



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Appeal to Arbitration, National Dispute

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

February 17, 2009

National Executive Board

William Burrus
President

Cliff Guffey
Executive Vice President

Terry R. Stapleton
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

Elizabeth "Liz" Powell
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

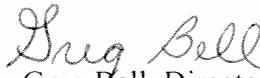
Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: USPS Dispute No. Q06C4QC09051867, APWU No. HQTG200820

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,

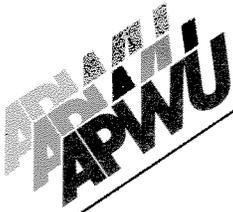

Greg Bell, Director
Industrial Relations

USPS #: Q06C4QC09051867
APWU #: HQTG200820

Case Officer: Greg Bell
Step 4 Appeal Date: 12/15/2008
Contract Article(s): 5, Unilateral Action; 12,
Principles of Reassignments;

cc: Resident Officers
Industrial Relations

GB/bw



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
(202) 842-4273 (Office)
(202) 371-0992 (Fax)

Article 15 - 15 Day Statement of Issues and Facts

February 13, 2009

VIA CERTIFIED AND REGULAR MAIL

National Executive Board

William Burrus
President

Cliff Guffey
Executive Vice President

Terry R. Stapleton
Secretary-Treasurer

Greg Bell
Director, Industrial Relations

James "Jim" McCarthy
Director, Clerk Division

Steven G. "Steve" 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

Elizabeth "Liz" Powell
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Mr. Patrick Devine
Labor Relations Specialist
U. S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Re: APWU No.HQTG200820; USPS No. Q06C4QC09051867,
Cert. No. 70032260000549124496

Dear Mr. Devine:

On January 21, 2009, we met to discuss the above-referenced dispute at Step 4 of the grievance procedure. The parties mutually agreed to submit their written statements no later than February 13, 2009. The following represents the APWU's understanding of the issues to be decided and the facts giving rise to the interpretive dispute.

This dispute concerns the Postal Service's unilateral implementation of a nationwide two-tour initiative, which is intended to eliminate or greatly reduce existing day shift Tour 2 assignments, operations and/or staffing.

Background

By letter dated October 17, 2008, the APWU requested documentation disclosing the specifics, extent and rationale of any nationwide, region-wide or district-wide program, plans or initiatives to eliminate or reduce Tour 2 operations and/or day shift Tour 2 staffing. The information was necessary for the APWU to determine whether such an initiative may constitute a violation or a mid-term modification of the National Agreement. The APWU also requested that as soon as the Union received the information that a briefing be provided by the Postal Service to include managers with knowledge of the plans or initiative. However, the Postal Service refused and failed to provide the requested information to the Union.

By letter dated November 14, 2008, the Postal Service provided in part as follows:

While the Postal Service is reviewing various options designed to improve operational efficiencies in light of decreased mail volume, the Postal Service has not implemented the nationwide program you suggest....

Regarding the APWU's request for the Postal Service to produce documentation regarding any "nationwide or region or district-wide program, plans or initiatives to eliminate or reduce Tour 2 operations and/or Tour 2 staffing – the Postal Service informed the APWU that "no such documentation exists."

However, to the contrary, evidence established that there is a two-tour initiative that is nationwide in scope and initiated by the Postal Service at the national level. Moreover, several plants have already implemented the nationwide two-tour initiative that either reduced or eliminated Tour 2 operations, and resulted in regular employees being excessed/reassigned from day shift Tour 2 to Tour 3 and/or Tour 1. Furthermore, many local presidents have been informed by local management that they have been instructed by headquarters to initiate this program. The Postal Service's assertions that there is no nationwide two-tour initiative and no information responsive to the Union's request is false.

The record showed that the Postal Service implemented nationwide two-tour and related initiatives, intended to eliminate or greatly reduce existing Tour 2 (day shift) assignments, operations and staffing. In addition, the Postal Service failed to provide any type of notification to the APWU concerning this matter, which impacts wages, hours or working conditions. Furthermore, the Postal Service failed and refused to jointly discuss the nationwide two-tour initiative. This is national program being implemented on a nationwide basis and the Employer has an obligation to notify and bargain with the Union at the national level over both the decision and impact of bargaining unit employees.

On November 25, 2008, the APWU filed an unfair labor practice charge against the Postal Service because the Postal Service has failed and refused to bargain in good faith with the APWU about a nationwide initiative to reduce or eliminate operations or assignments on Tour 2 and to provide information concerning this initiative, and by providing false information concerning the existence of requested documentation. In addition, the APWU requested "injunctive relief" and that the Board should seek contempt sanctions against the Postal Service based on orders in like or related matters enforced by courts of appeals. To date, the National Labor Relations Board (NLRB) has not rendered a decision regarding the unfair labor practice charge.

At a December 10, 2008 meeting between the parties, the APWU informed the Postal Service that the two-tour initiative and any other national initiative that relates to

working conditions requires joint discussion and bargaining before implementation. The APWU demanded bargaining. The Postal Service stated that the initiative in dispute was a national initiative with local implementation; that it's the Postal Service's position that there was no obligation to bargain; and that the purpose of the meeting was a briefing in response to the Union's information request.

APWU's Position

The APWU's position is, but not limited to, that the Postal Service has an obligation to notify the union, meet as needed, and jointly discuss new initiatives with the APWU during their development, inasmuch as those initiatives might impact employees or relate to employee working conditions. Joint discussions must take place during the development stage, and before implementation of any new initiative that might relate to employee working conditions. The Postal Service clearly violated its obligation pursuant to, but not limited to, Article 17, Section 5 of the parties' National Agreement.

The information requested was necessary for the APWU to determine whether such an initiative may constitute a violation or mid-term modification of the National Agreement or a violation of the Postal Service's obligation to bargain with the Union. It is the APWU's position that the Postal Service has an obligation to provide the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of the National Agreement, and that the Postal Service has an obligation to bargain with the Union.

The APWU also contends that the Postal Service's unilateral action in implementing its nationwide two-tour and initiative without joint discussion with the APWU during development constitutes a willful violation of, but not limited to, Article 5 of the parties' National Agreement.

In addition, it is also the APWU's position that the nationwide initiative establishing a two-tour operation, eliminating or greatly reducing existing day shift Tour 2 assignments and excessing regular employees from Tour 2, violates the parties intent and provisions of, but not limited to, the Article 7.1.B.4 and related Memorandum of Understanding (MOU) re: Supplemental Work Force, Conversion of Clerk Craft PTFs. The protection of existing day shift Tour 2 assignments was central to the historic agreement reached in 2006 contract negotiations.

At the December 10, 2008, meeting, discussions took place regarding the APWU's position concerning the restriction on working casuals between 5:00 a.m. and 12 noon (day shift). When asked if the Employer was taking the position that they could eliminate Tour 2 (day shift) regular employees and jobs and work casuals on a normal basis after 5:00 a.m., the Postal Service said yes.

Re: 15-Day Statement - Q06C4QC09051867

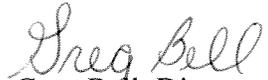
Feb. 13, 2009

Page 4

The APWU also contends that the Postal Service two-tour initiative deprives the Union of one of its central achievements – the protection of existing Tour 2 assignments. This unilateral action taken by the Postal Service also represents a repudiation of, and mid-term modification to the Supplemental Work Force, Conversion of Clerk Craft PTFs MOU and Article 7.1.B.4 of the National Agreement.

Please contact me if you wish to discuss this matter.

Sincerely,


Greg Bell, Director
Industrial Relations

APWU #: HQTG200820
USPS #: Q06C4QC09051867

Dispute Date: 12/15/2008
Contract Articles: 5, Unilateral Action; 12,
Principles of Reassignments;

cc: File

GB/LB:jm
OPEIU #2
AFL-CIO



February 13, 2009

Mr. Greg Bell
Director, Industrial Relations
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

CERTIFIED MAIL NUMBER:
7099 3400 0009 0506 2066

RE: Q06C-4Q-C 09051867
HQTG200820 Class Action
Washington, DC 20260-4100



Dear Greg:

In accordance with Article 15.2 (Step 4) (a), the Postal Service is providing you with its understanding of the issue involved. We met on January 21 to discuss the issue in dispute and were unable to reach an agreement.

The issue presented by the Union in initiating this dispute, is whether a violation of the National Agreement occurred by the:

*"...Postal Service's nationwide two-tour initiative program, which is intended to eliminate or greatly reduce existing day shift Tour 2 assignments, operations and/or staffing."*¹

The Postal Service disagrees with this statement of the issue. More properly stated, the issue in this grievance is whether management, pursuant to relevant contractual provisions, including its Article 3 management rights, may change employees work assignments without bargaining with the Union.

The Union asserts that the Postal Service is "considering or is in the process of implementing, a nationwide program establishing a two-tour initiative, intended to eliminate or greatly reduce existing Tour 2 assignments, operations and staffing." The Union further alleges that it has received no notification of this initiative, which impacts wages, hours or working conditions. It is the Union's position that the Postal Service has violated Articles 5, 17.5.B.4 and 31.3 of the National Agreement, as well as the "intent and provisions of" Article 7.1.B.4 and the "Memorandum of Understanding (MOU) Re: Supplemental Work Force, Conversion of Clerk Craft PTFs."

The Union asserts that Article 5 has been violated by the Postal Service's unilateral implementation of a program designed to reduce or eliminate Tour 2. The Union asserts that Article 17.5. B.4 has been violated as the Union has not been provided an opportunity to jointly discuss the referenced Tour 2 initiative, during its development, particularly as this initiative might impact employees or as it might relate to employee working conditions. The Union asserts that Article 17.3 has been violated as the Union has not received relevant information about this initiative.

Finally, the Union asserts that the unilateral reduction or elimination of Tour 2 operations and staffing undoes the "benefit of the bargain" it received in entering into the "Memorandum of Understanding (MOU) Re: Supplemental Work Force, Conversion of Clerk Craft PTF's," and the revised language in Article 7.1.B.4 of the 2006-2010 National Agreement. More specifically, the Union asserts that, in bargaining for the language which states that "casuals will not normally

¹ See, Union's letter dated December 16, 2008 initiating this Step 4 dispute.

work between 0500 and 1200 in mail processing operations," the Union sought to protect career employees working on Tour 2. The Union asserts that this protection is "undone" by the Postal Service's unilateral implementation of a program designed to reduce or eliminate Tour 2.

It is the Postal Service's position that while the Union has alleged violations of the National Agreement, the Union has failed to identify a specific national interpretive dispute as required by Article 15.2 (Step 4).

As discussed at a meeting between the parties on December 10, 2008, and once again at the Step 4 meeting on January 21, there is no nationwide two-tour program rising to the level of an initiative, as found in Article 17.5.C.4. At the outset it should be noted that there are a variety of work operations which have historically performed during the timeframe associated with Tour 2. These activities include, but are not limited to Postal Vehicle Service (PVS) dispatches, preventive maintenance performed by Postal Service mechanics and technicians on mail processing equipment, and certain mail acceptance activities. As there is, at least at this time, little likelihood of moving the performance of these activities to a different time frame, the suggestion that there is a "two-tour initiative program, which is intended to eliminate or greatly reduce existing day shift Tour 2 assignments, operations and/or staffing" would not apply to these activities, and could only extend to Function 1 mail processing activities. However, as stated in the Postal Service's letter to the Union dated November 14, 2008, "the Postal Service has not implemented the nationwide program you suggest."

Rather, in the face of substantial mail volume and revenue decline, the Postal Service has identified various cost-saving mechanisms to offset the financial loss caused by the decline. These mechanisms were discussed at the parties' December 10 meeting, and include the 1) Mail Processing Employee Scheduling (MPES) system; 2) the Targeted Allied & Indirect Position Reduction (identifying approximately 7,000 duty assignments not directly involved with mail processing and/or current operations); 3) the replacement of Universal Flat Sorting Machine (UFSM) manual keying with Optical Character Reader functionality; 4) First Class Mail (FCM) Handling Unit Tray Consolidation; 5) the movement of mail formerly processed on the Multi-Line Optical Character Reader (MLOCR) and Mail Processing Bar Code Sorter (MPBCS) to the more-efficient Delivery Input/Output Subsystem (DIOSS) and Delivery Bar Code Sorter (DBCS); 6) the Next Generation Registry Mail System; 7) the Area Mail Processing (AMP) consolidation process; and 8) the Sunday Operations programs, which seeks to reduce the number of work hours worked on Sunday. (Another cost-cutting program that was discussed was the Powered Industrial Vehicle Maintenance System, a system affecting only the mail handler craft employees). These programs are designed to increase operational efficiency in the specific areas targeted by the program. There is no direct connection to an elimination of Tour 2, or the duty assignments. In addition, the parties have been engaged in discussing a major expansion of the Modified Work Week program creating the possibility of four-day work weeks at every facility. (Employees would work four days a week, ten hours each day.) This could have effectively reduced Tour 2 operations and/or Tour 2 staffing as implemented on a site-by-site/operation-by-operation basis.

Contrary to the Union's assertion, therefore, there is no "nationwide two-tour initiative program, which is intended to eliminate or greatly reduce existing day shift Tour 2 assignments, operations and/or staffing." For that reason, the Union's argument that there has been a unilateral change and/or that there is a nationwide program rising to the level of an initiative, as contemplated by the language of Article 17.5.B.4 (and requiring discussion between the parties), must fail. Any reduction in staffing levels on Tour 2 is the product of local management addressing operational inefficiencies, and scheduling the performance of work in a more efficient manner, consistent with the long-standing practice as an exercise of management rights. The reassignment of employees from one tour to another is a by-product of that exercise.

In addition, the Union argument that it has not been provided relevant information, in violation of Article 31.3, is certainly not true. As articulated in the Postal Service's December 9 response to the Union's request for information, and as discussed above, documents corresponding to the above-mentioned cost-saving mechanisms were provided to the Union. These documents were provided and fully explained at the face-to-face meeting between the parties on December 10.² Thereafter, by letter dated December 26, 2008, the Postal Service provided follow-up explanation and information concerning various other cost-cutting efforts, including the removal of Carrier Sequence Bar Code Sorter (CSBCS) equipment, and the AMP consolidation process. The Postal Service provided additional information about Tour 2 staffing by letter dated January 16, of this year. The information was provided in response to the Union's request for additional information dated December 31, 2008. Since sending this information to the Union, the Postal Service has not received any indication from the Union that it has not been provided the information it seeks.

The Union's arguments about the benefit of entering the "Memorandum of Understanding (MOU) Re: Supplemental Work Force, Conversion of Clerk Craft PTFs," and the revised language in Article 7.1.B.4 of the 2006-2010 National Agreement, being "undone" must fail, as well. First, as stated above, there has been no nationwide initiative to eliminate or reduce Tour 2. Second, while it is true that "casuals will not normally work between 0500 and 1200 in mail processing operations," the agreement reached between the parties could only protect career employees from the impact of the use of casuals during those hours. More importantly, neither the MOU nor the revised language requires the Postal Service to preserve (or safeguard) the number of duty assignments on Tour 2.³

The well-settled language of the collective bargaining agreement, and the relevant arbitral authority, some of which is cited below, supports the Postal Service's position in this matter. Article 3 provides, among other things, that the Postal Service has the exclusive right, subject to the provisions of the Agreement and consistent with applicable law and regulations: under Article 3.B to hire, promote, transfer, assign, and retain employees. This ability to "assign" includes the right to reassign employees. (The effects of the decision under Article 3 to reassign employees are outlined in the parties' agreement found in Article 12). In addition, Article 3.C provides that the Postal Service has the exclusive right to maintain the efficiency of the operations entrusted to it. This includes maintaining the efficiency by having appropriate number of employees to match the operational needs of an operation. As explained at the parties' meeting last December 10, moving employees from Tour 2 to better match the fixed mail processing activities which take place from 7 PM (after mail is received from collection activities) to 7 AM (when mail is dispatched) is just such an example of maintaining the efficiency of the operations. To that end, Article 3.D provides that the Postal Service has the exclusive right to determine the methods, means, and personnel by which such operations are to be conducted.

As explained in the Postal Service's November 14, 2008, letter to the Union:

"...operations will be reviewed on a site-by-site basis and any action taken to improve operational efficiencies will be based on local circumstances. Because of the decrease in mail volumes, many facilities are under utilized resulting in operational gaps and inefficiencies. As those gaps and inefficiencies are identified and eliminated, the work may be compressed to better match operational windows. Consequently, the work flow may change and employees will follow the work. Any movement or reassignment of employees would be made pursuant to the relevant provisions of the collective bargaining agreement."

² The December 9th letter also explains the Postal Service's initial confusion concerning which documents the Union was actually requesting (*i.e.*, "elimination" of Tour 2 versus "reduction" on Tour 2).

³ Arbitrator Das's decision in case Q06C-4Q-C 07200239 (November 24, 2008) fully explains the MOU and language of Article 7.1.B.4 at issue.

Included in these relevant provisions is Article 12, Section 5, "Reassignments." In Article 12.5.A.4, one finds the authority of the Postal Service to "reassign within an installation employees excess to the needs of a section of that installation;" and in Article 12.5.A.5, the authority to "reduce the number of regular work force employees of an installation other than by attrition." In addition, Article 30.B.18 provides for local "identification of assignments comprising a section, when it is proposed to reassign within an installation" and Article 30.B. 22 provides for local implementation of this Agreement relating to seniority, reassignments and posting. Accordingly, the movement of employees from Tour 2 to Tour 1 or Tour 3 is not only permissible, its occurrence is anticipated under these agreed-upon provisions.⁴

Article 37, applicable to the clerks working in a Function 1 mail processing environment, provides further authority and agreed-upon provisions for the movement of clerks from one tour to another. Article 37.1.E, F, and G provide for (and define) for the Abolishment, Reversion, and Reposting of clerk duty assignments. Article 37.3 "Posting, Bidding and Application" provides for the procedures for reposting newly established and vacant duty assignments. Article 37.3.A.2 provides for the reversion of vacant duty assignments. Article 37.3.A.4 provides for the reposting of duty assignments. Article 37.3.B provides for certain Article 12 exceptions for the clerk craft. As such, management may make the determination that Tour 2 duty assignments are excess to operational needs under Articles 3 and 12, abolish or revert Tour 2 duty assignments, and then create and post duty assignments on other tours. In addition, for those employees who are unencumbered, they shall bid on duty assignments, (including newly-created Tour 1 or Tour 3 duty assignments), as agreed to by the parties in the changes made to Article 37.4.C.5.(a) in the 2006-2010 National Agreement.

As mentioned above, the right, authority and ability of the Postal Service to manage its operations efficiently and therefore, to move employees off Tour 2 is supported by arbitral authority. The arbitral authority includes, but is not limited to, Arbitrator Mittenthal's decision in Case H1C-NA-C 49 (December 7, 1983), wherein he upheld management's decision to allow for a different method of employee rotation, and addressed Article 3 rights:

"These rights are, of course, subject to other provisions of the National Agreement. But their presence in Article 3 serves to emphasize the parties' acceptance of the customary functions which are necessary to the successful conduct of any enterprise. If the managerial initiative contemplated by Article 3 is to have any meaning, it must allow for change. New "methods" new ways of doing things, are the lifeblood of any business."

Pre-dating that decision, and more directly on point with the instant grievance, Arbitrator Gamser in Case A-NAT-4157 (November 9, 1973), found no violation of the Agreement when the Postal Service reorganized its mail processing operations at the Grand Central Station. Without bargaining with the Union, management abolished 110 clerk craft positions on Tours 1 and 2, established 247 clerk duty assignments on Tour 3 (to relieve a "bottleneck"), and notified the employees that they need bid on the new duty assignments, or face being assigned as unassigned regulars.

Also supporting the Postal Service's position in the instant grievance is Arbitrator Sylvester Garrett's decision in Case AC-NAT 3052 (April 25, 1977) wherein he upheld the Postal Service's significant change in processing operations caused by changes in mail transportation by airplane, causing the reassignment of clerks in at least four cities. The Union had alleged that the Postal

⁴ The Union's allegation that Article 12.4 [and its notice requirements] has been violated, which is the subject of another Step 4 dispute [Q06C-4Q-C09051871] filed by the Union, is not addressed herein, particularly as there has been no "major relocation" of employees.

Service had not consulted about these changes, and had violated Article 5. The arbitrator found that the Postal Service was under no obligation to "engage in 'collective bargaining' as to whether or how it should exercise its authority under Article III of the National Agreement."

More recently, Arbitrator Shyam Das, in Case C90C-!C-C 93018526 (September 7, 2004), found, citing management's Article 3 right to uphold intra-craft cross-wage assignments, that "absent a contractual proscription on such assignments, there can be no question that the Postal Service would have the right " to make such assignments. In the instant grievance, as explained above, as there is no other contractual proscription, the Postal Service has the right to move employees from tour to another.

As such, the Union has not shown any violations of the Agreement.

Time limits at this level were extended by mutual consent, as it relates to the Article 15 issues involved in this dispute.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick Devine".

Patrick Devine
Labor Relations Specialist
Contract Administration (APWU)