



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

1300 L Street, NW, Washington, DC 20005

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

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

**Date:** July 29, 2010

**Re:** Award on Two-Tour Initiative

Enclosed you will find a recent award by Arbitrator Das which denied the union's grievance challenging the Postal Service's two-tour initiative. (USPS #Q06C-4Q-C 09051867; 7/27/2010)

As you may recall, in October 2008, the union sought information from the Postal Service regarding the specifics, extent and rationale of nationwide, region-wide or district-wide programs, plans or initiatives to eliminate or reduce Tour 2 operations. The Postal Service didn't provide the union with the requested information on the basis that it hadn't implemented a nationwide program and no documentation existed regarding such a program. Thereafter, the APWU filed an unfair labor practice charge against management in November 2008 for failing to provide the union with requested information and refusing to bargain in good faith with us regarding the nationwide initiative to reduce or eliminate operations or assignments on Tour 2. After a December 2008 meeting between the Postal Service and union, the APWU initiated a Step 4 dispute regarding the two-tour initiative and later appealed the grievance to arbitration. Subsequently, National Labor Relations Board's Region 5 Director issued a decision deferring the portion of the NLRB charge regarding allegations that the Postal Service violated Sections 8(a)(1) and (5) and Section 8(d) of the Act by engaging in a unilateral change and mid-contract modification. The remaining issue, regarding the Postal Service's failure to provide the union with requested information, was the subject of an NLRB complaint on the issue of USPS's refusal to provide the union with the information in a timely manner (as well as its refusal to provide the union with requested information concerning safety and ergonomic issues – part of a separate unfair labor practice charge filed by the union). A Board settlement agreement on this issue was reached in April 2010 requiring the Postal Service to post a notice regarding its obligation to timely furnish the APWU with requested information that is relevant and necessary to performance of duties as a collective bargaining representative in all facilities where consolidation of Tour 2 mail processing operations has taken place (as well as facilities where delivery bar code sorter machines are located).

At the arbitration hearing, the Postal Service provided testimony regarding the declines in mail volume since 2006. The Postal Service indicated that it developed "Closing the Gap"

initiatives in 2008 to close the budget gap in mail processing by reducing costs, including the MPES (Mail Processing Employee Scheduling) system and Targeted Allied and Indirect Position Reduction which relates to duty assignments not directly involved in mail processing. In addition, that MPES Scheduling was the latest scheduling tool to match employees to the work and to integrate the scheduling of machines and employees. The Service admitted that management determined that savings could be achieved by using a compressed mail-processing cycle; however, that Postal Service headquarters merely developed “processing compression targets for local management to achieve and tracked their success in doing it.” The Postal Service further claimed that “[t]he only thing Headquarters dictated ... was modeling to determine the opportunity to implement operational changes.” In addition, the Postal Service stressed that regular employees who had been reassigned from Tour 2 hadn’t been replaced by casuals. The Postal Service also maintained that the process of adjusting employee schedules wasn’t a new process but something that management had always done, and there never was a Tour 2 elimination initiative.

The APWU provided testimony indicating that Closing the Gap initiatives were directed, controlled and tracked by Postal Headquarters. We also stressed that over the years, there has been a history of the union becoming involved at an early stage in Postal Service initiatives and developments.

The union argued that under Article 17.5.B.4, management was obligated to provide the union with notice of national’s initiatives and to discuss them with the union at the development stage. We maintained that the Closing the Gap initiatives were new national management initiatives subject to the above provision and the Postal Service’s failure to comply constituted a violation of the National Agreement. Moreover, we contended that management rights under Article 3 are qualified by its obligations under Article 17.5. In addition, the union contended that the Postal Service violated the National Labor Relations Act by failing to bargain over the two-tour initiatives in violation of Section 8(a)(5) and by making a mid-term modification to Article 7.1.B.4 of the National Agreement in violation of Section 8(d) of the NLRA. We asserted that the purpose of Article 7.1.B.4 was to protect existing Tour 2 assignments of career employees, yet management informed the union at a December 2008 meeting that it had the right to eliminate Tour 2 assignments covering the hours of 5:00 AM and noon and still allow casuals to work during those hours.

The Postal Service countered that it had the exclusive right under Article 3 to reassign employees from positions on schedules that were no longer needed to positions on schedules where there was “productive work.” It maintained therefore that since Article 3 authorizes it to maintain an efficient operation and decide on how and when to process the mail, it wasn’t required to bargain in order to exercise those rights. Management further contended that the changes weren’t new ones but rather continuations of the same type of program that had been in effect for many years. Management thus argued that these factors are insufficient to constitute unilateral changes in violation of Article 5 of the National Agreement or Section 8(a)(5) of the NLRA. Furthermore, it asserted that the changes occurred on a local, not a national, level. In addition, the Postal Service asserted that the initiatives involved here don’t fall within the categories of initiatives specified in Article 17.5.B.4, and even if they did that provision doesn’t require the parties to negotiate over such measures or to provide notice of initiatives. Finally, it argued that Article 7.1.B.4 doesn’t

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protect Tour 2 regular employees but merely restricts casual starting times and the Postal Service hasn't replaced career employees on Tour 2 with casuats.

Arbitrator Das accepted the Postal Service's argument regarding Article 3. He said that "Article 3 of the National Agreement grants the Postal Service the authority to unilaterally adopt and implement the Closing the Gap initiatives at issue, without further bargaining with the Union." He cited language in Article 3 that the Postal Service "'shall have the exclusive right' to 'assign ... employees,' to 'maintain the efficiency of the operations entrusted to it' and to 'determine the methods, means, and personnel by which such operations are to be conducted.'" Das also cited a 1977 national award in which Arbitrator Garrett stated that the Postal Service isn't obligated "to engage in 'collective bargaining' as to whether or how it should exercise its authority under Article III of the National Agreement." In addition, he referred to a 1973 national award in which Arbitrator Gamser stated that the right to change tour complements "appear[s] [to be] specifically reserved to Management under Article III of the Agreement as well as dictated in enabling legislation, Section 1001 of the Postal Reorganization Act."

Then turning to the union's argument that management's rights under Article 3 are subject to Article 17.5 "which postdate the Gamser and Garrett decisions," Das found that the Closing the Gap initiatives "are not the type of 'new Postal Service initiatives' referred to in Article 17.5.B.4." "[W]hile the circumstances that precipitated the Closing the Gap initiatives may have been extreme," the arbitrator said, "scheduling operations and employees to improve efficiency in light of changing circumstances and identifying unnecessary positions for elimination are ongoing management functions." "The resulting reassignment of employees in accordance with procedures set forth elsewhere in the National Agreement is not something new or developmental," he continued. Arbitrator Das also said that even accepting the origin and execution of the initiatives, as "conceived, executed and monitored at the Headquarters level, as the Union asserts," he was unconvinced that "they are the sort of initiatives addressed in Article 17.5.B."

In addition, Das determined that the union failed to establish that the Postal Service violated Article 7.1.B.4 of the National Agreement or that management repudiated that provision and the related MOU in violation of Article 5 and Section 8(d) of the NLRA. He reasoned that though his award in USPS #Q06C4Q-C 07200239 "recognized that the restriction in Paragraph 8 of the MOU was designed to protect preferable day shift Tour 2 work for regular employees by precluding the scheduling of casuats to start work between 0500 and 1200," ... "[t]his was not a guarantee, however, that ... positions would not otherwise be reduced or eliminated in the Postal Service's exercise of its Article 3 rights." Moreover, he found that there was no evidence in the record that after eliminating "a regular Tour 2 mail processing or Function 1 allied or indirect position in the implementation of its Closing the Gap initiatives, the Postal Service then has assigned casuats to cover the same work or has stated an intention to do so."

Enclosure

National Arbitration Panel

|                               |   |                    |
|-------------------------------|---|--------------------|
| In the Matter of Arbitration  | ) |                    |
|                               | ) |                    |
|                               | ) |                    |
| between                       | ) |                    |
|                               | ) |                    |
|                               | ) | Case No.           |
| United States Postal Service  | ) | Q06C-4Q-C 09051867 |
|                               | ) |                    |
| and                           | ) |                    |
|                               | ) |                    |
| American Postal Workers Union | ) |                    |

Before: Shyam Das

Appearances:

|                               |   |
|-------------------------------|---|
| For the Postal Service:       | Peter J. Henry, Esq.                                |
| For the APWU:                 | Anton G. Hajjar, Esq.                               |
| Place of Hearing:             | Washington, D.C.                                    |
| Dates of Hearing:             | July 9, 2009<br>July 10, 2009<br>September 29, 2009 |
| Date of Award:                | July 27, 2010                                       |
| Relevant Contract Provisions: | Articles 3, 5, 7.1.B.4,<br>12.5, 17.5, 30.B and 37  |
| Contract Year:                | 2006-2010   |
| Type of Grievance:            | Contract Interpretation                             |

Award Summary

The grievance is denied.



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Shyam Das, Arbitrator

On December 16, 2008, the APWU initiated this Step 4 national dispute. The parties met on January 21, 2009 to discuss this dispute. On February 13, 2009, the parties exchanged 15-day statements in accordance with Article 15.4.D of the applicable 2006-2010 National Agreement. The Union appealed the dispute to arbitration on February 17, 2009.

The Union's 15-day statement, setting forth its understanding of the issues and facts, includes the following:

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....

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 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 provision 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.

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.

The Postal Service's 15-day statement, setting forth its understanding of the issues and facts, includes the following:

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."*

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."

\* \* \*

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.... 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.

\* \* \*

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 the 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.

The well-settled language of the collective bargaining agreement, and the relevant arbitral authority...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."

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.

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....

On March 31, 2009, the National Labor Relations Board's Region 5 Director issued a decision deferring a portion of the charge set forth in the Union's November 25, 2008 unfair

labor practice charge (as amended on December 3, 2008) as follows:

Based on our investigation, I am deferring the allegations that the Employer violated Section 8(a)(1) and (5) and Section 8(d) of the Act that relate to the unilateral change and mid-contract modification. This action, however, does not affect the remaining allegations that the Employer violated Sections 8(a)(1) and (5) of the Act by refusing to provide information on the nationwide initiative to reduce or eliminate tour 2. This allegation is being processed further by this office.

At arbitration, the Union noted that ultimately the Postal Service did provide the information the Union requested regarding the matter in issue. The Union also explained that a remaining issue relating to the timing of the Postal Service's providing of that information is before the NLRB. There is no issue in this arbitration relating to the Postal Service's obligation to provide information to the Union.

Relevant provisions of the National Agreement include the following:

ARTICLE 3  
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;



B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service...;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

\* \* \*

#### ARTICLE 5 PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

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#### ARTICLE 7 EMPLOYEE CLASSIFICATIONS

##### Section 1. Definition and Use

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##### B. Supplemental Work Force

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4. Casual employees will not normally work between 0500 and 1200 in mail processing operations. The intent of this provision is not to be circumvented locally by having casual employees scheduled

immediately before (0455) or after (1205) the restricted time frames. This provision does not apply to Motor Vehicle Craft casualties.

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ARTICLE 17  
REPRESENTATION

\* \* \*

Section 5. Joint Labor-Management Committee Meetings

A. The APWU through its designated agents shall be entitled at the national, APWU regional/USPS Area, and local levels, and at such other intermediate levels as may be appropriate, to participate in regularly scheduled Joint Labor-Management Committee meetings for the purpose of discussing, exploring, and considering with management matters of mutual concern; provided neither party shall attempt to change, add to or vary the terms of this Collective Bargaining Agreement. The local Joint Labor-Management Committee will meet as needed, but not less than once every quarter unless otherwise provided in the parties' local memorandum of understanding.

B. The national level Joint Labor-Management Committee will be co-chaired by the President of the APWU and the Postal Service Vice-President of Labor Relations and be comprised of an equal number of representatives for each party as agreed by the parties. This Committee will meet as needed, but no less than once every two months to fulfill the purposes and goals described below.

The purposes and goals of the national level Joint Labor-Management Committee will be to:

1. Promote more effective, open and continuous involvement between the parties to further enhance a positive working relationship and advance labor-management cooperation between the parties;
2. Jointly pursue strategies which emphasize improving employee working conditions and satisfying the customer in terms of service and costs;
3. Work together to seek ways of improving customer service, increasing revenue, and reducing postal costs; and,
4. Provide an opportunity to jointly discuss new Postal Service initiatives during their development, inasmuch as those initiatives might impact on employees or as they might relate to employee working conditions. These discussions may include, but are not limited to, the creation of new position descriptions; modifications to facilities; technological and mechanization changes; automation implementation; and the development of new facilities and designs.

C. As needed, the national level Joint Labor-Management Committee, through mutual agreement, will create subcommittees to deal with specific issues. All other national level committees established pursuant to the terms of this Agreement, including Safety &

Health, Ergonomics and Training, shall function as subcommittees of the national level Joint Labor-Management Committee. All subcommittees already established or created by the national level Joint Labor-Management Committee will report to such Committee, as necessary, on their specific issues of concern and provide updated information.

D. In order to further recognize and effect Union/Management cooperation, there will be four national level craft subcommittees created, one for each APWU craft, for the purpose of jointly addressing specific issues of contract administration for each such craft.... Neither party shall attempt to change, add or vary the terms of this collective bargaining agreement through these subcommittees.

Postal Service witnesses and documents established that the volume of mail peaked at approximately 213 billion pieces in 2006. Since then, mail volume has declined significantly. Volume in FY 2008 dropped 9 billion pieces or 5.4% from the prior year. As of June 2009, the Postal Service projected a decline in FY 2009 of 25-30 billion pieces -- three times the loss in 2008 and 30 times the loss in 2007. Revenue has also decreased significantly. The Postal Service began FY 2009 with \$7.2 billion in debt. By late August 2009, a \$7 billion loss was forecast for FY 2009.

David Williams has been the Manager of Processing Operations, also referred to as Function 1, since October 2005. In September 2008, Williams developed a series of initiatives (referred to as Closing the Gap initiatives) to close the budget gap in mail processing by reducing costs in FY 2009 by \$2

billion. He explained that historically the Postal Service had reduced costs through equipment innovation, but there was limited opportunity for that in 2009. Two of the major initiatives for FY 2009 were MPES Scheduling and reduction of Targeted Allied and Indirect Positions.

MPES Scheduling, Williams testified, was the latest scheduling tool designed to match employees to the work and to integrate the scheduling of machines and employees. It is complementary to other existing tools. Because of the decline in mail volume, management determined that significant savings could be achieved by using a compressed mail-processing cycle. Because mail processing is focused on getting the mail ready for delivery by 7:00 a.m. and much of the mail arrives at processing facilities at or about 7:00 p.m., this processing compression entailed moving processing from Tour 2 (day shift) to Tour 3 and Tour 1. This enabled the machines and employees to be utilized more efficiently. Some mail processing necessarily would still need to be performed on Tour 2, as would other APWU craft functions, such as maintenance, retail operations, transportation, etc.

Based on changes in mail volume, Headquarters developed processing compression targets for local management to achieve and tracked their success in doing so. Williams noted, however, that all facilities are different and implementation at the local level was expected to and did vary. The only thing Headquarters dictated, he said, was modeling to determine the opportunity to implement operational changes.

Williams also stressed that the Postal Service has always used scheduling and staffing tools to improve productivity and pointed out that the reduction in mail processing work hours, which was not confined to Tour 2, was just a continuation of a trend that predated these recent initiatives. Between 2001 and early 2009, Function 1 work hours declined by about 28%. The Postal Service stressed that historically as mail processing operations have become more efficient, Tour 2 has shrunk relative to Tours 1 and 3; that is nothing new. Manager of Contract Administration John Dockins testified that while external conditions affecting mail volume and revenue were extreme and dramatic at the time the Closing the Gap initiatives were developed and implemented, the process of adjusting employee schedules to match operating conditions and efficiencies was not a new process, but something the Postal Service has always done. He also stressed that there never was a Tour 2 elimination initiative.

Reduction of allied and indirect, i.e., non-processing, positions involved eliminating positions performing tasks such as photocopying, drafting, sign painting and illustrating that were determined to be unnecessary. Most of these positions were on Tour 2, but there also were reductions on other tours.

Manager Williams insisted that regular employees who have been reassigned from Tour 2 have not been replaced by casuals. Some casuals continue to be assigned to work past 5:00 a.m. subject to the restrictions in Article 7.1.B.4 as

interpreted in the National Arbitration decision in Case No. Q06C-4Q-C 07200239 (Das 2008).

APWU witness Philip Tabbita, Manager of Negotiations Support and Special Projects, testified that after carefully reviewing the documents ultimately provided by the Postal Service, he concluded that the Closing the Gap initiatives directed to mail processing compression and staffing on Tour 2 were directed, controlled and tracked by Postal Headquarters. He also testified regarding a number of "initiatives" which the Postal Service has informed the Union of and provided briefings on. Over the years, he stated, one of the Union's themes has been to have early involvement in Postal Service developments and initiatives. This is not because the Union wants to stop them, but to give the Union the opportunity for input. As he put it: "When the cement's dry, we're just not going to have an effect. We may fight about it, but we're going to bang our heads against that cement wall."

#### UNION POSITION

The Union asserts that, faced with declining volume and revenues, in or about October 2008 the Postal Service instituted a number of initiatives directly affecting bargaining unit employees, particularly on Tour 2 (the day shift). These included a Headquarters initiated project aimed at reducing or eliminating mail processing on Tour 2 and the elimination of so-called nonessential assignments, largely focused on Tour 2. The evidence was overwhelming that these projects were conceived, executed and monitored at the Headquarters level. These Closing

the Gap initiatives were "new postal service initiatives." Under Article 17.5.B.4, management was obliged to give the Union prior notice of these initiatives and to discuss them during their development. The Postal Service's failure to do so constituted a violation of that provision.

The Union insists that the Postal Service's claim that it had not implemented a nationwide program in its response to an October 17, 2008 inquiry from APWU President Burrus cannot be credited. Further evidence of the Postal Service's evasions is found in its response to the Union's request for any nationwide or region or district wide program, plans or initiatives to eliminate or reduce Tour 2 operations and/or Tour 2 staffing that such documentation did not exist. The Union argues that the Postal Service's claim that it misunderstood the nature of the Union's request is not creditable.

The Union contends that the additional defense raised by the Postal Service at arbitration, that Article 17.5.B.4 did not apply because the Joint Labor-Management Committee had never met should be disregarded because it is not set forth in the Postal Service's 15-day letter. Moreover, this defense is without merit. As Postal Service witness John Dockins testified, there was no need for formal meetings of the Joint Committee because the parties have developed a very mature and sophisticated relationship and meet all the time on "everything". Dockins further indicated that: "My take on that language is it's just kind of a default formalization codification of the requirement to meet in case the parties aren't meeting." Similarly, Union witnesses testified that the



parties have fulfilled their obligations under Article 17.5 by the Postal Service sending the Union notices of issues and the Union then reacting with requests for meetings. The joint process continued in this fashion, both on matters directly affecting wages, hours or working conditions and other matters like improving service. The Union maintains that the Postal Service's obligation to provide notice and discuss initiatives at the development stage is unaffected by the procedure. Moreover, the subcommittees recognized in Article 17.5 continue to meet. Among the programs and initiatives that the Union received notices about and the Union assigned officers and staff to arrange for meetings and discussion are the Breakthrough Productivity Initiative, Evolving Network Design, Station and Branch Optimization, Financial Shared Services, and the consolidation of Human Resources functions.

The Union also argues that the provisions in Article 17.5.B must be interpreted in light of the purposes and goals of the national level Joint Labor-Management Committee set forth in Article 17.5.B. Each of those purposes is consistent with the need to give prior notice of and involve the APWU in the development of the Closing the Gap initiatives. Particularly, given the dire economic straits of the Postal Service, as described by its witness, the need for the cooperation of the Union and its involvement in solutions is rather self evident.

The Union further contends that the Postal Service violated the National Labor Relations Act (NLRA) by failing to bargain over the Tour 2 initiatives in violation of Section 8(a)(5) and by making a mid-term modification to Article 7.1.B.4

of the national agreement in violation of Section 8(d) of the NLRA.

The Union asserts that unilateral changes in wages, hours or working conditions are prima facie violations of Section 8(a)(5) of the NLRA. In this case, the Postal Service invokes its management rights under Article 3, but those rights are qualified by its obligations under Article 17.5. Article 17.5 was adopted in 1994 after the earlier arbitration decisions which management relies on in this case. Moreover, the Union argues, waivers of the right to bargain, under NLRB precedent, must be "clear and unmistakable."

The Union insists it also demonstrated a mid-term modification of Article 7.1.B.4 and its related MOU, which, as interpreted by this Arbitrator, allowed the Postal Service to utilize casuals between the hours of 5:00 a.m. and noon if these casuals began their schedule prior to 5:00 a.m. In that case, the Union argued that the literal meaning of the article prohibited casuals from normally working between 5:00 a.m. and noon. The Postal Service argued, and the Arbitrator agreed, that the purpose of this provision was to protect existing Tour 2 assignments of career employees. Yet, during the December 19, 2008 meeting on the Closing the Gap initiatives, the Postal Service told the Union that it believes it had the right to eliminate Tour 2 assignments covering the hours of 5:00 a.m. and noon and still permit casuals to work during those hours. Thus, the Postal Service has turned around and undone the very protections which underlay Article 7.1.B.4. This constitutes a

repudiation of Article 7.1.B.4 and the related MOU, and is, at a minimum, a failure to bargain in good faith.

By way of remedy, the Union points out that the conventional remedy for unilateral changes under the NLRA is a cease and desist order and an order to bargain as well as restoration of the status quo and a make whole order. The Postal Service also must post the usual NLRB notice to employees. The Union asserts that the Article 17.5.B.4 violation demands the same remedy. At a minimum, the Union asserts, the Postal Service should be ordered to bargain with the Union now and restore the Union's bargaining power with a limited back pay order until the Postal Service's bargaining obligations are fulfilled. The Union also requests that the Arbitrator direct the Postal Service that it cannot eliminate Tour 2 jobs and still work casuals on Tour 2, consistent with its obligations under Article 7.1.B.4 as interpreted by this Arbitrator.

#### EMPLOYER POSITION

At issue in this case are APWU challenges to mail processing compression and the elimination of some non-essential allied and indirect positions on Tour 2. Essentially, the Postal Service asserts, the time needed to process mail was reduced because less mail was available to be processed. As a result, the Postal Service reassigned employees from positions on schedules that were no longer needed to positions on schedules that had productive work. The Postal Service contends that awards by National Arbitrators interpreting the Postal

Service' management rights under Article 3 of the National Agreement authorize the adjustment in operations implemented by management to reflect declining mail volumes and to improve efficiency. The Postal Service cites the following National Awards: Case No. A-NAT 4157 (Gamser 1973); Case No. AC-NAT 3052 (Garrett 1977); Case No. AC-E 22,783 (Fasser 1978); and Case No. NC-E 16340 (Gamser 1979).<sup>1</sup> The Postal Service also cites the following statement by Arbitrator Mittenthal in another National Arbitration case:

These rights [set forth in Article 3] 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 management 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.

The Postal Service also cites a decision of the D.C. Circuit Court of Appeals in NLRB v. U.S. Postal Service 8F.3d 832 (1993).

The Postal Service argues that in 2009 it acted consistently with past interpretation of the National Agreement

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<sup>1</sup> The Postal Service notes that there is some uncertainty whether the 1978 Fasser and 1979 Gamser decisions are National Awards due to differences in the structure of Article 15 between when those decisions were issued and now. In any event, the Postal Service states, they have persuasive authority.

and long standing practice to improve productivity. Compressing the operating window is merely a specific application of the Postal Service's rights set forth in Article 3. The Postal Service has the authority to maintain an efficient operation, to decide how and when to process the mail, and the number of employees to process it. This includes allocating fewer hours to process much less mail. Article 3 empowers the Postal Service to direct employees to process the mail at the times and manner that management determines. If there are too many employees working one operation, Article 3 gives the Postal Service the right to transfer, assign, reassign employees (consistent with more specific provisions in various other articles) to other operations where the Postal Service determines productive work is available. Similarly, the elimination of allied and indirect positions dedicated to performing work that is no longer needed falls squarely within management's Article 3 rights. Because Article 3 authorizes the Postal Service to take these steps no further bargaining is required to exercise those rights.

The Postal Service maintains that not only does Article 3 empower the Postal Service to make these changes to operations, but the changes are not new in 2009. Rather, they are nothing more than continuations of the same or the same type of program that has been in place for many years. For both reasons, they are not unilateral changes in violation of Article 5 of the National Agreement or Section 8(a)(5) of the NLRA. The Postal Service also asserts that the division of responsibility between Postal Headquarters and the field to manage processing operations has been in place for many years and is not subject

to challenge by the Union. In addition, the APWU failed to prove that local managers were excluded from implementing the 2009 initiatives.

The Postal Service contends that Article 17.5, and the related 1993 MOU, does not require bargaining and does not apply to the 2009 measures taken by the Postal Service. Article 17 does not speak in terms of negotiation, and it specifically restricts the Union from using joint meetings to alter any part of the contract. This prohibition shows that collective bargaining was not envisaged under Article 17.5.

The Postal Service further argues that Article 17.5.B does not apply to the 2009 initiatives undertaken by the Postal Service because they are not new or like the initiatives covered by Article 17.5.B. The steps taken to respond to major declines in mail volume by aligning work hours to available work were not new. Neither is the reduction in allied costs. They mirror steps and use tools that managers have used for more than a decade to similar effect. The APWU does not claim ignorance of this fact, nor could it in light of the significant declines in its own membership over the past decade. Determining the hours required to process mail, allocating work schedules to fit the available work, and eliminating unnecessary positions do not fit into any of the categories of initiatives specified in Article 17.5.B.4.

The Postal Service also maintains that even if Article 17.5 applied, which it does not, the December 10, 2008 meeting satisfied Article 17.5 and the Union suffered no injury. The

parties met on December 10 after the Union requested a meeting. Manager Williams attended the meeting and provided the Union with a substantial volume of documents about the initiatives. The parties discussed those initiatives by reference to certain of these documents, and after the meeting the Union studied them in greater detail. During the meeting, the Postal Service asserts, the Union shared its position about this program. Following the meeting Manager Dockins offered to schedule another meeting, but the Union declined the offer.

The Postal Service insists that Article 17.5 does not create an affirmative obligation to notify the Union of new initiatives. The word "notice" is conspicuously absent from Article 17.5. In contrast to various other provisions in the contract which explicitly require advance notice to the Union, Article 17.5 does not require or imply that the Postal Service will notify the Union of initiatives.

The Postal Service also contends that the parties have allowed the National Joint Committee provided for in Article 17.5 to fall into obscurity and become moribund. According to the literal terms of Article 17.5, that committee is to meet no less than once every two months, yet it has never met since this provision was adopted in 1994. After 15 years of failing to use the committee, the Postal Service states, the Union cannot properly blame the Postal Service for the absence of notice to the committee about the initiatives because the Union did not seek regular committee meetings. It is true the parties meet frequently, but those meetings occur in other contexts, such as discussion of grievances pursuant to Article 15 and discussion

of changes in handbooks, etc., pursuant to Article 19. Moreover, the frequent meetings between the parties attest to the willingness of the Postal Service to meet had the Union pursued regular meetings under Article 17.5. No notice was required under Article 17.5 because neither the text of the National Agreement nor the parties' practice support the existence of the supposed alleged notice requirement.

The Postal Service contends that Article 7.1.B.4 does not provide blanket protection to Tour 2 regular employees. The restriction on casual starting times agreed to in that provision does not preclude reassignment of regular employees from Tour 2 when no work is available due to declining mail volume or the functions they perform no longer are needed. There is no support in the record for the Union's apparent view that the Postal Service simply replaced career employees with casual employees on Tour 2. There is no dispute about the reduction in volume and consequent reduction in work load or that the Postal Service actually reduced the hours it processes mail. As Manager Williams testified, the Postal Service has not replaced career employees reassigned from Tour 2 with casual employees and never said that it could do so.

The Postal Service maintains that deferral of the Union's allegations that the Postal Service violated the NLRA by implementing unilateral changes and modifying the contract does not alter the analytical framework employed to resolve this dispute about the meaning of the contract. The Arbitrator's interpretation of the contract will resolve the Union's charges that the Postal Service violated the NLRA. If the contract



authorizes the actions taken by the Postal Service, then there was no such violation. While the Union urges the Arbitrator to apply the clear and unequivocal waiver standard because the NLRB deferred its unilateral action in mid-term modification claims to arbitration, that is not warranted because the NLRB, like the courts, applies a highly deferential standard of review to interpretations of labor contracts by arbitrators.

### FINDINGS

In Article 3 of the National Agreement the parties have agreed that the Postal Service "shall have the exclusive right" to "assign... employees," to "maintain the efficiency of the operations entrusted to it" and to "determine the methods, means, and personnel by which such operations are to be conducted." To be sure, the Postal Service's exercise of these management rights is "subject to the provisions of this Agreement and consistent with applicable laws and regulations," but as Arbitrator Garrett stated in his 1977 decision in Case No. AC-NAT-3052: "There can be no obligation by the Service to engage in 'collective bargaining' as to whether or how it should exercise its authority under Article III of the National Agreement."

The dramatic decline in mail volume and revenue preceding management's formulation of the Closing the Gap initiatives obviously necessitated a reduction in mail processing positions. Because of the timing of the receipt and delivery of mail, the bulk of mail processing occurs on Tours 1 and 3. Not surprisingly, compressing mail processing to make

more efficient use of machines and employees entailed a further reduction in Tour 2 operations and personnel.<sup>2</sup>

In my judgment, Article 3 expressly recognizes management's exclusive rights to implement the initiatives or changes at issue in this case. Management has unilaterally exercised these rights in the past. As Arbitrator Gamser stated as far back as 1973 in the Grand Central Reassignment Case (No. A-NAT-4157):

The Unions did not contend during the course of this hearing that the Postal Service did not have the right, under the Agreement, to change tour complements and that right does appear specifically reserved to Management under Article III of the Agreement as well as dictated in the enabling legislation, Section 1001 of the Postal Reorganization Act.

The Union argues, however, that the Postal Service's exercise of its rights under Article 3 is subject to the requirements of Article 17.5 -- which postdate the Gamser and Garrett decisions -- and that Article 17.5 required the Postal Service to notify the Union of the disputed national initiatives while they were in the development stage and discuss them with the Union prior to implementation. In particular, it cites Article 17.5.B.4, which states:

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<sup>2</sup> Operations also declined on other Tours, but not to the same degree. Postal witnesses testified, without contradiction, that the Tour 2 mail processing complement has been declining for many years as a result of automated mail-processing equipment that has led to a decline in the time needed to process mail.

The purposes and goals of the national level Joint Labor-Management Committee will be to:

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4. Provide an opportunity to jointly discuss new Postal Service initiatives during their development, inasmuch as those initiatives might impact on employees or as they might relate to employee working conditions. These discussions may include, but are not limited to, the creation of new position descriptions; modifications to facilities; technological and mechanization changes; automation implementation; and the development of new facilities and designs.

Notably, unlike certain other provisions of the National Agreement, such as Articles 19 and 32, Article 17.5 does not impose notification requirements on the Postal Service. Moreover, the Closing the Gap initiatives at issue are not the type of "new Postal Service initiatives" referred to in Article 17.5.B.4. The record shows that while the circumstances that precipitated the Closing the Gap initiatives may have been extreme, scheduling operations and employees to improve efficiency in light of changing circumstances and identifying unnecessary positions for elimination are ongoing management functions. The resulting reassignment of employees in accordance with the procedures set forth elsewhere in the National Agreement is not something new or developmental. Even granting that the Closing the Gap initiatives in issue were conceived, executed and monitored at the Headquarters level, as

the Union asserts, I am not persuaded that they are the sort of initiatives addressed in Article 17.5.B.<sup>3</sup>

This is not to say, however, that the Union was not entitled to request information and discussion regarding the Closing the Gap initiatives consistent with the general provisions of Article 17.5 and its rights as collective bargaining representative. While there evidently is an ongoing dispute, not before this arbitrator, as to the timing of management's response to the Union's request for information regarding plans or initiatives to eliminate or reduce Tour 2 operations and/or staffing, the record indicates that the Postal Service met with the Union to discuss these matters on December 10, 2008. Management provided information at that meeting and thereafter, and offered to meet further.

The Union may be correct in stating that, particularly given the dire economic straits of the Postal Service, there is a need for cooperation of the Union and its involvement in solutions, but I do not find a violation of the requirements of Article 17.5 as alleged by the Union in this case.

The Union also has not established a violation of Article 7.1.B.4 or that the Postal Service has repudiated Article 7.1.B.4 and the related MOU in violation of Article 5 and Section 8(d) of the NLRA.

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<sup>3</sup> As the Postal Service stresses, Article 17.5 also expressly rules out bargaining under its procedures.

The Award in Case Q06C-4Q-C 07200239, which I issued on November 24, 2008, states:

Article 7, Section 1.B.4 of the 2006-2010 National Agreement does not prohibit Tour 1 casual employees from normally continuing to work after 0500, provided they have not been scheduled in circumvention of the provision agreed to in paragraph 8 of the Memorandum of Understanding Re: Supplemental Work Force Conversion of Clerk Craft PTFs that is referenced at the end of 7.1.B and included in the CBA.

Subject to the proviso stated above, that decision permitted the Postal Service to have casuals assigned on Tour 1 continue to work beyond 0500 to complete their Tour 1 operations as they typically did. The decision recognized that the restriction in Paragraph 8 of the MOU was designed to protect preferable day shift Tour 2 work for regular employees by precluding the scheduling of casuals to start work between 0500 and 1200. This was not a guarantee, however, that Tour 1 positions would not otherwise be reduced or eliminated in the Postal Service's exercise of its Article 3 rights.

The record shows that at the December 10, 2008 meeting, the Postal Service indicated it would continue to utilize casuals to work past 0500 to the extent permitted. Consistent with my decision, that means using casuals to complete the operations they began on Tour 1. There is no evidence in this record that, after eliminating a regular Tour 2 mail processing or Function 1 allied or indirect position in the implementation of its Closing the Gap initiatives, the Postal

Service then has assigned casuals to cover the same work or has stated an intention to do so.

The NLRB deferred both the Union's Section 8(a)(5) and 8(d) charges to arbitration. The 8(d) charge relates to the Postal Service's alleged repudiation of Article 7.1.B.4 of the National Agreement, which has been dealt with above. The 8(a)(5) charge relates to the Union's allegation that the Postal Service failed to bargain over the Closing the Gap initiatives at issue in this case. There appears to be no dispute that those initiatives are mandatory subjects of bargaining under the NLRA. The parties have discussed at some length whether the arbitrator is bound to apply the NLRB's "clear and unmistakable waiver" standard in determining whether the Union in the National Agreement has waived its right to bargain over these initiatives or may follow the "contract coverage" theory adopted by some courts, including the D.C. Court of Appeals. While a fascinating subject, I find it unnecessary to go down that road in deciding this case.

Arbitrators' expertise lies in interpreting and applying collective bargaining agreements. They are "contract readers." As I understand it, that is a significant part of the basis on which the NLRB defers 8(a)(5) and 8(d) charges to arbitration. In this case, for reasons already stated, I have concluded that Article 3 of the National Agreement grants the Postal Service the authority to unilaterally adopt and implement the Closing the Gap initiatives at issue, without further bargaining with the Union. I also have concluded that it has not been established that in doing so, the Postal Service

violated any other provision of the National Agreement.  
Accordingly, the grievance filed by the APWU in this case is denied.

AWARD

The grievance is denied.

  
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Shyam Das, Arbitrator