



Seniority & Status After Excessing

As the ongoing crisis in the American economy and the diversion of mail to electronic communications continue to cause large declines in mail volume, the Postal Service is increasingly trying to reassign and relocate mail handlers and other postal employees to new sections, new tours, new crafts, and new installations. This issue of *Union Time*, therefore, continues our multi-part review of the provisions of Article 12 that are most likely to control in these situations.

In the last issue of *Union Time*, we covered the reassignment of mail handlers within their installation when they are determined by postal management to be excess to the needs of a section. In most of those circumstances, the reassignment process is governed by Article 12.6C4 of the NPMHU National Agreement.

This article covers seniority and status issues that are involved with excessing under the current NPMHU/USPS 2006 National Agreement, as well as related provisions found in other collective bargaining agreements. (*The NPMHU Contract Administration Department expresses its gratitude to Sam D'Ambrosio, National Shop Steward Trainer and Eastern Regional Vice President, and Paul Hogrogian, President of Local 300 covering the New York metropolitan area and Northeastern Regional Vice President, who presented this material as part of their Article 12 workshop at the recent semi-annual meeting of the Local Unions on September 25, 2009.*)

The starting point is found in Article 12.2F, which sets forth the general rule for changes in which seniority is lost. (As stated in Article 12.2F, this general rule controls "[e]xcept as specifically provided elsewhere in this Agreement.") This provision is extremely important, because there are many other postal employees — including not only mail handlers from other installations, but also clerks, carriers, custodians

and even vehicle service employees — who are coming over into the mail handler craft, both voluntarily and involuntarily. Article 12.2F deals with voluntary reassignments both from the Mail handler craft and from outside of the Mail handler craft. The provisions of 12.2F1a and .2F1b establish the rule that employees have seniority established as a part-time flexible employee, one day junior to the seniority of the junior part-time flexible (PTF) employee, when the employee voluntarily moves from the mail handler craft in one postal installation to the mail handler craft in another postal installation, or when the employee voluntarily moves from another craft into the mail handler craft, regardless of installation.

So if a clerk voluntarily comes over to the mail handler craft, that employee comes over as a PTF, one day junior to the junior PTF mail handler already in the installation. That much is pretty clear-cut.

Here is the exact language that explains these principles, taken directly from the Contract Interpretation Manual:

The provisions of Sections 12.2F1a and F1b set forth the rule that employees have seniority established as a part-time flexible employee, one day junior to the seniority of the junior part-time flexible employee, when the employee voluntarily moves to another postal installation or voluntarily moves from another craft to the Mail Handler craft.

The language requiring an employee who voluntarily moves from another craft to the Mail Handler craft to become a part-time flexible was effective as of January 7, 1985, as a result of changes in the 1984 National Agreement.

SOURCE: Step 4 Grievance H4M-4T-C 1043, dated November 13, 1985.

(continued on page 2)

Seniority & Status After Excessing

(continued from page 1)

But what happens if the clerk is involuntarily reassigned over to the mail handler craft? When a clerk is involuntarily reassigned into the mail handler craft, it is necessary to review Article 12.2G3 of the National Agreement (which is a provision that includes an exception to the general rule in Article 12.2F). Under that subsection, when an employee changes from another craft to the mail handler craft involuntarily, the employee will begin a new period of seniority, which counts from the effective date of the reassignment. So that is again clear-cut, at least under the NPMHU National Agreement.

Again, the language included in the CIM confirms this understanding of Article 12.2G3:

Except as provided in the next paragraph [relating to reassignments under Article 13], when an employee changes from another craft to the mail handler craft involuntarily, the employee begins a new period of seniority under Section 12.2G3. For example, if a full-time clerk had been involuntarily reassigned to the mail handler craft, under Section 12.6C5, effective October 1, 1990, that clerk would have been placed in the mail handler craft with a seniority date of October 1, 1990.

SOURCES: Letters, NPMHU to USPS, dated September 25, 1990, and USPS to NPMHU, dated October 16, 1990.

The APWU contract, however, seems to contradict this plain reading of the NPMHU National Agreement. The APWU contract says that when a clerk gets excessed into another craft, that employee is one day junior to the junior full-time regular or that employee keeps his/her own seniority, whichever is less. Because this APWU provision is in direct conflict with the NPMHU National Agreement, which clearly says that the clerk would begin a new period of seniority within the mail handler craft, the APWU provision does not control in this situation. Of course, sometimes representatives of management and/or the APWU will not tell the

NPMHU or its representatives about this apparent conflict. Instead, the clerks just show up in the mail handler craft, and they are automatically placed on the seniority list with an incorrect seniority date. The NPMHU representative at the installation must make clear to management that it is the receiving or gaining craft's contract that supersedes and controls in this situation. Thus, insofar as mail handler seniority for an employee involuntarily reassigned into the mail handler craft is concerned, the NPMHU National Agreement applies, which means that the reassigned clerk gets a wholly new period of seniority, starting with the date of reassignment.

Now, that's how the seniority issue is governed, but that is only half the problem. Then there is a separate issue relating to the status of the reassigned employee.

Although the involuntarily reassigned employee begins a new period of seniority in the mail handler craft, the employee also retains his/her full-time status if that status was held in the former craft. In other words, the full-time regular clerk or carrier who gets involuntarily excessed into the mail handler craft must begin a new period of seniority, but that employee remains a full-time regular employee. Similarly, if a PTF clerk or carrier gets excessed into the mail handler craft, that employee must begin a new period of seniority and that employee must remain a PTF.

Recently, a question arose in one of the NPMHU's training programs: what happens when a full-time flexible clerk gets excessed into the mail handler craft? Based on our review of the governing documents and their underlying policies, it is the NPMHU position that, because our craft does not have a full-time flexible position, such an employee would have to be given PTF status as a mail handler. In particular, because the NPMHU does not have full-time flexible employees, and these employees coming from other crafts had no regular or fixed schedules in their prior craft, the NPMHU believes that such employees would have to be put into a flexible schedule, and therefore the only available schedule would be the part-time flexible schedule as a PTF mail handler. The Postal Service may not agree with our position, but we plan on having continuing talks in the

Article 12 Task Force on this subject. So if this scenario plays out in your facility and you are a Local Union representative, please contact the CAD at the National Office, and we will try to get the issue resolved by the Article 12 Task Force.

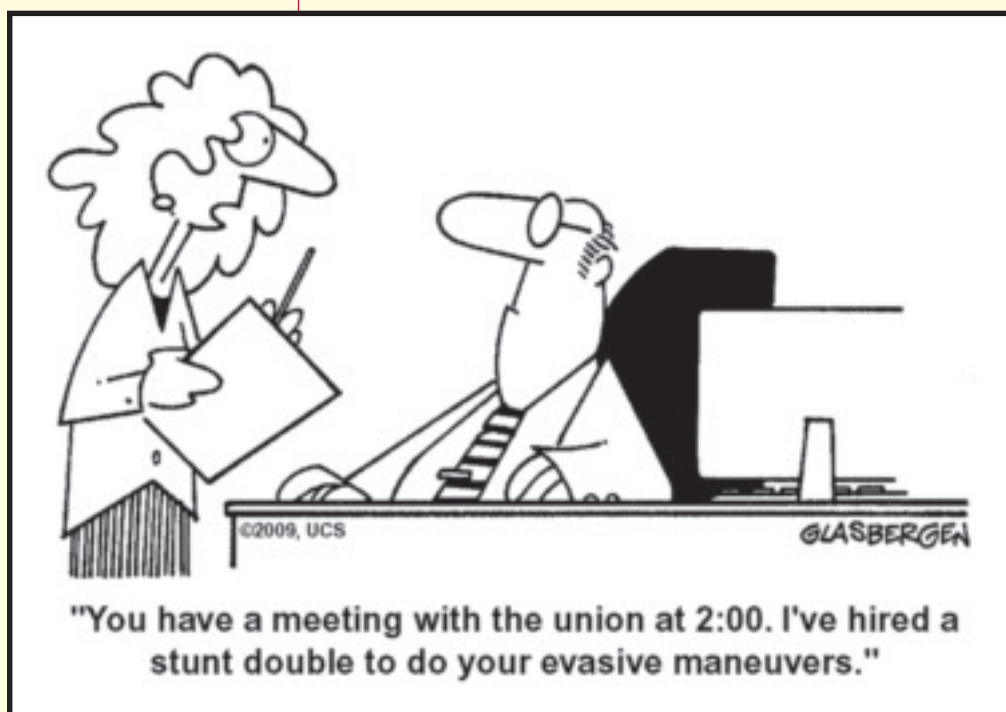
Finally, we turn our attention to a full-time regular mail handler who involuntarily is moving from one postal installation to another postal installation. Under Article 12.2G6, such an employee shall have his/her seniority established "as of the employee's time in the Mail Handler craft."

This is why mail handlers all around the country sometimes dislike it when mail handlers are transferred into their facilities. When those mail handlers get involuntarily excessed, they not only get their time from the building from which they are being involuntarily excessed, but they also get all of the time back that they had as a mail handler at any time in the past or from any location in the country. Although that may not go over too well in the mail handler's new installation, that is what the contract says, and that is how the contract is enforced.

Other issues also could arise. For example, what happens to a part-time regular employee or PTR who is involuntarily reassigned? Does the PTR get all of his or her time back when he or she is involuntarily excessed into another installation? We have taken the position that yes, the PTR also should get all mail handler time back. And this position has been confirmed in the CIM, under Article 12.2G6, when the manual states that "only full-time and part-time regular mail handlers are involuntarily reassigned from one installation to another in the Mail Handler craft with their seniority."

Here is another interesting question: what happens to a PTF who is involuntarily reassigned? Well, arguably the PTF is in a little different situation because there is specific language negotiated in another part of the contract,

Article 12.6C7b, which says that when PTFs get excessed to another building, they go to the bottom of the PTF list, even if the PTFs in the gaining installation have less time as a mail handler than the excessed employees. Only if and when these excessed PTF employees get converted to full-time, will they then get to count their prior time as part of their seniority. Moreover, that means that these PTFs, upon conversion to full-time, will get back only the time that they had in their prior installation; they do not get all of their mail handler craft time back following excessing under



Article 12.6C7b. As stated in the CIM, "[w]hen reassigned to the same craft in another installation, upon conversion to full-time, the employee will be credited with seniority from the losing installation augmented by seniority from the gaining installation."

If you have any questions about any of these provisions, or any other questions about the seniority or status of employees following reassignment, please contact your National or Regional CAD representatives.



Sammy Sez: Incumbency Rights

While training shop stewards around the country, I am often asked a question much like the following: If I am a Level 4 mail handler who has been driving a forklift or a motor-tug (jitney) or performing another ranked higher level position for over a year, and management has posted a bid for the job, am I entitled to the bid because I'm the incumbent?

The answer may be counterintuitive, but it is clearly no. In the circumstances presented by this question, management has created a new position, and that position must be posted for installation-wide bidding under Article 12. Indeed, Article 12, Section 3B3 states:

B3 *All vacant or newly established craft duty assignments shall be posted for employees eligible to bid within 10 days after a determination has been made that the position is not to be reverted.*

A different situation is covered by Article 12, Section 2I, which governs incumbency rights, and which often leads mail handlers to ask the question with which I started. Article 12.2I provides as follows:

- I1** *When an occupied level 4 or 5 position is upgraded on the basis of the present duties:*
- I1a** *The incumbent will remain in the upgraded job provided that the incumbent has been in that job for more than one year.*
 - I1b** *The job will be posted for bid in accordance with the Agreement if the incumbent has not been in the job more than one year.*
- I2** *When an occupied level 4 or 5 position is upgraded on the basis of duties, which are added to the position:*
- I2a** *The incumbent will remain in the upgraded job provided the incumbent has been in that job for more than one year. The year of the required incumbency in the job begins when the employee first begins working the assignment.*

As you can see, under these provisions, incumbency rights only apply when the present duties have been upgraded (usually because of a decision made nationally to upgrade all such duties to a higher level) or when duties are added to an occupied position.

In short, incumbency rights are not applicable to the situation presented by the original question. In that scenario posed by that question, the mail handler has been receiving higher level pay for more than a year because he or she

As you can see, under these provisions, incumbency rights only apply when the present duties have been upgraded (usually because of a decision made nationally to upgrade all such duties to a higher level) or when duties are added to an occupied position.

is performing the duties of a ranked higher level function. Management has now decided to create a bid position, presumably based on the needs of the facility. Management has not upgraded the position (indeed, management has been paying higher level all along), and management has not added higher level duties to an occupied position. Thus, incumbency rights do not apply.

Fraternaly,
Sam D'Ambrosio

Summaries of Arbitration Decisions

“The great aim of education is not knowledge but action.”

~ Herbert Spencer

A good Union representative is always learning, not only from his or her own experience, but also from the experiences of others.

All of our Union brothers and sisters depend on their Union representatives to present their grievances and arbitrations in an effective manner. And one way to keep alert to alternative approaches and strategies is to read the results — the wins and the losses — of actual arbitration decisions. Indeed, frequently the eventual outcome of an arbitration hinges on the quality of the grievance investigation and documentation that is initially completed by the Union steward.

Your best source to obtain copies of actual arbitration awards is the NPMHU’s own web-based MAILES system (Mail Handlers Arbitration Interactive Library Search System). If you have not done so already, sign up for your own username and password on the NPMHU webpage. MAILES is fully searchable, and it is a valuable resource that every Union representative should be taking advantage of. Should you need more information about the MAILES system, please feel free to contact the Contract Administration Department at NPMHU Headquarters in Washington, DC.

DISCLAIMER: *The arbitration awards described might be helpful to you; but remember, these are summaries only. You should review the complete decision before deciding whether and how a particular decision might help in the handling of a pending grievance or arbitration.*

Articles 12.3B Vacancy Posting Requirements (Arbitrator S. Holden, 6/10/2009)

GRIEVANT: Class Action (Brooklyn P&DC, New York)

CASE NO.: A00M-1A-C 05131115

BACKGROUND: During the summer of 2005, the Postal Service posted a number of Mail Handler bids. All but six of the bids were successfully awarded. According to the record and testimony, no one bid on the remaining six positions. During July 2005, the Union noticed that the six bid positions seemed to have disappeared, but it did not know specifically what had happened to them. As far as the Union knew, they were never reposted, so the Union assumed that they were reverted. The Union therefore filed a grievance claiming that it had never been notified about the reversion of these bids, and alleging that management was backfilling these positions by employing casual employees and assigning them to these duties.

Article 12.3B provides as follows:

In the Mail Handler Craft, Vacant Craft Duty Assignments Will Be Posted for Bid as Follows:

* * *

B3. All vacant and newly established craft duty assignments shall be posted for employees eligible to bid within 10 days after a determination has been made that the position is not to be reverted. If a vacant duty assignment has not been posted within 30 days, the installation head or the installation head’s designee shall advise the Union in writing, of the reasons the position is being withheld and the anticipated length of time such position will remain vacant. If the vacant assignment is reverted, a notice shall be posted within 10 days advising of the action taken and the reasons therefore. In addition, a copy of the notice shall be provided to the appropriate Union representative.

(continued on page 6)

Summaries of Arbitration Decisions

(continued from page 5)

Management responded that the Union had provided no evidence to show that the six positions had been reverted; that there was no evidence submitted to show that “the casuals on the rolls after the reversions of these positions are actually working the specific work hours and performing the specific work of the jobs that were reverted”; and that actually the positions were being withheld in accordance with Article 12.

ISSUE: The Union presented the issue as follows: Did the Postal Service violate the National Agreement and/or any supplements thereto when it reverted job bids and back filled with casual employees into work formerly done by full-time regulars? Management presented the issue as follows: Did the Postal Service violate the National Agreement through its use of casuals in the Brooklyn P&DC during the month of July 2005?

AWARD: The Postal Service violated the National Agreement by failing to notify the Union about either the reversion of these bids or the withholding of these bids. Because no evidence justified the use of casuals in these positions, management was ordered to post the six bids in dispute, and to pay a monetary remedy for the use of six casuals during the month of July 2005.

OF NOTE: A review of the record and documentation throughout the steps of the grievance procedure make it patently clear that the various representatives of the Postal Service were not clear themselves whether the six positions in question were reverted or were withheld as residual vacancies. The USPS advocate stated as much during the arbitration hearing.

The Postal Service’s claim that the grievance was procedurally flawed was found to be without merit. The Union had no choice but to make an assumption that the bids had been reverted, inasmuch as management failed to inform the Union of what it did with the bids. At Step 2, management claimed that there was no reversion but that the positions were residuals. At Step 3, the denial was for reversions, and

at the arbitration hearing management claimed the positions were residuals. The Union cannot be held to account for the changing position of the Postal Service.

Management claimed that the positions were not reverted. The language found in Article 12.3B3 of the National Agreement provides for posting and notice obligations once “a determination has been made that the position is not to be reverted.” It further provides that if “a vacant duty assignment has not been posted within 30 days, the installation head... shall advise the Union in writing, of the reasons the position is being withheld and the anticipated length of time such position will remain vacant.” Whether a position is reverted or not, there are notice requirements. There was no evidence presented that management met these posting or notice requirements.

On the other hand, the Union’s claim that casuals filled the six reverted/residual positions from the time of filing the grievance was not fully supported by the evidence presented in the record. Although a reading of other arbitration decisions strongly suggested to the arbitrator that this was an ongoing problem, she could not justify such a finding upon an assertion by the Union and her own instinct without documentation. The arbitrator refused to find, therefore, any continuing or ongoing violation.

Nonetheless, the arbitrator found that the heavy use of casuals in Brooklyn at the time that the grievance was filed, combined with management’s changing position with what happened to the six bid positions in question, strengthen the Union’s position in this case. To argue, as management has, that the casuals were filling in for mail handlers out on sick leave or vacation or pending removal is simply not plausible. Management never gave a reason for the reversion of these bids, and management never provided any notice of the withholding of these bids. The Union also provided documentation to show that casuals are used year round, and that the numbers of casuals had grown while the number of full-time regulars had decreased.

In these circumstances, a limited monetary remedy, based on the number of casual hours worked during July 2005 by six casuals, was awarded as a remedy for the violation of Article 12.3B3.

Article 12.3.B5, B7 Reposting of Duty Assignment (Arbitrator Gold, 2/4/2009)

GRIEVANT: Individual (Macon, GA P&DC)

CASE NO.: H06M-IH-C 08196741

BACKGROUND: On April 11, 2008, a full-time regular mail handler was notified that his position in Operation 010 was being reposted. The letter read as follows:

SUBJECT: Reposting of Duty Assignment

Due to operational needs your position will be reposted. This action is being issued under the provisions of the National Postal Mail Handlers Union and local Memorandum of Understanding, which states the conditions wherein management must repost positions. Effective, May 24, 2008 you will become an unassigned regular and will have the opportunity to bid on any new positions that are posted. If you are unsuccessful in obtaining any of the positions on which you bid, you may be reassigned to any vacant duty assignment subject to operational needs. You will be advised of your new schedule 28 days after becoming an unassigned regular.

I regret any inconvenience this reassignment may cause you. If you have any questions, please contact [the MDO].

The grievant had worked in this position for approximately seven years. His hours were from 1:30 to 10 on Tour 3. In August 2008, while an unassigned regular, the grievant bid on and was awarded a position in Operation 185 on Tour 3. His hours and rest days changed as a result.

The grievant was one of three mail handlers who received similar notices. While all three initially filed grievances, the other two ultimately decided that they preferred their new assignments and thus their grievances were withdrawn.

The record indicates that the Postal Service had hired three part-time regulars (PTRs) in June 2007. According to the written grievance, the three PTRs were assigned to the 010 Operation, and the grievant trained them in their new positions. Thus, as of April 2008, the PTRs had been working in the 010 Operation along with the grievant for over nine months.

The Postal Service reasoned, among other things, that since PTRs generally do not work more than six hours a day, six days a week, and the 010 was a six-hour-a-day operation, this was a perfect "fit" for PTRs.

ISSUE: Did Management violate Articles 5 and 12.3 and the MOU on PTRs when it reposted the grievant's bid assignment after hiring three PTRs and assigning them to Operation 010? If so, what shall be the remedy?

AWARD: The Postal Service did not violate the National Agreement. The grievance is denied.



OF NOTE: There was considerable confusion in this case with regard to how best to describe what occurred with the grievant's Operation 010 assignment. In the original letter sent to him on April 11, 2008, the Postal Service indicated that his position was being reposted. In its initial written grievance, the Union described the position as being abolished. The Step 2 designee, on the other hand, focused on the fact that his assignment had been reposted. The Step 3 designee for the Postal Service, however, framed his response in terms of an abolishment. He defined the issue to be settled, for example, as whether the National Agreement and the MOU on PTRs were violated when the grievant's bid assignment in the 010 Operation was abolished.

(continued on page 8)

Summaries of Arbitration Decisions

(continued from page 7)

He argued that “abolishment is a management decision, especially when it is decided to restructure operations more efficiently.” In arbitration, the Service argued that no abolishment took place and that the grievant’s old job was merely reposted — with a new assignment area (Operation 185), new hours, and new days off.

Despite the confusion, the arbitrator gave weight to management’s original description of its action — that is, the reposting of a duty assignment, and not to an abolishment of a position — even though the action apparently resulted in a reduction in the number of occupied duty assignments in the section. Under both sets of circumstances,

The parties appeared to disagree regarding the meaning of Section B7 of Article 12.3, where the contract states that a “[c]hange in duty assignment . . . will require reposting” if it involves a “50% change in duties (actual duties performed).”

The Union believes that this means that there must be a change of 50% or more of the duties within the 010 Operation. The Postal Service, on the other hand, argued at Step 3 that it is the assignment that is done away with, not necessarily the work that was associated with it, that is controlling: “the same work [is] performed by other assignments in a way that makes better use of the workforce.”

The MDO testified that the grievant’s rest days were changed from Wednesday and Thursday to Monday and Tuesday in Operation 185 because he would now be “prepping” mail (rather than canceling it in Operation 010) and there is no mail to prep on Mondays and Tuesdays. The peak day is Thursday.

Prepping mail is a twenty-four hour activity and there is an unlimited need for employees to work in this area. The MDO indicated that he did not recall the grievant ever working in Operation 010 during the period when he was an unassigned regular. Thus, the arbitrator agreed that “the 50 percent change that occurred took place when the grievant’s position was reposted.”

The question remains as to whether PTRs were hired in lieu of, or to the detriment of, full-time regular mail handlers, in violation of the MOU on PTRs. The MOU states that “the parties hereby agree that the United States Postal Service will not hire or assign

part-time regular Mail Handlers in lieu of or to the detriment of full-time regular or part-time flexible Mail Handlers.”

The parties also agreed to a question and answer to provide guidance in cases involving PTRs. It states that “an installation should not abolish an existing full-time position or refuse to create a new full-time position, and instead create a PTR position, if the work that is available can fill a regular full-time schedule.”



the Postal Service determines that its operational needs are better met by a more efficient restructuring of assignments. This is consistent with its management rights under Article 3. As noted by the Step 2 designee, “due to the decline in mail volume the operational needs within the Operation 010 have changed and no longer require the amount of eight (8) hour bid assignments as in the previous years.”

Here, full-time regular employees in the 010 Operation were moved to different assignments with eight hours of work, while PTRs remained in Operation 010 with less than eight hours of work. Indeed, the PTRs were already working side by side with the FTRs for several months before the full-time regular positions were changed. Thus, there is no evidence in this dispute that, following the reposting, the 010 Operation did not operate on a consistent basis absent the three full-time regular employees. Ultimately, there is no basis to conclude that management's action was arbitrary or capricious or constituted an abuse of its discretion. Based upon this reasoning, the grievance must be denied.

Article 12.6B3 Bumping & Displacement Change Days Off (Arbitrator Owens, 3/15/2009)

GRIEVANT: Individual (Roanoke, VA P&DC)

CASE NO.: C06M-1C-C 08252957

BACKGROUND: This grievance concerns the abolishment of a mail handler bid job in "hand-stamp" at the Roanoke P&DC, with off days of Saturday and Sunday. On March 13, 2008, the grievant received a letter abolishing his bid position, with the reason given that the position no longer conformed to the needs of the Service. However, after the abolishment, supervisors continued to assign employees from other areas to the abolished position. The only thing that changed in the hand-stamp position was that the non-scheduled days off were changed from Saturday and Sunday to Sunday and Monday. Three other mail handlers continued to cover the hand-stamp area on the non-scheduled day of Monday.

The Union claimed that the evidence demonstrated a violation of Article 12.6B3, which provides that "[n]o employee shall be allowed to displace or bump another employee." In particular, the Union argued that the grievant's job still exists; it was never abolished, and the only aspect that changed was the off days. The Union concluded, therefore, that the grievant has been bumped and displaced from the bid job which he properly held. Indeed, hand-stamp work continued to be performed by the grievant from Tuesday

through Saturday, and other employees were regularly assigned to perform the function on Mondays. The Union also pointed to daily worksheets showing that career employees were detailed to work the hand-stamp operation on the grievant's off day, and that casuals did not work in hand-stamp because it is a full-time bid position. The situation was really a job re-alignment, not an abolishment, argued the Union, and thus the Service had violated Article 12.6B3 when it displaced the grievant, a full-time regular employee, from his properly held bid position. The Union requested that the grievant be placed back in his prior position with off days of Saturday and Sunday.

The Service acknowledged that the letter sent to the grievant should have been a "repost letter," not an abolishment letter. If that had occurred, the Service argued, the grievant would have been in the same position that he currently found himself — that is, the job would have been abolished; it then would have been reposted with Sunday and Monday off as non-scheduled days; the grievant would have been able to bid on it; and then he would be exactly in the same situation. Therefore, the Service argued, there was no harm to the grievant because of management's administrative error. If the grievant's job was abolished and then re-posted with different off days, the grievant would not have been properly holding a duty assignment and would not have been in a position to be bumped or displaced under Article 12.6B3. Instead, he would have become an unassigned regular subject to the bidding process.

ISSUE: Did the Postal Service violate Article 12.6B3 and other relevant provisions of the National Agreement when it allowed employees to displace or "bump" the grievant from his duty assignment. If so, what shall be the proper remedy?

AWARD: The grievance is sustained. The grievant shall be returned to his prior job bid assignment on Tour 3 with non-scheduled days of Saturday and Sunday.

OF NOTE: In its letter of March 13, 2008 to the grievant, management informed him that his position was being abolished effective March 29 because it "no longer

(continued on page 10)

Summaries of Arbitration Decisions

(continued from page 9)

conforms to the needs of the Service.” The arbitrator found, however, that the grievant’s position was not abolished; the position still exists with the exception of the change in off days. Work in the hand-stamp operation is performed every day — except for Sunday — at the Roanoke P&DC. The hand-stamp work has been regularly assigned to other career employees on Monday, the grievant’s new non-scheduled day. Uncontested testimony by the Branch President confirmed that the operation had continued on Mondays. While management may have been justified to make the changes in question, it is difficult — under the given factual circumstances — to discern how changing the grievant’s off days from Saturday and Sunday to Sunday and Monday was “necessary to better meet the needs of the service.”

The arbitrator rejected the Service’s argument that the change really amounted to no more than a “de minimis” violation and that the grievant was not harmed. The parties have agreed in Article 12.6B1 that the any “dislocation and inconvenience” to employees “shall be kept to a minimum consistent with the needs of the service” when reassignments are considered. The grievant’s normal work routine of Monday through Friday was changed — a routine he had followed for the previous seven years. His job was “abolished” and off days were changed so that other career employees could perform hand-stamp work on his new off day of Monday. No plausible reasoning behind the change was provided. The facts, however, lend some support to the Branch President’s conclusion that the Service’s underlying rationale for the action was simply to reduce the number of employees whose off days were on Saturday and Sunday. That rationale notwithstanding, it is apparent from the record that the grievant’s job duties were never eliminated even though the Service’s letter of March 13 purported to abolish his bid assignment. Therefore, it must be concluded that the Service’s actions violated Article 12.6B.

Article 12.7 Transfer Request (Arbitrator Pecklers, 5/13/2009)

GRIEVANT: Individual (Bangor P&DC)

CASE NO.: B06M-1B-C 08281370

BACKGROUND: The grievant was a career employee, with a seniority date of August 21, 1993, and held a bid as a full-time regular Level 5 mail handler in the Eastern Maine P&DC. By letter dated April 19, 2006, the grievant wrote to the Plant Manager of the West Palm Beach, Florida P&DC, requesting consideration for a transfer to that facility, and including background information on his service record and his reasons for making the request. Afterwards, the grievant also sent a copy to the NPMHU Branch President in West Palm Beach, and confirmed via telephone that she would make sure that management received it because they were in the process of hiring 20 career mail handlers in that facility. The grievant received no written acknowledgement from management to his letter requesting a transfer, but the Branch President obtained a stamped receipt demonstrating that the Plant Manager’s office had received the transfer request.

The Union also demonstrated that hiring at the West Palm Beach facility had taken place off of the hiring register since the grievant’s transfer request was submitted.

ISSUE: Did the Postal Service violate the National Agreement, specifically Article 12.7 and the MOU of Transfers, when it failed to transfer the grievant to West Palm Beach? If so, what shall be the remedy?

AWARD: Grievance sustained. The Union made an un rebutted showing that the Postal Service violated Article 12.7 and the MOU on Transfers by failing to transfer the grievant to West Palm Beach. The transfer was ordered and seniority adjusted, consistent with the provisions of the National Agreement.

OF NOTE: Article 12.7 provides that “[p]rior to hiring Mail Handlers, installation heads will consider requests for transfers submitted by Mail Handlers from other installations.” It also provides that “[p]rovided a written request for a voluntary transfer has been submitted, a written acknowledgement shall be given in a timely manner.”

The Memorandum of Understanding on Transfers further provides as follows:

The parties agree that the following procedures will be followed when career Postal employees request reassignment from one Postal installation to another.
Reassignments (Transfers)

* * *

B. Installation heads will afford full consideration to all reassignment requests from employees in other geographical areas within the Postal Service. The requests will be considered in the order received consistent with the vacancies being filled and type of position requested. Such requests from qualified employees, consistent with the provisions of this memorandum, will not be unreasonably denied. Local economic and unemployment conditions, as well as EEO factors, are valid concerns. When hiring from entrance registers is justified based on these local conditions, an attempt should be made to fill vacancies from both sources. Except in the most unusual of circumstances, if there are sufficient qualified applicants for reassignment, at least one out of every four vacancies will be filled by granting requests for reassignment in all offices of 100 or more man-years if sufficient requests from qualified applicants have been received. In offices of less than 100 man-years a cumulative ratio of 1 out of 6 for the duration of the National Agreement will apply.

The Contract Interpretation Manual (CIM) also addresses the issue of Transfers, stating as follows:

Article 12.7.A of the National Agreement requires installation heads to consider requests for transfers prior to hiring mail handlers. Article 12.7.B goes on to require that provided a written request for a voluntary transfer has been submitted, a written acknowledgment shall be given in a timely manner.

The Union argued that management complied with neither of these requirements. And while the MOU must be read in conjunction with Article 12 per the CIM, no evidence was provided by the Postal Service during the grievance procedure that the grievant's transfer request was considered in the order received, or that the basis of the denial was the fact that the one to four ratio had been satisfied with other transfers.

The parties further stipulated that there were mail handlers hired at West Palm Beach after the date of the grievant's request, and that other transfers were accepted. This is evident from the documentation submitted by the Union, and thus the grievant was harmed on each occasion that a



mail handler was hired off the register or another transfer was accepted. Upon the totality of the findings of fact, the arbitrator concluded that the Postal Service violated the National Agreement when it failed to transfer the grievant to the West Palm Beach P&DC. The grievance accordingly was sustained, with the transfer ordered pursuant to the CIM language applicable to Article 12.7, which states that "[a]rbitrators from one Region have the authority to order managers in another region to accept a transfer request."

1101 Connecticut Ave NW
Suite 500
Washington, D.C. 20036
(202) 833-9095
www.npmhu.org



In This Issue of *UnionTime*

- **Seniority & Status After Excessing**
- ***Sammy Sez:* Incumbency Rights**
- **Summaries of Arbitration Decisions**
 - Articles 12.3B Vacancy Posting Requirements (Arbitrator S. Holden, 6/10/2009)
 - Article 12.3.B5, B7 Reposting of Duty Assignment (Arbitrator Gold, 2/4/2009)
 - Article 12.6.B3 Bumping & Displacement Change Days Off (Arbitrator Owens, 3/15/2009)
 - Article 12.7 Transfer Request (Arbitrator Pecklers, 5/13/2009)

