**American Postal Workers Union, AFL-CIO**

1300 L Street, NW, Washington, DC 20005

**To:** Local Presidents
National Business Agents
National Advocates
Regional Coordinators
Resident Officers

**From:** Greg Bell, Director
Industrial Relations

**Date:** January 12, 2005

**Re:** Article 1.6.B. Case

Enclosed you will find a copy of a recent national level award by Arbitrator Das on the issue of "whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted in the 1978 Garrett Award...a supervisor at a small post office, whose position description includes the performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor." Arbitrator Das stressed that this issue is "quite narrow" and "[t]he answer to this narrow and abstract issue is 'yes', if there has been no reduction in bargaining unit employee hours", and in the case of a postmaster, "the duties fall within the scope of 'window transactions' and 'distribution tasks' specified in its position description." Moreover, Arbitrator Das emphasized that "[t]his issue does not address any increase in bargaining unit work performed by a supervisor, and a blanket answer cannot be provided for a situation where bargaining unit employee hours are reduced without a change in the amount of bargaining unit work done by a supervisor." "[S]uch determinations as whether specific duties 'historically' have been performed by supervisor are to be made, to quote the Garrett Award, 'in light of all relevant facts applicable to that particular installation'," according to Das. *(USPS #Q98C-4Q-C 01238942; 1/4/2005)*

This case arose following the Service's initiation of a Step 4 dispute in response to positions taken by the APWU in several regional cases in small post offices challenging supervisors' or postmasters' performance of bargaining unit work. It was the APWU's position that this case did not involve an interpretive issue, was not arbitrable, and grievances referenced by the Postal Service in its Step 4 appeal should be returned to arbitration at the regional level in order to complete a review of relevant fact circumstances in making a determination of whether violations occurred. The dispute was first heard on the issue of arbitrability before Arbitrator Das. He ruled that the dispute was arbitrable. He also concluded that the dispute was limited to "whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted in the 1978 Garrett Award (Case No. AC-NAT-5221), a supervisor at a small post office, whose position description includes performance of bargaining unit duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or

transfer of work or change in the amount of such duties performed by the supervisor." He noted that the Postal Service's position on that issue was that supervisors' performance of bargaining unit duties under these circumstances does not violate Article 1.6.B; however, he said that he was "somewhat unsure" concerning the APWU's position on this issue. He then said that if the union does not agree with this position, the dispute is arbitrable. *(USPS #Q98C-4Q-C 01238942; 12/31/2003-AIRS #40270)* When we made it clear that the union did not agree with the Postal Service's position, a hearing on the merits was scheduled.

At the hearing, a Postal Service witness that had reviewed bargaining history covering negotiations between 1971 and 2000 testified that they showed that the union merely asserted during negotiations that supervisors were performing too much bargaining unit work and that this conduct not only affected the bargaining unit but decreased efficiency. Also, he said that the union's efforts were unsuccessful in its efforts to eliminate or further reduce the amount of bargaining unit work performed by supervisors. In addition, this witness claimed that the union never asserted in negotiations that supervisors violated Article 1.6.B by performing bargaining unit work on a daily or regular basis, and never argued that supervisory employees were limited to performing only such bargaining unit work as was "necessary."

The union argued that the Postal Service's interpretation of Article 1.6.B is vague since it never defined what "daily, regular or routine" means or explained which tasks constitute "historical" performance of bargaining unit work by a postmaster/supervisor. We maintained that the language of Article 1.6.B establishes that supervisors may only perform bargaining unit work listed in their position descriptions and only work when it is necessary for them to do so. The APWU argued that Arbitrator Garrett recognized the long established Postal Service policy that supervisors would not perform bargaining unit work except as necessary. In addition, we cited language in the job descriptions for a postmaster that limits them to window transaction and distribution tasks and only "as the workload requires" and for a supervisor that he/she can perform bargaining unit duties only "in order to meet established service standards."

The APWU further argued that the issue as presented implies that the Postal Service should allow its supervisors to continue to do the same amount of work they have done as in the past, even if regular clerks are being excessed, and that if the volume of work increases they can perform additional work so long as clerk hours are not diminished. We referred to the holding of the Garrett award that Article "1.6.B grants no authority to substitute a supervisor for a bargaining unit employee unless (1) such action can be justified by some change in relevant conditions or operating methods affecting the office or (2) otherwise results from good faith action by Management in the exercise of its authority under Article III." The union also maintained that the Garrett award rejected the position that if the workload decreases, clerks should be the only employees to bear the impact and he recognized that increased efficiency should not be achieved at the expense of bargaining unit employees. In addition, we asserted that Article 1.6.B is a "work preservation clause" that requires that the amount of bargaining unit work that the Postal Service is able to schedule clerks to perform forms a "baseline of bargaining unit work reserved for members of the unit" and "[u]nanticipated needs above and beyond that baseline may be performed by postmasters "as the workload requires" (if they are handling window transactions or distributing mail) or supervisors "in order to meet established service standards." Therefore, Article 1.6.B bars management from scheduling supervisors to perform bargaining unit work on a daily, regular or

routine basis" except where it is necessary for a postmaster/supervisor in an office with only one clerk, for example, to cover the window during the clerk's breaks or participate in distribution of mail to ensure its delivery in a timely fashion. We also cited interpretations by the Postal Service of Article 1.6.B as well as Step 4 settlements stating that supervisors will "do as little bargaining unit work as possible." Finally, the APWU argued that the bargaining history evidence supplied by the Postal Service constitutes hearsay, does not show that the union's position was an unachieved demand in collective bargaining, and does not demonstrate that the union ever conceded in bargaining that management could use supervisors in small offices on a daily, regular and routine basis to perform bargaining unit work when a clerk is available to perform such work. We also maintained that the union's lack of Article 1.6 grievances during the period 1981 until July 1990 did not demonstrate acquiescence but was due to grievances being held in abeyance pending an award on the meaning of "bargaining unit work" under Article 1.6.

The Postal Service countered that the Garrett award decided that if postmasters historically performed bargaining unit work on a daily basis, Article 1.6.B allowed the postmaster to continue performing such work in the future so long as the duties performed conformed with the postmaster's job description. In addition, the award held that a postmaster could increase the amount of bargaining unit work he or she performed so long as this assignment was a proper good faith exercise of its Article 3 rights. It asserted also that Arbitrator Garrett ruled that a postmaster was not limited to performing a certain percentage of bargaining unit work and the union should raise a desire to limit such work in negotiations. Moreover, management asserted that the union has attempted unsuccessfully in negotiations to eliminate postmasters' performance of bargaining unit work or decrease time for performing such work to no more than 15% of a postmaster's total hours. The Postal Service further argued that the union's grievances since the 1990s have improperly asserted that postmasters could only perform bargaining unit work due to the unavailability of a clerk by relying on references to the postmaster's job description and dicta from the Garrett award, rather than acknowledging that postmasters can perform such work as was historically performed by them. Management asserted that this constituted a relitigation of the Garrett award since Garrett's opinion took into account language in the postmaster's job description stating "as the workload requires." Finally, it contended that reducing postmaster hours to obtain more bargaining unit work is not "economically sound or practical", not permitted by statute, and would contravene operational needs of serving as the Postal Service's "public face to the community."

In addressing the issue in this case, Arbitrator Das reviewed Arbitrator Garrett's decision in #AC-NAT-5221. Though Garrett rejected the union's "suggestion" that Article 1.6.B limited supervisors in small post offices from spending more than approximately 15% of his/her daily work time performing bargaining unit work, he "also rejected the literal reading of Article 1.6.B suggested by the Postal Service, which would have allowed it to rewrite or replace all supervisory position descriptions, and, in effect, freely substitute supervisors for bargaining unit personnel, even on a full-time basis." Also, according to Arbitrator Das, Garrett concluded that Article 1.6.B restated "a long established policy to avoid having supervisors perform lower level work, subject to specified exceptions." However, Das stressed, "Arbitrator Garrett did not accept the Postal Service's position that it was free to increase the amount of bargaining unit work performed by a postmaster or supervisor in a small office to achieve full and efficient use of supervisory work time, irrespective of the impact on hours worked by clerks." On the other hand, Das said that

"Garrett also clearly did not accept the Union's argument that there could be no *regular* practice of having supervisors perform lower level work in a small office." "Nowhere in his decision does Arbitrator Garrett state or imply that Article 1.6.B might require the Postal Service to *reassign* bargaining unit work historically performed by a supervisor in a particular office to clerks because such duties are performed on a daily, regular or routine basis, or because clerks are or could be available to perform the work," according to Das.

He then reasoned that Arbitrator Garrett's award "focuses on *change*", specifically "on Postal Service action that increases the amount of bargaining unit work performed by supervisors, whether in response to changes in workload or to promote efficiency." In Garrett's analysis, Das also reasoned, he "starts from the pragmatic premise that existing position descriptions [in effect in 1971] that include performance of bargaining unit duties encompass the work historically performed by the incumbent(s) of that position under the prevailing circumstances at a particular office." Therefore, "[i]n this sense, historical practice sets the baseline for what is 'necessary' at a particular office," according to Das.

Arbitrator Das then stated that the issue in this case is "narrow and abstract" and though his answer to such an issue is "yes", several caveats or considerations apply. He said that consistent with the exception in Article 1.6.B, as interpreted by the Garrett award, bargaining unit work may continue to be performed on a daily, regular or routine basis by a supervisor that he/she has historically performed (and where there has been no shift of work or change in the amount of such duties by the supervisor ) "if there has been no reduction in bargaining unit hours, and assuming that in the case of a postmaster the duties fall within the scope of 'window transactions' and 'distribution tasks' as set out in the postmaster's position description." Das stressed that the issue in this case does not apply to increases in bargaining unit work performed by a supervisor, and a " 'blanket answer' cannot be provided for a situation where bargaining unit employee hours are reduced without a change in the amount of bargaining unit work done by a supervisor." Determinations as to whether specific duties have been performed historically by a supervisor are required to be made "in light of all relevant facts applicable to that particular installation," according to the arbitrator. Das noted that the ruling in this case does not dispose of the four grievances from offices referred to in the parties' position statements since the union alleged an increase in the performance of bargaining unit work by the postmasters in those cases.

GB/MW:jm

Enclosure

National Arbitration Panel

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| In the Matter of Arbitration | ) | |
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| | ) | |
| between | ) | |
| | ) | Case No. |
| | ) | Q98C-4Q-C 01238942 |
| United States Postal Service | ) | |
| | ) | |
| | ) | |
| and | ) | (Article 1.6.B Case, |
| | ) | Merits) |
| | ) | |
| American Postal Workers Union | ) | |

Before: Shyam Das

Appearances:

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|---|---|
| For the Postal Service: | Howard J. Kaufman, Esquire |
| For the APWU: | Anton Hajjar, Esquire |
| Place of Hearing: | Washington, D.C. |
| Dates of Hearing: | June 17, 2003 (Arbitrability)<br>April 15, 2004 (Merits) |
| Date of Award: | December 31, 2003 (Arbitrability)<br>January 4, 2005 (Merits) |
| Relevant Contract Provision: | Article 1.6.B |
| Contract Year: | 1998-2000 |
| Type of Grievance: | Contract Interpretation |

Award Summary

The issue in the present interpretive case, it should be emphasized, is quite narrow, namely:

> ...whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted in the 1978 Garrett Award...a supervisor at a small post office, whose position description includes performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor.

The answer to this narrow and abstract issue is "yes", if there has been no reduction in bargaining unit employee hours, and assuming that in the case of a postmaster the duties fall within the scope of "window transactions" and "distribution tasks" specified in its position description. This issue does not address any increase in bargaining unit work performed by a supervisor, and a blanket answer cannot be provided for a situation where bargaining unit employee hours are reduced without a change in the amount of bargaining unit work done by a supervisor. Moreover, such determinations as whether specific duties "historically" have been performed by a supervisor are to be made, to quote the Garrett Award, "in light of all relevant facts applicable to that particular installation".

Shyam Das, Arbitrator

This case originated on September 5, 2001, on which date the Postal Service notified the Union as follows:

> In accordance with the provisions of Article 15, the Postal Service is initiating a dispute at Step 4 of the grievance procedure on the following interpretive issue:
>
> > Whether there is a violation of Article 1.6.B of the National Agreement when postmasters or supervisors in offices of fewer than 100 bargaining unit employees, who have historically performed non-supervisory tasks, continue to do so on a daily, regular or routine basis.
>
> In Case G98C-4G-D 00254152, New Roads, LA; Case G98C-4G-C 00222041, Youngsville, LA; Case G98C-4G-C 00232532, Mamou, LA; and Case G98C-4G-C 00239464, Baker, Louisiana, the APWU has taken the position that if there is a clerk available who can perform the work, it must first be assigned to the clerk. The assignment of such work is regardless of whether the work has historically or traditionally been performed by the postmaster or supervisor.
>
> Recently, in Case G90C-4G-C 92043937, the union pursued a similar argument that the postmaster could not perform duties on a daily, regular and routine basis since bargaining unit personnel were available.
>
> It is the Postal Service's position that there is no prohibition against postmasters or supervisors in offices of fewer than 100 bargaining unit employees performing such work. In Case AC-NAT 5221 Arbitrator Garrett addressed this issue. The arguments routinely used by the union in regular arbitration are substantially similar to

those made by the APWU in the case in front of Arbitrator Garrett. Arbitrator Garrett did not impose a fixed maximum percentage or amount of time that supervisors or postmasters could perform such work.

Following a Step 4 meeting, the Union provided the following statement of its position, dated October 26, 2001:

The Postal Service is asserting a claim that no violation of 1.6.B occurs when Postmasters or Supervisors in offices with less than 100 bargaining unit employees perform bargaining unit work on a daily, regular or routine basis if they have historically performed such tasks.

We disagree with that assertion. The Union believes that a violation does occur when Postmasters and Supervisors shift work from the craft to themselves on a daily, regular and routine basis. It is our contention that craft work should be performed by craft employees if they are qualified and available to perform those duties. Any performance of bargaining unit work by Postmasters and Supervisors must be consistent with their job descriptions, Article 1.6.B and the Garrett Award (AC-NAT-5221).

The Union believes it has every right to examine all fact circumstances, historical and otherwise, when determining whether or not violations of 1.6.B are occurring. We disagree with assertions made at the Step 4 meeting that Postmasters and Supervisors can perform bargaining unit work on a daily and routine basis with impunity if they have historically done so. The contract and the 1978 Garrett interpretation of 1.6.B require

a close and complete review of the relevant fact circumstances when making a determination of whether a violation is occurring or not.

For that reason we believe the cases referenced in this Step 4 Appeal must be returned to arbitration at the regional level. Each of the referenced cases have been reviewed and in my opinion the fact circumstances of each case demonstrate that contract violations are occurring. Examination of fact circumstances do not require interpretive findings and require adjudication at the local or regional level. The following are some of the primary fact circumstances.

1. New Roads, LA 698C-4G-C-00254152 - In this office a full time position was reverted and the Postmaster has increased his performance of bargaining unit work. In addition, the work hours of the PTFs have been reduced. The Postmaster works on a daily, regular and routine basis during time frames he has not scheduled one or more PTF's. The part time flexibles are averaging less than 30 hours a week.

2. Youngsville, LA G98C-4G-C-00222041 - In this office the former Postmaster reduced the hours of the PTF's and increased his performance of bargaining unit work on a daily and routine basis. On his day off (Saturday) a 204B was scheduled to do craft work and the PTF was not scheduled.

   A new Postmaster came to the office and dramatically reduced the amount of bargaining unit work he performed. The hours were restored to the PTF's and the

senior PTF was converted to regular. The Union in this case is seeking retroactive compensation for the violations that occurred while the former PM was there.

3. Baker, LA G98C-4G-C-C00239464 - In this Level 20 office the supervisor and the Postmaster performed bargaining unit work on a daily basis. The original supervisor left and the new supervisor did not perform bargaining unit work.

   PTF work hours were reduced. The supervision's [sic] job description does not provide for doing craft work. The Postmaster alleges he has a right to do craft work at least 2 hours a day. We disagree. The Prior Postmaster in this office rarely did bargaining unit work.

4. Mamou, LA G98C-4G-C-00232532 - The clerical staffing in this office has been reduced and since that time the Postmaster has increased her daily and regular performance of craft work. The two PTF's are averaging less than 30 hours a week. In addition, an injured letter carrier was rehabbed into the office as a clerk and is getting 40 hours a week.

A grievance is also pending in this office regarding a reverted full time clerical position.

As you can see each of the referenced cases attached to this appeal have non interpretive fact circumstances that must be resolved at the local or regional level.

The Postal Service's statement of position, dated April 30, 2002, reiterated the position set out in its September 5, 2001 letter (previously quoted) and stated:

> The Postal Service's position is that the daily, regular or routine performance of non-supervisory tasks which have been historically performed by the postmaster or supervisor does not violate the Agreement. The history and practice in Post Offices with less than 100 bargaining unit employees is that postmasters and supervisors may perform non-supervisory tasks, which include bargaining unit work. [Footnote omitted.] The Garrett award recognizes management's right to perform such work. Further, the language of Article 1.6.B was negotiated in 1973 and has remained unaltered despite repeated union proposals for change in subsequent contract negotiations.
>
> Although the union argues that the Louisiana cases referenced in our September 5, 2001 correspondence should be remanded for application of the Garrett award to the facts of each case, the union's approach does not address the underlying interpretive dispute. During the October 25 meeting, the union maintained that if a postmaster or supervisor performs non-supervisory tasks on a daily, regular or routine basis it is a violation of the Agreement. The Postal Service disagrees as this was addressed by Arbitrator Garrett. The interpretive dispute can only be addressed at the National level by joint resolution; by the APWU's acceptance of our position by not appealing the matter to arbitration; or by a national arbitration award.

The Union appealed the dispute to arbitration on May 2, 2002. At arbitration, the Union took the initial position that this dispute does not involve an interpretive issue arising under the National Agreement, and, hence, is not arbitrable. The Union also claimed that the dispute initiated by the Postal Service is procedurally defective because it failed to set forth the facts and circumstances giving rise to the dispute and/or because the National Agreement requires the issue to be presented in the context of an appeal of one or more of the complained-of local grievances to National arbitration, rather than be initiated at Step 4. The parties agreed to bifurcate the dispute to obtain a ruling on these preliminary issues.

In a decision dated December 31, 2003, I concluded that the dispute is not procedurally defective. With respect to arbitrability, my decision stated:

> As set forth in the above Findings, the dispute in this case, as delineated at arbitration, is whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted in the 1978 Garrett Award (Case No. AC-NAT-5221), a supervisor at a small post office, whose position description includes performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor. The Postal Service's position is that the performance of bargaining unit duties under these circumstances does not violate Article

> 1.6.B. As indicated in the Findings, I am somewhat unsure as to the Union's position on that issue. If the Union does not agree with the Postal Service's position, this dispute is arbitrable and should be scheduled for a hearing on the merits.

Following issuance of the December 31, 2003 decision, the Union made it clear it did not agree with the Postal Service's position. A hearing on the merits of the dispute was held on April 15, 2004. The Union set forth the basis for its disagreement with the Postal Service. The Postal Service reiterated its position and presented testimony and documents to describe the history and practicalities of postmasters performing bargaining unit work in small offices. It also presented evidence regarding bargaining history on this subject from 1971-2000.

Article 1.6 of the National Agreement provides as follows:

> 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;
>
> 2. for the purpose of training or instruction of employees;
>
> 3. to assure the proper operation of equipment;

> 4. to protect the safety of employees; or
>
> 5. to protect the property of the USPS.
>
> B. In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6.A.1 through 5 above or when the duties are included in the supervisor's position description.
>
> (Emphasis added.)

Postmaster position descriptions, EAS-11 through EAS-18, which evidently have not changed since before the parties entered into their first CBA in 1971, include:

> May personally handle window transactions and perform distribution tasks as the workload requires.

The position description for Supervisor, Customer Services, EAS-16, includes:

> May personally perform certain non-supervisory tasks in order to meet established service standards, consistent with the provision of Article 1, Section 6 of the National Agreement.

The provision in Article 1.6.B, at issue here, has remained unchanged since 1973. The exception "when the duties are included in the supervisor's position description" was the

subject of a major interpretive decision by Arbitrator Sylvester Garrett, Case No. AC-NAT-5221, issued on February 6, 1978. (Hereinafter referred to as the "Garrett Award".) In that National decision, Arbitrator Garrett addressed the meaning of Article 1.6.B. His findings included the following:

> For convenience Article I, Section 6-B will be referred to as I-6-B in these Findings. The interpretation of I-6-B ultimately suggested by the APWU would read it to embody essentially a limitation that no supervisor in a small Post Office could spend more than about 15% of his or her daily work time performing bargaining unit work.
>
> There is no support in the language of this provision for this suggestion. Such an "interpretation" in truth would represent a detailed implementation of I-6-B such as the parties might develop through negotiations, or which Management might adopt unilaterally, in order to provide a practical day-to-day rule of thumb to minimize administrative confusion in the thousands of small Post Offices....
>
> Under the USPS literal reading of I-6-B, however, it would be free to rewrite or replace all supervisory position descriptions so as to take full advantage of the exception referring to the inclusion of bargaining unit work "in the supervisor's position description." Under this interpretation, in effect, it could substitute supervisors for bargaining unit personnel freely, even on a full-time basis. To embrace such an interpretation would be to read I-6-B as if written in a vacuum rather than in the context of an on-going

> collective bargaining relationship. Proper interpretation of such a key provision in a collective agreement surely involves more than an exercise in semantics.

[Chairman Garrett then addressed the background to the 1973 negotiations in which Article 1.6.B was adopted.]

* * *

> It follows that in 1973 I-6-B was not intended to authorize revision of supervisory position descriptions (as they existed in 1973) to include performance of bargaining unit work. It is equally clear that nothing in Article I, Section 6 could be deemed to preclude revision of existing position descriptions, or the development of new ones, when such action might be warranted by changes in relevant conditions or operating methods in a given office, or otherwise required in a good faith exercise of Management initiative under Article III of the Agreement.
>
> Another problem is presented where an applicable supervisory position description in a given office already includes performance of bargaining unit duties ..., but the Service then substantially increases the amount of bargaining unit work required of incumbents of the supervisory position, at the expense of hours worked by Clerks. Here again, I-6-B necessarily implies an obligation to act in good faith, rather than arbitrarily taking advantage of this exception to increase the performance of bargaining unit work by supervisors. Thus I-6-B grants no authority to substitute a supervisor for a bargaining unit employee unless (1) such action can be justified by

some change in relevant conditions or operating methods affecting the office or (2) otherwise results from good faith action by Management in the exercise of its authority under Article III.

* * *

... There is no way, therefore, that I-6-B reasonably could be read to grant an unlimited license to eliminate Clerk hours by transferring Clerk work to supervisors without also giving consideration to other possible means of reducing total work hours.

In light of this analysis, it is clear that the USPS errs in claiming an unfettered license under I-6-B to assign Clerk duties to supervisors. Proper observance of the policy enunciated in Article I, Section 6 would require as a minimum that--before such action is taken in any given office--the USPS should also give full consideration to other reasonably available means of eliminating excess manpower. If, after such a good faith review has been conducted, it nonetheless reasonably appears that Clerk hours must be reassigned to supervisors in any given small office, appropriate action then might be taken in the exercise of Management authority under Article III.

The present interpretation obviously cannot be applied in any given small office except in light of all relevant facts applicable to that particular installation. In order to dispose of all pending grievances under I-6-B, therefore, the parties either will have to negotiate a detailed set of rules for implementing this provision (as the APWU apparently would desire) or proceed with a detailed analysis of each of the pending grievances.

A Postal Service witness who had reviewed bargaining history documents in the Service's files covering the negotiations from 1971 to 2000 testified at the April 15, 2004 hearing that they do not show that the Union ever asserted that a supervisor violated Article 1.6.B by performing work on a daily or regular basis. Similarly, he noted, based on those documents, the Union never claimed that postmaster or supervisor position descriptions limit their performance of bargaining unit work or that they were contractually limited to performing bargaining unit work only "as necessary". The Union, he stated, just asserted, on a recurring basis, that supervisors were doing too much bargaining unit work. The Union, he added, stressed that this not only was contrary to the interests of the bargaining unit, but also to the Postal Service's interest in increasing efficiency, and the Union sought -- unsuccessfully -- to eliminate or further reduce the bargaining unit work done by supervisors.

## UNION POSITION

The Union initially asserts that the interpretation of Article 1.6.B proffered by the Postal Service is hopelessly vague. The Union points out that the Postal Service never defined what "daily, regular or routine" means, nor has the Postal Service explained which tasks it is addressing or what history constitutes "historical" performance of bargaining unit work by a postmaster/supervisor. The Union notes that the Postal Service offered no evidence of past practice, and it

stresses that practices, in any event, may reflect a violation of the CBA.

The Union argues that by stating no violation can occur unless work is shifted or transferred from the bargaining unit to a supervisor, the Postal Service seems to be claiming that it is free to continue to have supervisors do the same amount of work as in the past, even if one or more full-time regular clerks has been excessed, and that, if the volume of work increases, supervisors can perform additional work so long as clerk hours are not diminished. According to the Union, the Postal Service also never explained whether, in its view, Article 1.6.B means the time a supervisor spends on bargaining unit tasks is fixed or the duties are fixed.

The Union contends that the language of Article 1.6.B supports its position that supervisors may perform only the bargaining unit work listed in their position descriptions and only when it is necessary for them to do so. This is clear, it says, from the language of Article 1.6.B and the Garrett Award. The postmaster position description limits postmasters to specific duties -- window transaction and distribution tasks -- and only "as the workload requires". The supervisor position description states that supervisors can perform bargaining unit duties only "in order to meet established service standards". The Union insists that the Garrett Award rejected the "postmaster as the basic clerk" argument of the Postal Service, citing long established Postal Service policy that supervisors would not perform bargaining unit work except as necessary.

The Union stresses the following holding in the Garrett Award:

> Thus I-6-B grants no authority to substitute a supervisor for a bargaining unit employee unless (1) such action can be justified by some change in relevant conditions or operating methods affecting the office or (2) otherwise results from good faith action by Management in the exercise of its authority under Article III.

The Union maintains that fixing the time a supervisor performs bargaining unit work at the expense of clerks, including opportunities for PTFs to work additional hours, is substituting a supervisor for a bargaining unit employee. Nothing in the Garrett Award has been or could be cited to support the Postal Service's interpretation that supervisors are free to perform the same amount of bargaining unit work as they "historically" have done provided only that clerks do not lose work hours. The Garrett Award firmly rejected the notion that if the workload decreases clerks bear the only impact. Garrett held that the Unions did not agree that increased efficiency was to be achieved at the expense of bargaining unit employees, without giving consideration to other possible means of reducing the work force.

The Union asserts that under the Garrett Award, supervisors can only perform necessary work, and this is true where the workload in a particular facility increases. Such

cases are very fact bound, but if the Postal Service were to intentionally understaff an office with an increasing workload, that would violate Article 1.6.B.

The Union contends, as set forth in its brief:

> The only reasonable interpretation of Article 1.6.B as a work preservation clause is that the amount of bargaining unit work that the Postal Service is able to schedule clerks to perform (including available PTF hours) forms a *baseline* of bargaining unit work reserved for members of the unit. Unanticipated needs above and beyond that baseline may be performed by postmasters "as the workload requires" (if they are handling window transactions or distributing mail) or supervisors "in order to meet established service standards." Certainly Article 1.6.B prohibits the Postal Service from scheduling postmasters and supervisors to perform bargaining unit work, that is, from doing bargaining unit work on a daily, regular or routine basis.

The Union argues that contemporaneous interpretations of Article 1.6.B support the Union's position in this case. The Postal Service's own comparison of the 1973 contract changes from the 1971 National Agreement (Union Exhibit 16) includes a statement that: "we will expect our supervisors to do as little bargaining unit work as possible." A Step 4 settlement with the NALC (which was a party to the same National Agreement as the APWU) entered into around that time included a statement that management "reaffirm [ed] its intent that supervisors will do as little bargaining unit work as possible ...." And in a March 3,

1978 Step 4 response in a NALC case (Union Exhibit 20) management acknowledged that: "the supervisor's job description does not intone that he would perform bargaining unit work as a matter of course every day but rather that he would perform such duties in order to meet established service standards."

The Union acknowledges that there may be circumstances where it is necessary for a postmaster/supervisor to perform bargaining unit work on a daily, regular or routine basis. For example, in an office staffed by a postmaster and one clerk, the postmaster covers the window during the clerk's breaks and may pitch in to distribute mail to get it out in a timely fashion. The Union also points out that those post offices staffed only by a postmaster ordinarily are not subject to Article 1.6.B, since the postmaster is not a supervisor in that particular context. The Union hastens to add, however, that this would not be the case in situations where the Postal Service intentionally has understaffed a one-person office or where clerks who had worked in the facility were excessed.

The Union contends that regional arbitration awards in which the Union has prevailed are correct. It also denies that the Union ever acquiesced in the Postal Service's proffered interpretation. The Union stresses that all Article 1.6 grievances were held in abeyance from 1981 until July 1990, pending an arbitration award defining the term "bargaining unit work". The Garrett Award was issued in 1978, so it cannot be concluded from a lack of grievances on this issue before July 1990 that there was a common understanding in support of the

Postal Service's view of the Garrett Award. Moreover, as shown in two Union exhibits, some Postal Service managers have accepted the Union's position based on the Garrett Award and other regional arbitration awards.

Finally, the Union insists that the bargaining history evidence offered by the Postal Service is hearsay and, in any event, does not demonstrate that the Union's position in this case was an unachieved demand in collective bargaining. The evidence does not show that the Union ever conceded in bargaining that management is free to use supervisors in Article 1.6.B offices on a daily, regular and routine basis to perform bargaining unit work when a clerk is available to perform it. What the Union did was seek to clarify the existing language in the CBA in order to eliminate many disputes in the field, without prejudice to its position which it expressed in a number of regional arbitration cases. The Union also made proposals to eliminate supervisors doing any bargaining unit work, which clearly goes beyond the restrictions in Article 1.6.B.

## EMPLOYER POSITION

The Postal Service contends that the Garrett Award held that if postmasters historically performed bargaining unit work on a daily basis, the clear language of Article 1.6.B allowed the postmaster to continue performing this work in the future consistent with the postmaster's job description. This has been referred to in some regional arbitration decisions as the "practice test". The Garrett Award further held that an

increase in bargaining unit work by the postmaster or a shifting of clerk work from a clerk to the postmaster also would be allowed if the Postal Service justified increasing a postmaster's performance of bargaining unit work hours as an otherwise proper good faith exercise of its Article 3 rights. This is sometimes referred to as the "unless test".

The Postal Service insists that the Garrett Award implicitly recognizes bargaining unit work may be performed on a daily, regular and routine basis by a postmaster/supervisor. Moreover, Arbitrator Garrett ruled that a postmaster was not limited to a certain percentage of time devoted to bargaining unit work, and stated that if the Union desired to limit postmasters' work it should raise the subject in negotiations.

The Postal Service points out that the Union has attempted over the years either to eliminate postmasters' performance of bargaining unit work or to decrease the time that postmasters perform bargaining unit work to no more than 15 percent of the postmaster's total hours. But the Union's efforts in this regard have been unsuccessful in negotiations from 1975 through 2000.

The Postal Service asserts that throughout the 1980s, the Union grudgingly accepted the holding in the Garrett Award that a postmaster who traditionally had performed bargaining unit work on a daily basis is entitled to continue to perform this work, as long as there is no increase in craft work and work is not shifted from a clerk to the postmaster. In the

1990s, however, the Union embarked on a different approach by raising challenges based on the language in the postmaster job description in a series of cases. The thrust of these grievances focused on the phrase "as the workload requires" in the postmaster position description, which the Union combined with selected dicta from the Garrett Award to argue that a postmaster could only perform bargaining unit work based on the unavailability of a clerk, rather than the historical methodology that was the crux of the Garrett Award. These Union grievances, the Postal Service states, chose to seize on the "unless" test and ignored the "practice" test, which is a predicate for applying the second "unless" test. Not surprisingly, the Postal Service notes, the majority of arbitrators have rejected the Union's tortured reading, but a few arbitrators, notably Arbitrator Edwin Benn in Case No. COC-4U-C 5058 (1992), ruled in the local union's favor.

The Postal Service maintains that although the Union claims it does not want to "relitigate" the Garrett Award, the Union has embarked on such a path for the past ten years by bringing virtually identical grievances to arbitration. As a review of the underlying grievances in the instant case illustrates, the Union's real argument is that if a bargaining unit employee is in the office, the Union wants the clerk to have first call on all bargaining unit work. This is the "availability of a clerk" argument. In the Postal Service's view, the Union aim is to chip away at the Garrett Award and make it a nullity in those offices where grievances have been filed.

The Postal Service stresses that Arbitrator Garrett considered the same postmaster position description which the Union now relies on and focused on whether or not there were any changes in postmaster craft hours. Arbitrator Garrett also considered the language in the postmaster position description "as the workload requires" and found it adequate for his award, as have most other regional arbitrators faced with grievances of this sort.

The Postal Service argues that it should not be subjected to repetitive grievances and arguments on issues that previously have been definitively resolved in national arbitration. The only possible aim of these grievances is the Union's desire to negate the Garrett Award and change a consistent 30-plus year past practice, as well as overcoming its failed collective bargaining positions in multiple negotiations over several decades.

The Postal Service maintains that Arbitrator Garrett held that a postmaster can perform bargaining unit work on a daily basis. The only caveat is that a postmaster cannot increase the number of hours he historically has performed window and distribution tasks. The Postal Service also was admonished in the Garrett Award not to rewrite job descriptions or shift work from clerks to the postmaster, except where there are legitimate reasons for the Postal Service to increase postmaster hours. The Postal Service points out that since the

Garrett Award, it has not invoked this right, but has followed the past history of the postmaster work hours in each office.

The Postal Service also maintains that the possibility of reducing postmaster hours to accommodate the Union's desire to obtain more work is not really economically sound or practical. The postmaster's presence in a post office is required, not only by statute, but operationally as the Postal Service's public face to the community. These considerations, it asserts, require a postmaster's presence at the facility for an 8-hour day.

## FINDINGS

This national interpretive dispute was initiated by the Postal Service in 2001. In 1976, the APWU initiated a national interpretive dispute that culminated in the 1978 Garrett Award. As stated by Arbitrator Garrett:

> In its [the APWU's] view Article I, Section 6-B is such "a patently ambiguous contractual provision" that it would be foolhardy to deal with multitudinous cases thereunder, over a prolonged period, and with many different Regional Arbitrators. Its brief concludes that, "The convenience of applying the law to a particular case may not be present...but the need to obtain guidance is overriding."

In finding that the present dispute initiated by the Postal Service does raise a legitimate interpretive issue, I stated in my December 31, 2003 decision:

> Article 1.6.B applies to post offices with less than 100 bargaining unit employees. It provides for an exception to the general prohibition on supervisors (including postmasters) performing bargaining unit work "when the duties are included in the supervisor's position description".
>
> What does this exception mean? That was the issue presented to and decided by Arbitrator Garrett in 1978. For over 25 years the parties have applied the ruling in the Garrett Award to cases where this exception is cited by the Postal Service to justify performance of bargaining unit work by a supervisor. In a very real sense, the ruling in the Garrett Award is part and parcel of the parties' collective bargaining agreement. Essentially, the exception in Article 1.6.B can only properly be applied by applying the Garrett Award.
>
> Thus, to the extent there is a genuine dispute between the parties as to the meaning of the Garrett Award it constitutes an interpretive dispute under the National Agreement. Such a dispute is to be distinguished from a dispute as to the application of the Garrett Award to a particular set of facts, which may or may not also be in dispute.

In his lengthy and comprehensive decision, Arbitrator Garrett concluded that there was no support in the language of Article 1.6.B for the Union's suggestion that it encompassed a

limitation that no supervisor in a small post office could spend more than about 15 percent of his or her daily work time performing bargaining unit work. Arbitrator Garrett also rejected the literal reading of Article 1.6.B suggested by the Postal Service, which would have allowed it to rewrite or replace all supervisory position descriptions, and, in effect, freely substitute supervisors for bargaining unit personnel, even on a full-time basis.

Arbitrator Garrett concluded that Article 1.6.B essentially was intended to restate and embody in the National Agreement a long established policy to avoid having supervisors perform lower level work, subject to specified exceptions. One such exception was that in small and medium size offices it may be "necessary" to require supervisors to perform lower level work, as reflected in supervisory position descriptions in effect when the parties negotiated their first collective bargaining agreement in 1971.

Arbitrator Garrett did not accept the Postal Service's position that it was free to increase the amount of bargaining unit work performed by a postmaster or supervisor in a small office to achieve full and efficient use of supervisory work time, irrespective of the impact on hours worked by clerks. He did not accept the notion that Article 1.6.B incorporated the Postal Service's position that the postmaster is the "basic clerk" who is supplemented by additional clerks only as required.

Arbitrator Garrett also clearly did not accept the Union's argument that there could be no regular practice of having supervisors perform lower level work in a small office. Nowhere in his decision does Arbitrator Garrett state or imply that Article 1.6.B might require the Postal Service to reassign bargaining unit work historically performed by a supervisor in a particular office to clerks because such duties are performed on a daily, regular or routine basis, or because clerks are or could be available to perform the work.

The Garrett Award focuses on change, in particular on Postal Service action that increases the amount of bargaining unit work performed by supervisors, whether in response to changes in workload or to promote efficiency.

Arbitrator Garrett stated: "it seems reasonable to infer that the position description exception initially was spelled out in 1971 because the parties recognized that existing supervisory position descriptions contemplated the performance of bargaining unit duties." Arbitrator Garrett then went on to address situations where the Postal Service revises existing or develops new position descriptions to include performance of bargaining unit work or "substantially increases the amount of bargaining unit work required of incumbents of the supervisory position [which already includes performance of bargaining unit duties], at the expense of hours worked by Clerks". In any of those situations, Arbitrator Garrett concluded:

> ...I-6-B grants no authority to substitute a supervisor for a bargaining unit employee unless (1) such action can be justified by some change in relevant conditions or operating methods affecting the office or (2) otherwise results from good faith action by Management in the exercise of its authority under Article III.

In my view, Arbitrator Garrett's analysis necessarily starts from the pragmatic premise that existing position descriptions that include performance of bargaining unit duties encompass the work historically performed by the incumbent(s) of that position under the prevailing circumstances at a particular small office. In this sense, historical practice sets the baseline for what is "necessary" at a particular office. Any substantial change, thereafter, has to meet the requirements Arbitrator Garrett spelled out.

The parties have cited many post-Garrett Award regional arbitration decisions involving Article 1.6.B. For the most part, these decisions appear to be consistent with the interpretation of Article 1.6.B in the Garrett Award. In my opinion, however, some of the decisions are inconsistent with the Garrett Award to the extent they purport to interpret and apply what they find to be ambiguously written supervisory position descriptions in a restrictive manner (or otherwise purport to determine what is "necessary") without regard to historical practice at the particular office. Such decisions cannot be squared with the Garrett Award.

The issue in the present interpretive case, it should be emphasized, is quite narrow, namely:

> ...whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted in the 1978 Garrett Award...a supervisor at a small post office, whose position description includes performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor.

The answer to this narrow and abstract issue is "yes", if there has been no reduction in bargaining unit employee hours, and assuming that in the case of a postmaster the duties fall within the scope of "window transactions" and "distribution tasks" specified in its position description. This issue does not address any increase in bargaining unit work performed by a supervisor, and a blanket answer cannot be provided for a situation where bargaining unit employee hours are reduced without a change in the amount of bargaining unit work done by a supervisor. Moreover, such determinations as whether specific duties "historically" have been performed by a supervisor are to be made, to quote the Garrett Award, "in light of all relevant facts applicable to that particular installation".

Finally, I note that while availability of a clerk to perform the work may not be controlling in the narrow circumstances posited in this interpretive case, that does not

suffice to dispose of the four grievances from offices in Louisiana referenced in the parties' position statements. In each of those cases, the Union has alleged an increase in the performance of bargaining unit work by the postmaster.

## AWARD

The interpretive issue raised in this case is resolved on the basis set forth in the next to last paragraph of the above Findings.

Shyam Das, Arbitrator