

math

)
)
)
)
)
)
)
)
)
)
)

)
)
)
)
)
)
)
)

),
)
)
)
)
)

$$),),),)$$

)

)
)
)
)
)
)
)

),
)
)
)
)
)
)

),
)
)
)
)
)

D.

21

3,

ube

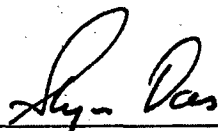
16

ac

Award Summary

(1) The Question posed in the Postal Service's Step 4 grievance in Case No. Q06C-4Q-C 10032106 -- "Does Article 15 provide for the filing of a 'national Step 1' covering thousands of locations and employees, at the national level?" -- is answered: No.

(2) The Postal Service's challenge to the arbitrability of the Union's Step 4 grievance in Case No. Q06C-4Q-C 10005587 is resolved on the basis set forth in the above Findings.



Shyam Das, Arbitrator

BACKGROUND

Q06C-4Q-C 10032106

Q06C-4Q-C 10005587

This proceeding involves two related Step 4 grievances, one filed by the American Postal Workers Union (Case No. Q06C-4Q-C 10005587) and the other by the United States Postal Service (Case No. Q06C-4Q-C 10032106). The Postal Service's Step 4 grievance challenges the propriety of a grievance filed by the Union, purportedly at Step 1 of the grievance procedure, alleging that the Postal Service is violating Article 1.6.B of the National Agreement on a nationwide basis. The Union's Step 4 grievance also alleges a nationwide violation of Article 1.6.B. The Postal Service contends that the Union's Step 4 grievance is not arbitrable. That arbitrability issue has been bifurcated from the merits of the Union's Step 4 grievance. This decision addresses the Postal Service's Step 4 grievance and the arbitrability of the Union's Step 4 grievance.

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.)

In what commonly has been characterized as a seminal opinion, Arbitrator Sylvester Garrett in 1978 addressed the exception "when the duties are included in the supervisor's position description" set forth in Article 1.6.B, which applies to small post offices. Case No. AC-NAT-5221 (Garrett Award). Many of these post offices are staffed by a postmaster (a supervisor) and just one or two APWU bargaining unit clerks, often PTFs. The pertinent portions of Garrett's decision are restated in my 2005 decision in Case No. Q98C-4Q-C 01238942 [Merits] (Das Award), as follows:

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.

In January 1995, the parties entered into a Step 4 settlement relating to guidelines issued by management affecting level 18 and below post offices. This settlement provided as follows:

The issue in this grievance involves the issuance of a national guideline entitled, "Workload/Workhour Budget Equalization Program Guidelines." Specifically, the issue in question concerns that portion of the guidelines which suggest when a shift of clerical bargaining unit work from craft employees to postmasters would be appropriate.

After discussing this matter, we agreed to the following as full and final settlement of this dispute:

Nothing in the newly issued Clerical Workload/Workhour Equalization Program shall be construed to waive Management's obligations under Article 1.6 or any National Level Award interpreting Article 1.6.

The Postal Service acknowledges that in a 1978 arbitration award, Case No. AC-NAT-5221, Arbitrator Garrett set forth certain standards for evaluating whether or not management has the ability to shift bargaining unit work from craft employees to postmasters in Article 1.6.B offices.

As a result, no bargaining unit work will be shifted from craft employees to postmasters/supervisors solely as a result of a review using the Workload/Workhour Budget Equalization Guideline process.

Rather, if, after employing the Workload Workhour Budget Equalization Review process such an adjustment appears warranted, the considerations established in Arbitrator Garrett's decision will be reviewed and applied before any shift of bargaining unit work from craft employees to postmasters is effectuated. In particular, the conditions in the office must be in concert with the conditions specified in Arbitrator Garrett's decision in order for any such shift of work to be justified.

This settlement is made without prejudice to the Postal Service's ability to make subsequent changes in accordance with Article 19.

APWU President William Burrus testified that in 2006-8 the Union received lots of complaints of reduced bargaining unit hours in small post offices. As there are some 13,000 small post offices, he explained, the Union believed it was necessary to find a global way to address these violations of Article

1.6.B. After bringing this matter to the attention of Postmaster General Jack Potter and Executive Vice President Anthony Vegliante, Burrus wrote a letter to Labor Relations Vice President Doug Tulino on July 1, 2009, stating:

Information that the union has received indicates widespread violations of the contractual restrictions on the assignment of bargaining union work. In response to the declining mail volume and revenue loss, postal management has shifted bargaining unit work to non bargaining unit employees in violation of our agreement. National level arbitrators have issued interpretive rulings restricting the transfer of bargaining unit work and it is the intent of the union to enforce these restrictions.

There are many thousands of post offices where the union intends to initiate disputes on the transfer of work and it would be in our mutual interest to reach agreement on a process to advance such disputes through the grievance arbitration procedure.

This is to request a meeting to discuss the logistics and process for the filings, hearing, appeals and arbitrations of those circumstances where the record indicates the transfer of work. If possible, it would be in our mutual interest to reach agreement on a process. The alternative is the filing of thousands of individual cases, the payment of witnesses, Step 1 and Step 2 discussions and arbitrations in the thousands of locations. In the absence of an agreement, the union will apply the contractual provisions.

On July 21, 2009, Burrus and other Union officials met with Tulino. The Union presented Tulino with an e-mail thread which it maintained showed that the Postal Service on a national basis was using a chart to instruct all postmasters in small offices to work a certain number of clerk hours every day without reference to the practice in particular offices or the preconditions for the transfer of work set forth in the Garrett Award and the Das Award.

On August 5, 2009, Burrus wrote Tulino a letter expressing his thoughts on a framework of an agreement for processing alleged violations of Article 1.6.B. Burrus testified:

So when you're talking about 13,000 offices, the facts in each office are so varied, and I thought that perhaps it would be in our mutual interest to find a mutually agreeable, uniform process to lay over the entire universe, all 13,000 offices: These are the rules, did you abide by them or did you not? ...

However, efforts to negotiate a procedure to handle Article 1.6.B disputes were unsuccessful.¹

¹ The Garrett Award had noted that: "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...or proceed with a detailed analysis of each of the pending grievances."

The Union then proceeded to file a number of grievances addressing this matter. Burrus testified that the Union anticipated the Postal Service would attempt to block the Union's efforts to litigate the violations of Article 1.6.B by raising procedural objections to whatever grievance the Union filed. Therefore, he said, the Union sought to cover all the bases by initiating all the different types of grievances provided for in Article 15 of the National Agreement. The Union filed: a Step 4 national level interpretive grievance; a Step 1 grievance covering all level 14 through level 18 small offices; and area-wide grievances in each Postal Service area. The area-wide grievances have been held pending resolution of the Union's Step 4 grievance. The Step 1 grievance, which subsequently was appealed to Step 2 and Step 3, has been held pending resolution of the Postal Service's Step 4 grievance challenging the propriety of that grievance.

The Union's Step 1 Grievance and Postal Service's
Related Step 4 Grievance

On October 19, 2009, Union President Burrus sent a letter to Postal Service Vice President Doug Tulino. The top of the letter states in bold: "Initiate National Dispute." The text of the letter is as follows:

In violation of the Gamser [later corrected to Garrett] and Daas [sic] interpretive decisions on the assignment of bargaining unit work the Postal Service has arbitrarily shifted/transferred bargaining unit work

that is restricted by Article 1. Section 6.B. to non bargaining unit employees.

The Gamser and Daas interpretive decisions clearly defined the circumstances when non bargaining unit employees may perform bargaining unit work rejecting the USPS claim to an unfettered right to reassign such work. The limitations set forth in these decisions have been violated.

Pursuant to provisions of the national agreement the union initiates grievances contesting the reassignment of bargaining unit work in violation of Article 1.6.B. in each of the level 15, level 16, level 17 and level 18 offices [later amended to include level 14 offices] on behalf of the affected employees and the union for all hours and work denied.

If the employer contests the facts that bargaining unit work has been reassigned in any identified office during the relative time period, we request the work hours of bargaining unit employees in the contested office at the time of the Daas' decision and currently.

If the employer relies upon an exception to the prohibition on the transfer of work, we request:

- a) the specific exception as identified by Gamser or Daas;
- b) the identification of the specific office and the date the exception was applied.

If the employer relies upon the standard of "good faith application of management's rights," the union requests the date for

each identified office when the union was informed that this standard would be applied in the transfer of work, the specific nature of that discussion, documents provided and the parties involved. And if the employer believes that it was not required to inform the union that it was imposing a good faith exception, it is requested that the union be informed of the process applied without union input that we can appeal such determination.

If reduction of mail volume is cited by the employer in any office, the union requests the specific volume reduction by office with a comparison to the work hour transfer pre and post Daas.

The transfer of bargaining unit work to non bargaining unit employees is at the core of the parties national agreement and must be given serious consideration in fulfilling our mutual commitment to good faith bargaining.

This transfer of work has been applied on a national scope implying centralized instructions and control but the union does not rely on the presence of "a smoking gun" and awaits presentation of the facts in each contested office.

The union hereby grieves the violations of Article 1.6.B requesting that affected employees and the union be made whole.

If agreement cannot be reached on remedies to satisfy these grievances, I am available to discuss exploring agreement on scheduling an expedited process for review of documentation, discussions and grievance hearings on individual offices and mutually selected designees and arbitrators. Absent

expeditious mutual agreement on a expedited process, I insist that the agreed to time limits on grievance processing be applied and the Postal Service inform the union of its defense and contentions for each office within the time limits of the grievance procedure or waive defense on matters not brought timely to the unions attention.

Pursuant to Article 15.2.Step 2(a) the union requests that the Employer designate officials outside the installations as the official Step 2 designees. Mike Morris, Assistant Director, Clerk Craft or his designee is designated as the union contact representative in each office of 20 or fewer employees and consistent with Article 17.2.C is certified as the union representative to perform the duties of a Steward in the adjudication of this issue.

Direct communications at the headquarters level on the process should be directed to my office.

On October 23, 2009, Burrus forwarded a 229-page listing of level 15 to level 18 offices where the Union alleged violations had occurred.² Burrus testified that he did not file a national grievance. He explained that the "Initiate National Dispute" designation was inadvertently added to the letter he had drafted by a secretary before he signed it. As he subsequently wrote to management: "it was my intent to forward the Step 1 grievance to the employer pursuant to Article 15.2.Step 1(a) for its

² According to the Postal Service, there no longer are any level 14 offices. Burrus' cover letter stated that the listing "is compiled from data provided by the Postal Service and is not certified by the union as being complete."

determination of the designee assigned to discuss the grievance." Burrus stated he sent the letter to management at the national level because no one else has jurisdiction over all 13,000 affected offices.

On October 30, 2009, Burrus sent a letter to Tulino attaching the Union's Step 2 appeal of the grievance filed on October 19. The Appeal Form designates "Grievant Person or Union" as "Class Action," and states:

The Union is alleging a wholesale shift of bargaining unit work (BUW) to supervisors and/or postmasters in violation of Article 1.6.B as interpreted by Arbitrator Garrett in AC-NAT 5221 and Arbitrator Das in Q98C-4Q-C 01238942. In addition, work has been shifted to PMRs, casuals and other crafts in violation of Article 7 and in some instances it has resulted in the excessing of PTFs and/or FTRs in violation of Article 12. No exceptions or other good faith efforts have been demonstrated to attempt to justify this wholesale shift of BUW away from the bargaining unit.

This grievance was filed at Step 1 in accordance with Articles 15, Section 2, Step 1(a) and Article 17, Section 2.C and is intended to cover all post offices with less than 20 employees "where the union has not certified a steward" that are listed in the 10/23/2009 correspondence between William Burrus and Doug Tulino. It is not intended to cover or apply to post offices that have local representation or are currently represented by a steward under Article 17, Sections 2.A.B. or D.

Since you failed to respond to the Step 1 appeal dated October 19, 2009 and have made no one available at Step 1 with which to discuss this grievance, it is hereby appealed to Step 2 in accordance with Article 15.2.Step 1.(d). The Step 2 appeal is being sent to you since you have not notified the Union of a designee in accordance with Article 15.2.Step 2(a).

Mike Morris, Assistant Director - Clerk Craft, testified that he discussed this Step 2 appeal with John Dockins, Manager of Contract Administration for the APWU contract, on November 10, 2009.

On November 20, 2009, Morris filed Step 3 appeals at each of the Postal Service's six Grievance/Arbitration Processing Centers, stating, in part:

This is a class action grievance protesting the transfer of BUW to non-bargaining unit employees. We met on November 10, 2009 to discuss this case at Step 2 of the grievance procedure. Since the Union did not receive a written Step 2 decision within the specified 10 day time period making a full and detailed statement of facts and contractual provisions justifying the transfer of work, the grievance has not been granted or denied....

The Union subsequently designated one of the six grievances appealed to Step 3 as the "representative" grievance provided for in Article 15.2.Step 3.(e). A Step 3 discussion occurred on December 16, 2009. The Union appealed the grievance to regional

arbitration on January 14, 2010. The Postal Service denied the grievance at Step 3 on January 15, 2010.

Meanwhile, on November 25, 2009, Dockins wrote a three-page letter to Burrus raising various procedural objections, and stating: "Filing Step 1 grievances at the headquarters level is unprecedented and in violation of Article 15...." The letter concluded: "In summary, the nationally filed 'Step 1(s)' and 'Step 2(s)' are procedurally defective, untimely and unsubstantiated." Burrus responded to Dockins in a five-page letter dated December 3, 2009.

On December 11, 2009, the Postal Service initiated a Step 4 grievance, presenting the following interpretive issue: "Does Article 15 provide for the filing of a 'national Step 1', covering thousands of locations and employees, at the national level?" This Step 4 grievance filed by the Postal Service is one of the two matters presently before me for decision.

The Union's Step 4 Grievance

On October 23, 2009, the Union initiated a Step 4 grievance in which it stated:

Pursuant to Article 15, Section 4.D, the APWU hereby initiates a Step 4 dispute over the performance of bargaining unit work by non-bargaining unit employees in violation of Article 1.6.B of the National Agreement in level 15, 16, 17 and 18 offices. The Postal Service has systematically reassigned

bargaining unit work in violation of the principles of the Garrett and Das interpretive decisions on the assignment of bargaining unit work.

If the Postal Service disputes the fact that there has been a reassignment of bargaining unit work, we hereby renew our request that the Postal Service provide the APWU with data showing the work hours of bargaining unit employees and non-bargaining unit employees, and mail volume, in offices of the size in question at the time of the Das Award, in 2003, and currently.

If the Postal Service contends that the reassignment of bargaining unit work is justified by an exception identified in the Garrett or Das Awards, we request that you state what the exception is and inform us how it has been applied in each office where you contend it applies.

If the Postal Service contends that bargaining unit work has been reassigned through the "good faith application of management rights," we request that you provide us information showing that the Union was informed in each office where management rights were invoked, when they were invoked, and when the Union was notified that this was being done. If you contend that the Employer had no obligation to inform the Union when it reassigned bargaining unit work in that manner, we request that you tell us how the decision was made to invoke management rights and who made that decision in each case in which it was done.

If the Postal Service intends to rely on the reduction of mail volume as a justification of its actions in reassigning bargaining

unit work, the Union requests that the Employer provide work hour and volume data at the time of the Das Award (2003) and the comparable data for 2009.

As a remedy for the violations of Article 1.6.B, the APWU requests that the work be returned to the Union and individuals in the bargaining unit and the Union be made whole.

On December 8 (or possibly 9), 2009 a Step 4 meeting was held. Dockins, who represented the Postal Service, testified that he repeatedly asked the Union to describe what it considered to be the interpretive issue, as the Postal Service did not dispute that the Garrett Award applied, but got no response from the Union. Dockins noted that the Postal Service acknowledges hours have been transferred from the bargaining unit to non-bargaining unit employees, but stressed that was not a *per se* violation of the Garrett Award -- a determination has to be made on a case-by-case basis using the criteria set forth in the Garrett Award. Burrus, who represented the Union, testified that he tried to get a commitment from Dockins that the dispute was not interpretive, but Dockins responded that the Garrett Award and the Das Award spoke for themselves.

In a December 11, 2009 letter to Dockins, Burrus wrote: "My [Step 4] grievance...was initiated alleging the Postal Service violated the meaning of the Garrett and Das' awards in the transfer of bargaining unit work and the filing was intended to determine if there is a dispute." In the Union's 15-day statement, dated December 22, 2009, Burrus stated:

Postal management has violated the meaning of the Garrett and Das national interpretive awards in the transfer of bargaining unit work without satisfying the required conditions. In level 14 through 18 offices, postal management has aggressively reduced bargaining unit employees and bargaining unit work through the transfer of such work to non bargaining unit employees. Bargaining unit employees have been denied work and pay in violation of Article 1.6.B and the union asks that the employees and the union be made whole.

Burrus also noted: "As of this date, I am unaware if the parties disagree over the application of the Garrett and Das Awards interpreting Article 1.6.B."

In its December 23, 2009, 15-day statement, the Postal Service set forth the following position:

The Postal Service points out that the APWU allegation that an unspecified amount of bargaining unit work has been reassigned to unidentified supervisors at undisclosed locations on unknown dates does not rise to the level of an interpretive dispute of general application as required by Article 15.

Violations of Article 1.6.B must be dealt on a case-by-case, site-by-site basis and will turn on the particular facts present in each situation. The APWU has not presented any facts and has not identified an interpretive issue of general application. If, and when any facts are produced by the APWU, such facts would need to be applied to the

requirements of Article 1.6.B on a case by case basis. These are application issues, not interpretive issues. The APWU has not articulated what the interpretive issue is in this case. Therefore, this grievance is defective....

The Postal Service's challenge to the arbitrability of the Union's Step 4 grievance is the second of the two matters presently before me for decision.

Article 15

Relevant provisions of Article 15 (Grievance-Arbitration Procedure) of the National Agreement include the following:

Section 2. Grievance Procedure Steps

Step 1:

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting

more than one employee in the office. When the Union files a class action grievance, Management will designate the appropriate employer representative responsible for handling such complaint.

* * *

Step 2:

(a) The standard grievance form appealing to Step 2 shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.

* * *

Section 4. Grievance Procedure-General

* * *

D. It is agreed that in the event of a dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated at the Step 4 level by either party. Such a dispute shall be initiated in writing and must specify in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the contention of either party. Thereafter the parties shall meet in Step 4 within thirty (30) days in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. Should they fail to agree, then, within fifteen (15) days of such meeting, each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving

rise to such issues. In the event the parties have failed to reach agreement within sixty (60) days of the initiation of the dispute in Step 4, the Union then may appeal it to arbitration, within thirty (30) days thereafter. Any local grievances filed on the specific interpretive issue shall be held in abeyance at the appropriate level pending resolution of the national interpretive dispute.

Section 5. Arbitration

* * *

D. National Level Arbitration

1. Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.

EMPLOYER POSITION

The Union's Step 1 Grievance

The Postal Service contends that there is no contractual basis for what the Union filed at Step 1. Article 15 sets out a specific, well established "bottom up" procedure by which an employee or the Union may file grievances that progress from Step 1 through arbitration. Fundamentally, Step 1 operates at the immediate supervisor level. Only where a complaint affects "more than one employee in the office" (a class action grievance) must the Postal Service designate an

appropriate representative to handle the complaint, because there might be more than one supervisor for the several employees. The provision cited by the Union which states the Employer shall designate an official outside the installation to discuss grievances filed in small offices applies at Step 2, not Step 1.

In this case, the Postal Service points out, the Union filed a document it labeled "Initiate National Dispute," suggesting it was like a Step 4 grievance, but which it then treated as a Step 1 grievance, filing appeals to Step 2 and Step 3. The Postal Service insists Article 15 does not provide for what the Union seems to have intended, which is to file Step 1's in thousands of offices by means of a single document filed at the national level. There also is no contractual support for a Step 1 grievance to be filed at headquarters for "top down" "designation" to the field. The Postal Service further notes that the Union's Step 2 filing, for the first time, announced that it was a "class action," but the class action language appears under Step 1, and is designed for complaints "affecting more than one employee in the office." Many of the offices covered by the grievance have only one employee "in the office." It is readily apparent, the Postal Service asserts, that the Union has mixed and matched parts of Article 15 to fit its own agenda.

The Postal Service argues that even as a Step 1 filing, the Union's grievance is defective because it fails to set forth a detailed statement of the facts as required by

Article 15. The Union provided a 229-page listing of offices -- which it said was not even complete -- with no indication of what the specific violations were, aside from a general claim of a transfer of work, and challenged the Postal Service to prove a negative -- that it had not violated the agreement. At what the Union characterized as a Step 2 meeting between Morris and Dockins, the Postal Service again asked for information to no avail.

Whatever the Union was attempting to file, however it is characterized, the Postal Service contends, it is not consistent with the National Agreement. Moreover, the Union cannot ignore contractual requirements because they are inconvenient or potentially expensive.

The Union's Step 4 Grievance

The Postal Service maintains that the Union's Step 4 grievance ignores two vital contractual requirements and, thus, must be dismissed. The Union provided no facts to support its grievance claims and it has not articulated an interpretive issue of general application.

The Postal Service notes that the Union's October 23, 2009 letter initiating its Step 4 grievance alleged that the Postal Service had systematically reassigned bargaining unit work in violation of the principles set forth in the 1978 Garrett Award. However, the Postal Service stresses, that statement says nothing about the facts giving rise to the

dispute and nothing about where the issue might be, let alone what the interpretive issue is. At the Step 4 meeting held on December 9, 2009, Union officials refused to tell Postal Service representative Dockins what it was that they saw as a violation and how they arrived at that conclusion, even though they had a contractual obligation to do so.

The Postal Service stresses that the so-called "e-mail thread" which the Union relied on at arbitration was not shown to Dockins or even referenced at the Step 4 meeting. The "national program" which the Union now claims supports its case was not brought up at all. Nor was the 1995 Step 4 agreement, which the Union now asserts has been ignored. In short, everything the Union now says supports its Step 4 filing was left unsaid.

The Postal Service insists it is not an answer for the Union to assert that at some time in the past some of the materials they placed into the record, which were not shown to Dockins at the Step 4 meeting, had been discussed in some fashion with Postal Service officials weeks or even months earlier. Article 15 provides that at the Step 4 meeting: "The parties shall meet...in an effort to define the precise issues involved, develop all necessary facts...." The Union deliberately ignored this contractual requirement and its rationale that it had no obligation to explain its position because the Postal Service "knew" it was violating the Garrett Award "in every post office in the country" and that Dockins knew that the Union knew that must be rejected.

The Postal Service maintains that the Union has repeatedly ignored requests from the Postal Service that it state what the interpretive issue was that supported its direct Step 4 filing. Moreover, to the extent the Union voiced its position, it was not a dispute over a meaning of the contract language, but over how that language was being applied in individual offices. The record makes clear that the Union really has no dispute, or knows of no dispute, over the interpretation of the Garrett Award and the Das Award (and hence the contract), and that the real issue for the Union is the application of the contract to facts in individual facilities. Likewise, the Postal Service is not aware of any interpretive dispute that would justify the Union's Step 4 filing.

The Postal Service asserts that the issue in this case is not analogous to cases involving remedy cited by the Union. This is not a case where the Postal Service has conceded any liability. The Postal Service also argues that it is not enough for the Union to claim that this is a nationwide problem. The Union must show that there is an interpretive issue at stake, a genuine dispute over the meaning of collective bargaining language and not just a dispute over the application of that language. Moreover the Union must show the dispute was made clear to the Postal Service. The Union did neither.

Furthermore, the Postal Service stresses that the Union's claim of a nationwide problem is nothing more than that -- a claim. Even the e-mail which the Union submitted at

arbitration, which comes from a single Postal Service area, specifically states that the program being discussed "is only a management tool to assist in the evaluation of earned [function] 4 workload and is not the determining factor in developing a complement requirement for office." The 1995 Step 4 settlement cited by the Union, which dealt with an earlier program, was an agreement not to shift workload solely as a result of that program -- not an agreement not to shift work at all. There is no arbitral proscription against the shifting of bargaining unit work. The issue is what are the facts in any individual office in which such shifting is taking place. That is a fact-based determination to be decided in regional arbitration; it does not rise to a national interpretive issue.

UNION POSITION

The Union's Step 1 Grievance

The Union asserts that its Step 1 grievances were filed in each of the covered offices and that the Union did not file a national Step 1 grievance as alleged by the Postal Service. The Union filed Step 1 grievances which then were appealed to Step 2, Step 3 and regional arbitration. The Union's grievance letter is perfectly clear in stating that it is filed regarding "each" of the offices involved, in designating the Union's representative for the grievances and in requesting that the Postal Service designate its representatives, which it refused to do.

The Union disputes the Postal Service's contention that the Union is required to file all Step 1 grievances with an immediate supervisor. It is clear from the language in Article 15 that this requirement is stated for individual employees who file grievances, but not for the Union.

The Union's October 19, 2009 filing was a class action grievance covering all affected employees in level 14 to level 18 offices. While the Postal Service contests the class action status of this grievance, claiming the designation of class action was not made until Step 2, this ignores the reality that there is no official Step 1 form requiring such designation at Step 1, and the attachment to the October 19 filing referred to employees in 13,000 post offices. The Union insists it is clear on the face of its Step 1 filing that it is a Step 1 class action representing an allegation of the same violation affecting approximately 13,000 employees in multiple offices. Article 15 gives the Union the right to file a class action grievance, and requires that management designate an appropriate management representative. Given the breadth of the violations involved, it hardly could be expected that a supervisor in a single office would be the Postal Service designee. Moreover, a grievance representing all the affected employees in the identified offices could not have been filed with any specific postmaster because a postmaster has no jurisdiction over the employees or the assignment of work in other offices unless so designated by the Postal Service. It was management's prerogative and responsibility to designate the person with whom the grievances were to be filed.

The Union's Step 4 Grievance

The Union agrees that under the contract only interpretive issues of general application may be arbitrated at the national level, but points out that it is well established that the issue of what remedy should be awarded for violations of the National Agreement is itself an interpretive issue subject to arbitration at the national level. In this respect it cites arbitration decisions by Arbitrator Richard Mittenthal, in Case Nos. H4C-NA-C 77 and 93 (1988) and H4N-NA-C-21 (Fourth Issue) and 27 (1986), and by Arbitrator Das, in Case No. Q94V-4Q-C 96044758 (Interim Award) (2002).

The Union asserts that its Step 4 interpretive dispute alleges the Postal Service has reassigned bargaining unit work to supervisors in small offices on a nationwide basis without satisfying the conditions specified in the Garrett Award and the Das Award. Management does not have an unfettered right to reassign work from clerks to supervisors in small offices, but must give full and good faith consideration to other alternatives. The Union is seeking an award that requires the parties to establish a process for identifying and remedying the widespread Article 1.6.B violations. The Union stresses that in response to its grievance, the Postal Service has not disputed the fact that work has been reassigned from clerks to supervisors, nor has it argued that it has complied with the preconditions to such reassignments established in the Garrett Award and Das Award.

The Union states that it began this process believing the parties were in agreement that Article 1.6.B does not permit the Postal Service to reassign clerk work to supervisors by using an externally-imposed formula that does not take the work assignment practice in each office into account. As part of its effort to engage the Postal Service in a joint process to identify and remedy widespread violations of Article 1.6.B, the Union gave the Postal Service documentary evidence from a Postal Service vice president showing that the Postal Service is using a rigid formula to require supervisors in small offices to perform a minimum amount of clerk work each day. Because the amount of clerk work done by supervisors varies from office to office, the imposition of these minimums has resulted in the reassignment of work from clerks to supervisors in small offices. The Union sees this as a clear violation of Article 1.6.B which the Postal Service cannot deny.

In the Union's view, if the Postal Service is in agreement that the interpretations by Arbitrators Garrett and Das apply to these circumstances they should agree to reduce this response to writing, present the data and identify remedies. National level arbitration awards have clearly established that when there is no question that the agreement has been violated the question of an appropriate remedy for those violations is itself an interpretive issue subject to national level arbitration. The fact that the Postal Service has failed to acknowledge these violations does not distinguish this case from those other cases. If the Arbitrator finds that

the Postal Service has engaged in a widespread pattern of Article 1.6.B violations the questions will be the obligation to produce data and what remedy to provide.

The Union insists that it has not sought to raise new issues at arbitration. APWU President Burrus not only made postal management aware of the Union's complaints about the rapidly escalating problem of Article 1.6.B violations, he tried with might and main to get management to meet with him to find a way to identify and remedy violations.

The Union maintains it is abundantly clear that the Postal Service was fully aware of the Union argument and evidence before, during and after the Step 4 meeting. The Union points out that Article 15 requires the parties to make each other aware of their contentions and their evidence, but it does not require that this be done at the Step 4 meeting, as such.

The Union contends that it is unavailing for the Postal Service to assume the posture that it does not see any disagreement between the parties about the meaning of Article 1.6.B. It is very clear to the Union that this provision is being violated nationwide on such a massive scale that only a remedy crafted to deal with this problem in a systematic or global way can provide any hope of enforcing compliance with the parties' Agreement. If the Postal Service disagrees either that widespread systemic violations are occurring or that these violations entitle the Union to an effective remedy, that disagreement presents an interpretive issue.

FINDINGS

Union's Step 1 Grievance

The Step 1 provisions of Article 15.2 do not provide for a nationwide class action grievance or for a national filing of as many as 13,000 Step 1 grievances in a single combined grievance. Read as a whole, those provisions provide for a grievance to be filed either by an individual employee or by the Union with the affected employee's immediate supervisor. They state that a Step 1 Union grievance may involve a complaint "affecting more than one employee in the office." (Emphasis added.) They also provide that:

When the Union files a class action grievance, Management will designate the appropriate employer representative responsible for handling such complaint.

In context, this provision seems to address a situation where the employees in the office who constitute the "class" have more than one immediate supervisor. I do not read this provision as providing for a class action grievance to be filed at Step 1 which encompasses employees in thousands of separate offices as part of the class.

The provision in Article 15.2.Step 2(a), which provides for the Employer to designate "an official outside of the installation" (emphasis added) as the Step 2 official in

offices of twenty employees or less, does not expand the permissible scope of a Step 1 filing. Rather, it appears to reflect the parties' understanding that in these small offices there often is no supervisor other than the immediate supervisor with whom the grievance was filed at Step 1.

Article 15.2.Step 3(f) does provide a specific vehicle for filing certain grievances on an area-wide basis. It states:

In order to discourage the filing of multiple local grievances involving any new or changed District or Area-wide policy, instructions, or guidelines, the APWU Regional Coordinator or National Business Agent may file one grievance concerning such policy, instructions, or guidelines, directly at Step 3 of the grievance procedure.

Among the different types of grievances filed by the Union protesting the transfer of bargaining unit work from clerks to postmasters are area-wide grievances filed under this provision. Those grievances are not before me.

Accordingly, the answer to the question posed by the Postal Service's Step 4 grievance -- "Does Article 15 provide for the filing of a 'national Step 1' covering thousands of locations and employees, at the national level?" -- is: No.

Union's Step 4 Grievance

As APWU President Burrus stated in his July 1, 2009 letter to Labor Relations Vice President Tulino:

This is to request a meeting to discuss the logistics and process for the filings, hearing, appeals and arbitrations of those circumstances where the record indicates the transfer of work. If possible, it would be in our mutual interest to reach agreement on a process. The alternative is the filing of thousands of individual cases, the payment of witnesses, Step 1 and Step 2 discussions and arbitrations in the thousands of locations. In the absence of an agreement, the union will apply the contractual provisions.

(Emphasis added.)

The Garrett Award similarly described the choices open to the parties for resolving the many pending grievances when that decision was issued in 1978.

Merely alleging a nationwide violation and seeking a nationwide remedy does not satisfy the requirement that a Step 4 grievance involve an interpretive issue of general application. This is not a case such as those cited by the Union where the parties have framed a dispute as to what particular remedies are available or appropriate for a given contractual violation.³ The

³ Moreover, to the extent that Arbitrator Mittenthal's Award in Case Nos. H4C-A-C 77 and 93 ordered a remedy for a nationwide violation of Article 7, Section 3.A, the parties agreed there

parties also have not articulated any difference in their respective understandings of what the Garrett Award and the Das Award (which, for present purposes, simply delineates the Garrett Award) says, nor do they disagree that those Awards apply to the transfer of bargaining unit work from clerks to supervisors that admittedly has occurred.

Addressing situations where the Postal Service "substantially increases the amount of bargaining unit work" required of supervisors "at the expense of hours worked by Clerks," 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.

This clearly places the burden on the Postal Service to justify its actions in such cases, but the application of these principles to the situation in any given office does not constitute an interpretive issue of general application.

had been such a violation, but disagreed at Step 4 and prior to the start of the arbitration hearing as to the permissible remedies. The Postal Service has not conceded a violation of Article 1.6.B in this case. In its 15-day statement it contends the Union has failed to identify an interpretive issue of general application -- the matter to be decided here -- and reserves its right to respond if the Union does so in the future.

There is, however, one aspect of this case which could support a Step 4 interpretive grievance. In its Step 4 grievance, the Union alleges that the Postal Service has "systematically reassigned bargaining unit work in violation of the principles of the Garrett and Das interpretive decisions" (Emphasis added.) Earlier, it drew the attention of top Labor Relations management at headquarters to an e-mail thread, which on its face appears to indicate the existence of a national Postal Service policy -- albeit in the face of declining mail volume -- to have postmasters take on additional bargaining unit work at the expense of hours worked by clerks. Moreover, it is unrealistic to think that top Labor Relations management at headquarters was unaware of the 1995 pre-arbitration Step 4 settlement regarding an earlier national program aimed at shifting additional bargaining unit work to postmasters/supervisors.⁴ The Postal Service is correct in noting that this settlement does not preclude the shifting of bargaining unit work, but the settlement clearly states that:

...[I]f, after employing the Workload Workhour Budget Equalization Review process such an adjustment appears warranted, the considerations established in Arbitrator Garrett's decision will be reviewed and applied before any shift of bargaining unit work from craft employees to postmasters is effectuated. In particular, the conditions in the office must be in concert with the conditions specified in Arbitrator Garrett's

⁴ The settlement was specifically referenced in the Union's October 30, 2009 Step 2 appeal sent to Vice President Tulino.

decision in order for any such shift of work to be justified.

The Postal Service stresses that at the Step 4 meeting the Union did not refer to the e-mail thread, nor to the 1995 Step 4 settlement. By all accounts, the Step 4 meeting was unfruitful and both parties felt frustrated, albeit for different reasons. The grievance filed by the Union and its 15-day letter also do not specifically refer to these documents. As noted above, however, they clearly were lurking in the background and were known to both sides.

Consistent with the applicable provisions of Article 15, the Union is entitled to raise in a Step 4 grievance the issue of whether the Postal Service has implemented a national program for shifting work in the relevant small post offices that is inconsistent with the Garrett Award and the 1995 Step 4 settlement. If the Union adopts that position -- which seems at least implicit in the present record -- and the Postal Service disagrees -- either as to the existence of such a program or as to whether it is inconsistent with the Garrett Award and the 1995 Step 4 settlement -- the parties properly could arbitrate that issue at national arbitration.

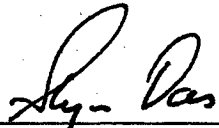
Both parties have an interest in resolving disputes, particularly those that are widespread. Occasionally, the process carefully crafted by the parties gets derailed. A rule of reason and an appreciation for the parties' good faith obligations and efforts are appropriate considerations. Under

the rather unusual circumstances in this proceeding, and without setting any precedent for any future case, I will return the Union's Step 4 grievance to the Step 4 level and direct the parties to meet within 30 days (unless otherwise agreed) in an effort to define the precise interpretive issues, if any, involved -- consistent with the Findings in this Award -- develop all necessary facts and reach agreement. If they fail to reach agreement, the parties shall exchange 15-day statements and the Union may reappeal the grievance to arbitration.

AWARD

(1) The Question posed in the Postal Service's Step 4 grievance in Case No. Q06C-4Q-C 10032106 -- "Does Article 15 provide for the filing of a 'national Step 1' covering thousands of locations and employees, at the national level?" -- is answered: No.

(2) The Postal Service's challenge to the arbitrability of the Union's Step 4 grievance in Case No. Q06C-4Q-C 10005587 is resolved on the basis set forth in the above Findings.



Shyam Das, Arbitrator

