argued that there was a prior practice and custom of Sales, Services and Distribution Associates performing the work in question. There must be proof of existence of a prior practice and custom and its scope. The party claiming the prior practice and custom must assume the burden of persuasion that the prior practice and custom is unequivocal, clearly enunciated and acted upon and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. The elements of proof to establish the foregoing include the nature of the prior practice and custom and whether it involves direction of the work force or a benefit of peculiar personal benefit to Employees; the manner in which the prior practice and custom is claimed to have come into being, whether by express direction or deliberate repetition; whether the prior practice and custom was a way of doing things which occurred by either party neglecting to assert a right or authority and evidence of any claimed rights of reliance such as in grievances.

There are no Mail Handlers at the Oakland Station. Employer Exhibit No. 1, a copy of an arbitration decision styled *United States Postal Service and American Postal Workers Union and National Postal Mail Handlers Union*, Case No. H7C-NA-C-32 (Dana Edward Eischen, Arbitrator; April 24, 1998), dealt with Mail Handlers and did not address Sales, Services and Distribution Associates. The certain arbitration decisions and exhibits cited above indicate that the spreading of mail is work performed by Clerks and not Carriers. A prior practice and custom was established of Sales, Services and Distribution Associates performing the work in question.

The Employer cited no exceptions under Article 7, Section 2, Paragraphs B. and C. Rather, the Employer argued that the agreement was silent and that the work did not fall within the exclusive jurisdiction of the Sales, Services and Distribution Associates and there was no prior practice and custom. Moreover, even if there was a prior practice and custom, the prior practice and custom is no longer efficient and economical.

The parties entered into evidence as Joint Exhibit No. 8 a copy of the Employer's Carrier Handbook, which provided in pertinent part as follows:

. . .

#### **116.4 Receipt of Morning Close-Out Dispatch**

... If mail is trayed separately and is identified for each route, it should be taken to the carriers' cases. Otherwise, carriers may obtain it from a central point, except that Delivery Point Sequence mail will be handled in accordance with the DPS procedures established for the unit.

...

#### **116.6 Carrier Withdrawal of Letters and Flats**

Carriers may be authorized to make up to two withdrawals from the distribution cases prior to leaving the office, plus a final cleanup sweep to include Delivery Point Sequence mail as they leave the office.

...

The parties entered into evidence as Joint Exhibit No. 10 a copy of the Field Operations Standardization Development AM SOP II Guidebook 2007, which provided in pertinent part as follows:

...

### **2 INTEGRATED OPERATING PLAN (IOP)**

...

**2-6 DPS Processing** - Mail Processing must stage DPS letters for transport in shelved or modified APCs so that individual trays do not have to be re-handled at the delivery unit.

...

### **3 CLERK OPERATIONS - FUNCTION 4**

**3-4 Empty Equipment** - ... As clerks spread mail, empty equipment must be removed and placed in containers for return to the plant in a timely manner. ...

...

#### **3.6 SOP**

#### ***Sample Mail Spreading SOP for Function 4***

#### **MAIL SPREADING STANDARD OPERATING PLAN**

The spreading of mail by clerical personnel is a critical item that must be performed efficiently, correctly, and in a timely manner in order for the delivery operation to meet their objectives.

...

**3.10 Staging and Spreading Mail** - Setup, staging and spreading of all mail types must be accomplished so that mail is presented to the carriers in a timely manner to insure delivery is able to maximize efficiency in office and street duties. All manual letters and flats must be spread by F4 personnel, reducing or minimizing carrier withdrawal time.

Pulldown is the withdrawal of mail from distribution cases in preparation for spreading the mail to carrier cases. Efficient pulling ensures improving the flow of mail and enhancing distribution. Carrier withdrawal of letter and flat mail should be eliminated wherever local conditions permit. . . .

. . .

#### **4 CUSTOMER SERVICE/DELIVERY FLOOR LAYOUT**

. . .

**4-5 DPS Staging Area** - DPS mail is not to be distributed to carriers. DPS is to be staged in the carrier line of travel to the exit. Carriers are to place DPS mail in rolling stock for transport to vehicles.

. . .

#### **5 CITY DELIVERY - FUNCTION 2B**

. . .

**5-5 DPS Mail** - DPS mail is not to be distributed to carriers. DPS is to be staged in the carrier line of travel to the exit. . . .

. . .

If the Carriers had picked up the DPS mail from the pie carts as they left the office, the Union would have no grievance. However, the Carriers pick up the DPS mail from the pie carts and take it to their cases and re-bundle it in conjunction with casing the remainder of their mail before they leave the office. Joint Exhibit No. 10, Field Operations Standardization Development AM SOP II Guidebook 2007, Section 3-10 Staging and Spreading Mail, provides that "Setup, staging and spreading of all mail types must be accomplished so that mail is presented to the carriers in a timely manner to insure delivery is able to maximize efficiency in office and street duties." Section 4-5 DPS Staging Area provides that "DPS mail is not to be distributed to carriers. DPS is to be staged in the carrier line of travel to the exit. Carriers are to place DPS mail in rolling stock for transport to vehicles.". Section 5-5 DPS Mail provides that "DPS mail is not to be distributed to carriers. DPS is to be staged in the carrier line of travel to the exit. . . ". The

spreading of mail from the pie carts to the Carrier cases is Sales, Services and Distribution Associate work.

Union witness, Ronald Komlenic, testified that Sales, Services and Distribution Associates spread mail approximately one (1) hour to one and one-half (1-1/2) hours a day six (6) days a week. However, that involves spreading of all mail. I have insufficient evidence of the time involved spreading the mail from the pie carts to the cases. The appropriate remedy is to compensate the Sales, Services and Distribution Associates' class for the time Carriers spread the mail from the pie carts to their respective cases. I will retain jurisdiction in this matter to effectuate the foregoing.

#### DECISION:

For the reasons set forth in the foregoing discussion, it is my opinion that the Employer violated the Agreement when it assigned the spreading of mail to Carriers and the Employer is hereby ordered to cease doing so and to compensate the Sales, Services and Distribution Associate class for the time Carriers did so at the Sales, Services and Distribution Associate class straight time rate and I hereby retain jurisdiction to effectuate the foregoing.