



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

November 2, 2009

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-331-0992 (Fax)

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

National Executive Board

William Burrus
President

Cliff Guffey
Executive Vice President

Elizabeth "Liz" Powell
Secretary-Treasurer

Greg Bell
Director, Industrial Relations

James "Jim" McCarthy
Director, Clerk Division

Steven G. Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Bill Manley
Director, Support Services Division

Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

John H. Dirzius
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Re: USPS Dispute No. , APWU No. HQTV20097, Cert No. 7007 2560 0003 2183 3427

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,


Greg Bell, Director
Industrial Relations

USPS #:

APWU #: HQTV20097

Case Officer: Robert Pritchard

Step 4 Appeal Date: 9/1/2009

Contract Article(s) ;

cc: Resident Officers

Industrial Relations

File

GB:ndp//opeiu#2//afl-cio



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Article 15 - 15 Day Statement of Issues and Facts

October 15, 2009

Robert C. Pritchard
Director, MVS Division
1300 L Street, NW
Washington, DC 20005
(202) 842-4240 (Office)
(202) 842-8517 (Fax)

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

National Executive Board

William Burrus
President

Cliff "C. J." Guffey
Executive Vice President

Terry Stapleton
Secretary-Treasurer

Greg Bell
Industrial Relations Director

James "Jim" McCarthy
Director, Clerk Division

Steven G. "Steve" Raymer
Director, Maintenance Division

Re: APWU No. HQTV20097, Cert. No. 7007 2560 0003 2183 3366

Dear Mr. Tulino:

The USPS failed to meet in accordance with Article 15 of the Collective Bargaining Agreement. Article 15, Section 2 (Step 4) provides that if the parties fail to reach an agreement, then within fifteen days of their meeting each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to the dispute.

The following is the APWU's statement of issues and facts concerning this dispute:

Article 7 of the National Agreement clearly defines that there are 2 types of employees. There is the regular work force which consists of career (full-time and part-time) employees, and there is the supplemental work force. The supplemental work force consists of casuals, and in the Motor Vehicle craft - we refer to as the "pre - 2006 rules" on casuals still apply. Casuals have specific terms on how they can be used and for limited amounts of time. They cannot be used in lieu of a career workforce employee except under certain conditions, and during the course of a service week the employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at straight time rate prior to assigning such work to casuals. Casual employees are prohibited from performing duty assignments requiring training and testing. Casual employees may not be employed in lieu of full or part-time employees. HCR drivers should be counted as casual employees under the terms of collective bargaining agreement.

Robert C. "Bob" Pritchard
Director, MVS Division

Bill Manley
Director, Support Service Division

Sharyn M. Stone
Central Region Coordinator

Mike Gallagher
Eastern Region Coordinator

Elizabeth "Liz" Powell
Northeast Region Coordinator

William "Bill" Sullivan
Southern Region Coordinator

Omar M. Gonzalez
Western Region Coordinator

Article 3 of the Collective Bargaining Agreement states: "The employer shall have the exclusive right subject to the provisions of this agreement and consistent with applicable laws and regulations." The applicable law that we wish to sight here is:

- 39 USCS § 1008, which states ... "§ 1008. Temporary employees or carriers
(a) *A person temporarily employed to deliver mail is deemed an employee of the Postal Service and is subject to the provisions of chapter 83 of title 18 [18 USCS §§ 1691 et seq.] to the same extent as other employees of the Postal Service.*
(b) *Any person, when engaged in carrying mail under contract with the Postal Service, or employed by the Postal Service, is deemed a carrier or person entrusted with the mail and having custody thereof, within the meaning of sections 1701, 1708, and 2114 of title 18.*"

Contract drivers clearly perform these duties and are entrusted with the mail and therefore, are deemed employees of the Postal Service. This buttresses our arguments even further to go along with the Step 4 signoffs; that will be quoted later in this document.

If you go to the National Arbitration Brief of the United States Postal Service on Arbitration case number: Q90C-6E-C 9446800, it clearly states that Mr. Valenti also testified that the Postal Service counts contract employees used as casuals against the Cap set out in the National Agreement because this is a requirement of the Step 4 agreement on contract issues (page 6).

On page 5 of the Postal Service's brief it states... "Contract employees procured through the procurement procedures are hired when you need specialized skills"... and it goes on to say, "under the procurement process the Postal Service contracts with an agency such as AON, Kelly Girls, Manpower, etc. to provide employees who specified criteria that is attuned to the work that needs to be done." This is clearly what the Postal Service has done. They have not gone to a Manpower or Kelly Girl service, but they have gone to trucking companies to procure these people; and they would clearly fall under the Postal Services own terms, according to their brief as casual employees.

On page 7 of the Postal Services' brief concerning the use of Kelly Girls it states... "The matter was resolved short of arbitration by an agreement that those contract employees could be used and would be counted as casual employees."

The Postal Services brief continues to say on page 8... "Specifically, the union contends that the Postal Service can only use workers who have been hired and placed on Postal rolls as casual employee." The statement continues to say... "The union's argument is not only simple, it is simply wrong. The National Agreement's language does not prohibit the use of contract agency employees as supplemental workers. To the contrary, the Agreement specifically provides that management shall have the right to determine both the work to be done and the workers who will do it. Though the union has an interest in and properly plays a role in deciding whether non-bargaining unit employees may perform work reserved to the bargaining unit, it has no contractual or legal standing under this agreement to dictate how the Postal Service obtains employees who are permitted by contract to perform bargaining unit work. Moreover, the Postal

Service submits that this issue has long been resolved between the parties, not only by their actions and agreements during the past 30 plus years, but also by former President of the APWU, Moe Biller, who specifically acknowledged management's right to use temporary contract

agency employees as supplemental work force employees, so long as they were counted against a casual employee cap in the National Agreement."

The brief goes on further to say on page 9, "Significantly, Article 7 clearly defines the employment status of regular and transitional work force employees. Both regular and transitional work force employees are defined as "persons who are hired pursuant to such procedures as the Employer may establish. Hiring or, in postal terminology, appointing someone evidences a clear statement that the employee is a person who has been entered on the Postal Service's rolls. The contract provides for no such requirement for supplemental casual employees. In fact, Article 7 never addresses how such employees will be procured, nor does it even remotely imply that the supplemental work force workers need be on postal rolls."

The Postal Service's brief continues to say on page 15, "The evidence clearly establishes that the union clearly agreed with the Postal Service; that contract employees from temporary employment agencies could be used as casual employees as long as they were counted against the casual Cap. The un-rebutted testimony of Thomas Valenti unequivocally established that the union, not only agreed that workers from temporary employment agencies could be used as casual employees, but affirmatively notified their field representatives of this agreement."

The Postal Service brief continued to say at the bottom of page 14... "In the absence of a clear and unequivocal limitation on the right of management to select the personnel who will perform its work, the Postal Service is free to employ whatever persons it chooses to do that work, and to procure them in the manner it deems most appropriate."

At the bottom of page 15 the Postal Service brief states that, "The manual contained the Step 4 agreement executed by Joyce Ong and Cliff Guffey, at that time the Assistant Director of the Clerk Division. In that Step 4 settlement, the union agreed that temporary agency workers could be used as casual employees so long as they are counted against the casual limitations." The trucking companies that the Postal Service contracts with in order to move mail clearly fall into the same mold as any other employment agency. Many of these trucking companies have no other work than to supply labor to the postal service. They clearly fall into the category that the Postal Service has said would constitute casual employees; therefore, they are limited as any other casual employees restrictions would be and they should be counted as casual employees against the cap; and if they are hired in lieu of full-time or part-time employees, the MVS Division has been harmed by this, and should be compensated with this work, being shifted to PVS and compensated for the hours that these casual employees have worked.

This is buttressed by the National level award by Arbitrator Das that was issued on January 31, 2003, for case number: Q90C-6E-C 94 46800. That award in full says, "Article 7B does not prohibit the Postal Service from using Kelly Girls or similar type temporary employment agencies as a supplemental work force provided as casuals, and are subject to the limits on employment of casuals set forth in Article 7B." These employees are in fact limited in terms.

Doug Tulino

October 15, 2009

Page 4

Re: HCR as Casuals

The postal contract for transportation fall into 3 categories: (1) Emergency Contracts of six months or less, (2) Temporary Contracts of 2 years or less, and (3) Regular Contracts 4 of years or less. All of these contracts are of limited duration and therefore, these companies are providing labor just as Kelly Girls did, just as Manpower did, and these employees are in fact casual employees and must be treated as such under the Collective Bargaining Agreement.

Please contact me if you wish to discuss this matter.

Sincerely,



Robert Pritchard
Case Officer

APWU #: HQTV20097

Dispute Date: 9/1/2009

USPS #:

Contract Articles: ;

Cc: Industrial Relations

RCP:ndp//opeiu#//afl-cio