In the Matter of the Arbitration between

AMERICAN POSTAL WORKERS UNION, AFL-CIO

-and-

UNITED STATES POSTAL SERVICE

(Re: St. Clould, Florida)

Case No. H4T-3W-C 9682

OPINION AND AWARD

Before DANIEL G. COLLINS, Arbitrator

Appearances:

For the Union

Thomas K. Freeman, Jr., Assistant Director,
Maintenance Division
Owen J. Barnett, Assistant Director,
Maintenance Division

For the Postal Service

Stephen W. Furguson, Labor Relations Executive

This proceeding involves a claim that the Postal Service violated the parties' 1984-1987 National Agreement when it contracted out custodial work at the St. Clould, Florida Post Office. A hearing was held before the undersigned Arbitrator at Washington, D.C. on February 24, 1986. Thereafter, the parties submitted post-hearing briefs, which were received by the Arbitrator on September 5, 1986.

The Issue

The parties did not agree on a precise issue. The Arbitrator finds the issue to be whether the Postal Service

violated paragraph .261a of the parties' 1984 Memorandum of Understanding when it contracted for certain custodial work at the St. Cloud, Florida Post Office.

The Background of the Dispute

The parties stipulated as follows:

1. There are 15 hours of custodial work per week which had existed at the St. Clould Post Office since June 29, 1984.

2. The 15 hours of work had been accomplished by a 15-hour part-time regular custodian from July 21, 1984 to May 11, 1985.

3. On May 11, 1985 the custodian who did that work transferred to the clerk craft and management reverted the vacant 15-hour custodial assignment and contracted out the 15 hours of work.

The 1984 Memorandum of Understanding provides as follows:

> The parties agree that the following language will be incorporated into paragraph 535.261 of the Administrative Support Manual and that such language will not be changed during the life of the 1984 National Agreement. Subsequent changes may be made pursuant to the provisions of Article 19 of the USPS-APWU/NALC National Agreement.
>
> .26 Clearing Service

.261 Authorization

a. Cleaning services contracts may be authorized for cleaning offices, branches, or stations (1) if the average weekly workload does not exceed 32 hours, and (2) provided the work is not presently being performed by field service maintenance employees.

b. Cleaning service contracts are not authorized for (1) offices with less than 190 revenue units, or (2) buildings at which classified custodial maintenance employees are assigned.

Date: October 18, 1984; incorporated into December 24, 1984 Award.

The language of paragraph .261a of the Memorandum of Understanding is identical with that of the 1973 Postal Service Manual, except that the latter referred to an average daily workload not exceeding 4 hours. That language was continued in paragraph 536.261a of the Administrative Support Manual. Prior to 1973 the Postal Service Manual at paragraph 633.811 had contained the phrase "..provided the work has not previously been done by field service maintenance employees."

On April 5, 1985 the Services Southern Regional Office by memorandum described the pertinent effect of the Memorandum of Understanding as follows:

When a classified custodial maintenance employee voluntarily vacates (through a bid, retirement, etc.) the only custodial position in a facilty, and the MS-47 staffing

critoria requires 32 or less hours per week, a contract cleaner may be hired to accomplish the cleaning tasks.

The Parties' Positions

The Union argues as follows: The words "work...not presently being performed" in the Memorandum of Understanding unambiguously mandate that custodial work not exceeding an average of 32 hours weekly may not be contracted if such work as, as here, being performed by field service maintonance employees as of the effective date of the Memorandum, i.e. December 24, 1984. That the parties intended "presently" to have this meaning is clear from their similar use of the word in Article 30 A of the National Agreement, which provides for continuation during the term of the Agreement of "presently effective local memoranda of understanding..." What the Postal Service is attempting to do in this proceeding is to regain a right that it bargained away in negotiations. In the 1984 negotiations the Postal Service was well aware of how the Union read the word "presently", and it accepted the Union's interpretation in return for the Union's agreeing to increase the threshold for protection against contracting of custodial work from 20 to 32 hours weekly.

The Postal Service argues as follows: The pertinent language of the Memorandum of Understanding means that

when a "custodial position becomes vacant and the hours for the workload requirement are met, the Postal Service is permitted to contract for custodial cleaning services." The history of the development of the identical language in the 1973 Postal Service Manual establishes that the language was intended to preclude the very result the Union now seeks. In addition, the evidence of past practice supports the Postal Service's position. Furthermore, in the 1984 negotiations, not only did the Union not raise any question concerning the meaning of the language at issue, but its admitted concern with the possible loss of approximately 2000 jobs to contractors indicates that it must have understood that language to permit the Service to contract out vacated jobs.

Discussion

While each party presented considerable testimony and documentary evidence as to the negotiations leading to the 1984 Memorandum of Understanding, the Arbitrator is convinced that the meaning of the words "work...not presently being performed by field service employees" was never raised, no less discussed. Furthermore, while there was discussion in those negotiations about possible loss of a large number of custodial positions

to contracting, the Arbitrator is not persuaded of the implication that the Union therefore must have understood the aforesaid language to mean that vacant custodial positions could be contracted. On the contrary, there was an effort by the Service to increase substantially the workload hours requirement for protection against contracting, and this in itself could easily have triggered a reference to a large job loss among part-time custodial employees, particularly since that discussion took place against the backdrop of the General Accounting Office study that looked to generate significant savings by contracting for custodial work in smaller post offices. In this connection the Arbitrator finds it difficult to believe that had the Union then viewed the pertinent language of the Administrative Support Manual as meaning what the Service here asserts, it would not have strenuously sought in negotiations to change that meaning.

The evidence as to the history of the 1973 development, in the Postal Service Manual, of the pertinent language similarly is inconclusive. While it seems clear that the language that was adopted in 1973 was more limited in its protection against contracting than the Manual's earlier language, it is not clear how much more limited

it was intended to be. On this point the prior language could easily have been read as protecting any work that had ever been done, at any prior time, by field service employees. However, the new language--which is at issue here--can be read plausibly, as the Union urges, as protecting all work being done at the language's adoptive date or, as the Service urges, only work as to which a vacancy has not occurred.

The Postal Service made a very determined effort to produce evidence as to past practice--an endeavor made difficult by the lack of any retention requirement as to custodial records. The Service did produce evidence as to five instances, prior to the effective date of the Memorandum of Understanding, in which a vacated custodial position was replaced by a contract cleaner. The Arbitrator believes though that given the magnitude of postal operations it cannot fairly be concluded that the Union's failure to object in these few and far-flung instances constituted an acquiesence in the Service's reading of the language at issue, which then appeared in the Administrative Support Manual. To conclude otherwise would be to allow the National Agreement and regulations incorporated therein to be definitively interpreted by a few local officials of management and the union--a

result the Arbitrator believes neither party ever intended. In this connection, it is of significance that the first time the Service promulgated a regional memorandum setting forth its reading of language at issue, the Union objected and has carried the matter to the national level.

There is then neither persuasive evidence of past practice nor bargaining history to guide the Arbitrator as to the parties' intention. Under the circumstances the Arbitrator must attempt to discern the meaning of the words "work...not presently being performed by field service personnel" from the context of the Memorandum of Understanding and the National Agreement and from the ordinary usage of language.

The key words "not presently being performed" appear in a short document, the Memorandum of Understanding, which contains both an execution date and an effective date. The Arbitrator is therefore inclined to think then that the words were intended to be associated with one of these dates, here the effective date. This reading is buttressed by the fact that the only other time the parties used the word "presently" in the National Agreement, in Article 30A, they clearly intended to delineate a state of facts existing at the time of the Agreement's effective date. Further support for this reading of the word

"presently" is to be found in its standard dictionary definition as "now" or "in existence". The Arbitrator for these reasons concludes that the most reasonable reading of the language at issue is that urged by the Union.

Conclusions

For the foregoing reasons the Arbitrator finds that the Postal Service violated paragraph .261 of the 1984 Memorandum of Understanding when it contracted for certain custodial work at the St. Clould, Florida Post Office. The grievance accordingly will be granted.

Dated: September 30, 1986

Daniel G. Collins

DANIEL G. COLLINS, Arbitrator

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated 1984-87 and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

The Postal Service violated paragraph .261 of the 1984 Memorandum of Understanding when it contracted certain custodial work at the St. Clould, Florida Post Office. The grievance accordingly is granted.

Daniel G. Collins

DANIEL G. COLLINS, Arbitrator

State of New York)
)ss.:
County of New York)

On this 30th day of September, 1986, before me personally came and appeared DANIEL G. COLLINS to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

[illegible] A. YANNANTUONO
Notary Public, State of New York
No. 31-4859370
Qualified in New York County
Commission Expires March [illegible]