



REASSIGNMENT OF MAIL HANDLERS EXCESS TO THE NEEDS OF A SECTION (ARTICLE 12.6C4)

With large declines in mail volume caused by the diversion of mail to electronic communications and the crisis currently facing the American economy, the Postal Service is increasingly trying to reassign and relocate Mail Handlers under the terms of the 2006 National Agreement. This issue of *Union Time*, therefore, begins a multi-part review of the provisions of Article 12 that are most likely to control in these situations.

In this issue, we cover 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 these circumstances, the reassignment process is governed by Article 12.6C4 of the National Agreement. We say in most circumstances, because there are exceptions.

The most important exception arises from Article 12.4 of the National Agreement, which authorizes the parties — during local negotiations conducted periodically pursuant to Article 30, Sections 30.2P and 30.2S of the National Agreement — to reach a Local Memorandum of Understanding to define the term “section.” As provided in Article 12.4, Definition of a Section, when the Postal Service and the Union adopt a definition of the term “section” for each installation, they must confine themselves to one or more of the following: (A) pay location; (B) by floor; (C) tour; (D) job within an area; (E) type of work; (F) by branches or stations; (G) the entire installation; (H) incoming; and/or (I) outgoing. Moreover, if no sections are established by local negotiations, then Article 12.6C4a makes clear that “the entire installation shall comprise the section.” In these circumstances — when the entire installation is defined as the section — then Mail Handlers may be moved by the Postal Service within the installation not by the procedures established by Article 12.6C4,

but by the mechanisms of abolishment and subsequent posting and bidding of assignments under other provisions of Article 12.

Assuming that Article 12.6C4 applies, because a section is defined in the LMOU as something narrower than the entire installation, and because the Postal Service has decided that there are too many full-time employees assigned to that section, the parties have agreed to a particular process for reducing the number of Mail Handlers excess to that section. Under Subsections 12.6C4b and 12.6C4d, the first step is for management to identify both the full-time duty assignments to be abolished and the junior full-time regular Mail Handlers to be reassigned. The employees to be reassigned must be the junior full-time regulars in the section at the salary level of the assignments to be abolished, and may or may not be holding the assignments that actually will be abolished.

Focusing first on the Mail Handlers to be reassigned outside of the section, under Article 12.6C4b, these junior employees will be reassigned outside the section, but within the installation and within the Mail Handler craft. (The National Agreement also refers to “occupational group,” but that term has no application under the Mail Handler National Agreement, but rather is a remnant from the years in which Mail Handlers shared a National Agreement with other craft unions.) These junior employees will become unassigned regulars, shall retain their seniority and their salary level, and may bid on any existing vacancies for which they are eligible to bid. As with other unassigned full-time regular employees, these junior employees are entitled to schedules

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Reassignment of Mail Handlers

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with fixed non-scheduled days off unless or until they successfully bid for another assignment or are properly placed in a vacant duty assignment. If they do not bid, they may be assigned to any vacant duty assignment for which there was no successful bidder in the same craft and installation, as set forth in Article 12.3B11. Their personal preference is to be considered if more than one such assignment is available.

Such reassigned full-time employees retain the right to retreat to the section from which they were withdrawn only upon the occurrence of the first residual vacancy in the salary level after employees remaining in the section have completed bidding. (Such bidding in the section is limited to employees in the same salary level as the vacancy.) Failure by the reassigned full-time employee to accept the first available vacancy will end his/her retreat right. The right to retreat to the section is optional with the employee who has retreat rights with respect to a vacancy in a lower salary level. Failure to exercise the option with regard to a vacancy in a lower salary level does not terminate the employee's retreat rights in the salary level from which the employee was reassigned away from the section. Thus, a Level 5 Mail Handler with retreat rights into the section does not forfeit those retreat rights if s/he fails to exercise such retreat rights with regard to a Level 4 Mail Handler position.

Previous to this writing, as reflected in Version 2 of the Contract Interpretation Manual, the NPMHU and the Postal Service had a dispute at the National level over whether, as long as there are employees who were involuntarily excessed from a section and who still have retreat rights to vacancies in one or more salary levels, all subsequent newly created duty assignments in the same or lower salary level in the section should be posted only to the section or should be posted for bidding on an installation-wide basis. The Postal Service previously maintained that all of these newly created duty assignments must be available to the previously excessed Mail Handlers; the NPMHU previously maintained that any newly created duty assignments must be posted for bid installation-wide, and that only residual vacancies occurring in the section should be offered first to

Section 12.6C4 of the National Agreement

C4 — Reassignment Within an Installation of Employees Excess to the Needs of a Section

C4a — The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations. If no sections are established by local negotiations, the entire installation shall comprise the section.

C4b — Full-time employees, excess to the needs of a section, starting with that employee who is junior in the same craft or occupational group and in the same level assigned in that section, shall be reassigned outside the section but within the same craft or occupational group. They shall retain their seniority and may bid on any existing vacancies for which they are eligible to bid.

If they do not bid, they may be assigned any vacant duty assignment for which there was no senior bidder in the same craft and installation. Their preference is to be considered if more than one such assignment is available.

C4c — Such reassigned full-time employee retains the right to retreat to the section from which withdrawn only upon the occurrence of the first residual vacancy in the salary level after employees in the section have completed bidding. Such bidding in the section is limited to employees in the same salary level as the vacancy. Failure to bid for the first available vacancy will end such retreat right. The right to retreat to the section is optional with the employee who has retreat rights with respect to a vacancy in a lower salary level. Failure to exercise the option does not terminate the retreat rights in the salary level in which the employee was reassigned away from the section.

C4d — When full-time duty assignment(s) in the same craft or occupational group and the same level in the section are to be abolished and the junior employee(s) from the Section are to be reassigned, the following shall apply:

C4d1 — The appropriate duty assignment(s) shall be identified and abolished.

C4d2 — The junior full-time employee(s) excess to the needs of the section shall be identified and reassigned.

C4d3 — The duty assignment(s) encumbered by the employee(s) junior to the senior employee whose duty assignment is abolished will be offered, in seniority order, and in an expedited selection process, to the employee(s) remaining in the section beginning with the senior employee whose duty assignment was abolished. An employee(s) declining to make a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed.

C4d4 — The results of the above-listed actions shall be effective at the beginning of the succeeding pay period.

the junior employees who previously were excessed out of that section. The Postal Service has now agreed with the NPMHU position, and that agreement will be reflected in Version 3 of the CIM, to be distributed shortly.

Finally, it also is worth remembering that Article 17.3C of the National Agreement provides that, while designated as a steward or chief steward (but not an alternate steward), a Mail Handler cannot be involuntarily reassigned to another tour, station, or branch of the installation, if there is a duty assignment in his/her category (full or part-time) for which the steward is qualified.

Turning to the Mail Handlers who remain in the section from which employees will be excessed, the next step to implement Article 12.6C4 is found in Subsection 12.4C4d3, which requires management to implement an "expedited selection process." The senior employee whose duty assignment was abolished now has his/her choice of all duty assignments in the same level that are remaining in the section, starting with the next junior employee to him/her. This process continues, in seniority order, until all of the jobs are filled.

Put another way, and to paraphrase Subsection 12.6C4d3, the Mail Handler duty assignments that remain in the section will be offered, in seniority order, and in an expedited selection process, to the employee(s) remaining in the section beginning with the senior employee whose duty assignment was abolished. An employee declining to make

a selection when canvassed shall be assigned to the duty assignment(s) remaining in the section after the expedited selection process has been completed. The results of this expedited bidding process shall be effective at the beginning of the next pay period.

The provisions of Subsection 12.6C4d concerning the expedited selection process were first added to the National Agreement during 1993 negotiations. Their purpose was to protect the senior employee whose job may be abolished, while also expediting the selection process. If there is a need to abolish a full-time duty assignment in a section which would result in the excessing of the junior employee, there will be expedited bidding by the employees within the section, limited to the senior employee whose assignment was abolished and all employees junior to that employee. Those employees will select from among the duty assignments remaining in the section that are encumbered by employees junior to that senior employee whose duty assignment was abolished. It is important to remember that expedited bidding, pursuant to Article 12.6C4d, can only occur when abolishing and excessing have occurred in the affected section.

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In the next issue of Union Time, we will discuss Article 12.6C5, which governs Reduction in the Number of Employees in an Installation Other Than by Attrition.



NLRB and Postal Service Agree to Extend Settlement on Weingarten Rights

In March 2008, the National Labor Relations Board and the Postal Service agreed to a six-month experimental program concerning the handling of current and future *Weingarten* charges filed with the Board.

The purpose of this program was to resolve future disputes over steward representation in an expeditious manner and, in the NLRB's view, to provide meaningful remedies to adversely affected employees. When the NPMHU initially was informed about the settlement discussions, we objected to the weak provisions of the program being proposed, particularly its failure to provide full reinstatement and back pay to affected employees when a violation of *Weingarten* rights occurs.

The program was amended after our objections, to make clear that the program does not affect in any way an employee's contractual rights or remedies under the National Agreement. Thus, an employee whose *Weingarten* rights have been violated still may claim that, under the National Agreement, that he is entitled to have his or her discipline expunged, and any missing pay to be fully reimbursed.

More recently, the NLRB and the Postal Service have agreed to extend the program, with some favorable modifications, for an indefinite time into the future. Thus, in January 2009, a new nationwide settlement agreement was signed by the parties, once again allowing the Postal Service to avoid the complete elimination of the discipline accompanied by full reinstatement and back pay for these *Weingarten* violations.

In particular, the initial program included the following features:

- Upon a finding by one of the NLRB's Regional Offices of a *prima facie* violation of *Weingarten* rights, the Postal Service must conduct a new meeting or interview with the employee.
- If the first meeting resulted in discipline, the affected employee or the union could request a new meeting and full *Weingarten* rights. The USPS may not use any information obtained from the employee at the first meeting against the employee at the reconvened meeting, and the USPS must reconsider the discipline and, if necessary, modify the discipline and take other appropriate steps to rectify the situation.
- If the first meeting did not result in discipline, the Postal Service can avoid a new meeting by notifying the employee that none of the information obtained will be retained in the employee's personnel file or used against the employee in any way.

The revised program includes the following additional protections:

- The revised program now clearly states that it covers not only the Postal Service, but also the Postal Inspection Service.
- The revised program allows the employee or the union to insist that a different supervisor conduct the second interview, and also protects the employee from discipline that exceeds the discipline that was originally imposed after the first meeting, unless the investigation uncovers misconduct or unsatisfactory job performance that is "wholly unrelated" to the matters raised in the original discipline.

A more complete report on this settlement agreement will be presented in the next semi-annual report of the Contract Administration Department. In the meantime, any union representative who has any questions about the program, or wishes to see the underlying documents, should contact the National CAD.

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“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 MAILS 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. MAILS 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 MAILS 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.*

Article 12.2D7 Abolishment (Arbitrator Javits, 2/11/2006)

GRIEVANT: Two Individuals (Center Bangor P&DF, ME)

CASE NO.: USPS: B06M-1B-C08243104
B06M-1B-C08243102

BACKGROUND: The grievance challenged management’s decision to abolish two mail handler positions on Tour 2.

ISSUE: Did management violate Article 12 of the National Agreement when it abolished two bid assignments? If so, what shall be the remedy?

AWARD: The Postal Service did not violate Article 12 of the parties’ National Agreement when it abolished these positions. Management’s decision to abolish both mail handler positions was a proper exercise of managerial discretion based on its operational needs. Therefore, the grievance is denied.

OF NOTE: The Union argued that the Service violated Article 12 of the National Agreement when it “abolished” the two mail handler positions on April 12, 2008. According to the Union, management had no valid reason for abolishing either of these positions. It maintained that the work associated with each of these abolished positions continued to exist and is, in fact, was being performed by mail handlers from the OTDL. There was, the Union argued, clearly sufficient work available to maintain these abolished mail handler positions. For that reason, the Union insisted that the Service failed to prove that its actions were motivated by operational or efficiency concerns. Moreover, both grievants testified that they observed other mail handlers perform the same duties they had performed before their positions were abolished.

The Union also argued that the Postal Service violated Article 12.3.E4 when it assigned other mail handlers to “before” and “after” tour overtime to do the work of these abolished positions, because that was an improper “bump” or displacement of these employees.

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In essence, the Union argued that there was no valid reason for abolishing these mail handler positions if there continued to be a daily need to have mail handlers from the OTDL perform these same duties. To support its position, the Union submitted documents at the hearing showing that, after the abolishment of these two positions in April 2008, management had mail handlers perform significant amounts of overtime work. The Union insisted that the work associated with the abolished positions was still available. According to the Union, management failed to rebut this evidence.

On the contrary, the Service argued that, under the management rights clause in Article 3 of the National Agreement, it has the right not only to maintain the efficiency of the operation, but also to “determine the methods, means, and personnel by which such operations are to be conducted.” The Service maintained that the decision to “abolish” the mail handler positions in the instant case was a reasonable business decision made in accordance with Article 3.

More specifically, the Service argued that there was simply insufficient work available to continue with the grievants’ abolished positions. According to the Service, management made an operational decision to assign the two grievants to work hours later in the day when there was more critical work available. The Service offered testimony of the Plant Manager that this was the case. The Service further argued that the burden is on the Union to show that management violated Article 12 of the National Agreement. The Union, however, failed to show how the abolishment of the positions violated Article 12. Moreover, the Service presented testimony showing that the work associated with these abolished positions was not assigned to mail handlers from the OTDL. To the contrary, the time period involved was the peak period for mail handler vacations during the year. It

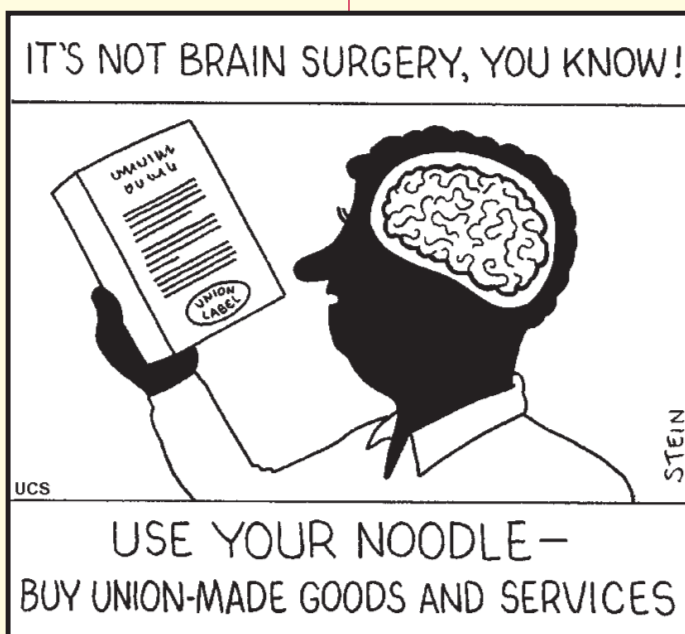
was for this reason that there was a significant amount of overtime assigned to mail handlers.

Based on the evidence presented at the hearing, the Arbitrator was satisfied that the Service’s decision to “abolish” the mail handler positions was reasonably made following a detailed consideration of the Service’s operational needs. Postal management presented a strong and compelling case that the position of one grievant was abolished because there was insufficient mail volume arriving on Tour 2 for her to continue in her position. It also credibly explained that the reason for abolishing the position of the second grievant was because a new containerization process had reduced the number of work hours available to Platform/Sawtooth mail handlers to only two hours each day. Under

this new process, much of the arriving mail would arrive in “wheeled” containers which improved the efficiency of operations at the postal facilities’ dock/platform area. This, in turn, reduced the need for Platform/Sawtooth mail handlers, including the second grievant. These explanations offered by management were based on credible testimony and were forthright and candid. Under the National agreement, Postal Service management has the right to abolish certain duty assignments where the circum-

stances require it. Where, as in this case, there was simply insufficient work to justify a continuation of the positions, management has the right to abolish the assignments. In addition to explaining its rationale for abolishing these positions, the Service also explained very convincingly why so much overtime work was assigned to mail handlers on the OTDL during the relevant time period. While the Arbitrator accepts that significant levels of overtime work was granted to mail handlers on the OTDL list, he is not satisfied that these hours were used to replace the work being done by the grievants.

Contrary to the arguments presented by the Union, there was no evidence that management’s decision to abolish the grievants’ positions was in any way arbitrary or capricious. Rather, it appears that management placed considerable



time, thought, and consideration into the decision to “abolish” the two mail handler positions. The Service clearly established that, at the time it took the decision to abolish the positions, it had a compelling reason to do so. This decision was taken solely in order to improve the operational efficiency of the postal facility pursuant to Article 3 of the National Agreement. Certainly one cannot say the decision was taken on a whim or without any rational basis. To the contrary, the decision was thought out and based on objective evidence.

It should be noted, said the Arbitrator, that the role of the arbitrator is not to second guess operational decisions made by management. Management has broad discretionary rights under Article 3 of the National Agreement to direct employees in the manner it believes best promotes the efficiency of its operations. Certainly a degree of deference should be afforded to operational decisions of this type, particularly where management has presented persuasive evidence for its decision. Article 3 provides the Postal Service with broad rights; the function of the Arbitrator is to ensure that, in exercising its managerial discretion, the Service fully complies with all the other relevant contractual language in the National Agreement and does not act in an arbitrary or capricious manner. No such showing was made in the instant case, however. If management determines that a duty assignment should be abolished to promote the efficiency of the operations, then it has the right to take the necessary action. And the burden remains on the Union to show a violation of Article 12.

Articles 7.3 and 12, Precedence of Withholding over 90/10 Ratio (Arbitrator Mueller, 7/11/2003)

GRIEVANT: Individual (Terre Haute, IN)

CASE NO.: USPS: J98M-I.I-C 0 I 079330

BACKGROUND: On August 15, 2000, the Manager of Human Resources in the Greater Indiana District advised the union that, pursuant to the impact relative to the implementation and installation of the Automated Flat Sorting Machine (AFSM 100) and changes in operational needs in the Greater Indiana District, full-time clerk and mail handler craft positions, level 5 and below in offices within a 30-mile radius of impacted offices, would be under withholding of full-time

clerk and mail handler craft positions via residual vacancies. The total would not exceed thirty-one (31) full-time positions.

This withholding action, which was to remain in effect through the close of Accounting Period 12 of Fiscal Year 2001, was taken to facilitate the possible involuntary reassignment of clerk and mail handler employees outside the installation.

The Terre Haute facility was included within the covered area. On November 18, 2000, two new PTF mail handler employees were hired and began employment at the Terre Haute facility. On December 1, 2000, the union filed a grievance contending that the two most senior PTFs should have been converted to an unassigned regular in compliance with the provisions of Article 7.3 of the National Agreement.

ISSUE: Did the Postal Service violate the National Agreement when it did not convert PTF mail handlers to regular full time? If so, what is the appropriate remedy?

AWARD: The grievance was denied. Withholding under Article 12.6 takes precedence over the 90-10 full-time/part-time flexible ratio imposed by Article 7.3. The grievants were not entitled to a conversion to a regular position when the 90-10 ratio was exceeded while withholding was in effect.

OF NOTE: After the hiring of two PTFs in November 2000, the facility had 5 PTF employees and 30 regular employees. Such relationship exceeded the 90-10 ratio set forth in Article 7.3. The union also contended the Postal Service had violated the intended application of Article 12.6 as interpreted by Arbitrator Richard Mittenthal in case no. H7N-3D-C 22267. Articles 12.6 and 7.3 can be accommodated so as to give both provisions meaning, Mittenthal suggested at page 11 of his award:

Strict compliance with the withholding obligation would leave room for maintenance of the stalling ratio. Vacancies could be withheld in appropriate circumstances for a reasonable period so long as Management was at the 90-10 staffing ratio at the end of this period. Both of Management's obligations could both be satisfied subject only to a reasonable delay in filling the withheld vacancies.

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The union argues that where, as here, there are multiple withholdings without some movement of employees in accordance with the intent of withholding, it is unreasonable under this Mittenthal Award.

Management, on the other hand, contends that Article 12.6 prevails over Article 7.3 as determined by Arbitrator Mittenthal. The contract requires that management hold all full time positions when employees are being excessed or displaced. Management notified the union at the Regional level of the fact that a number of employees in the Greater Indiana District were facing the possibility of being excessed as a result of installation of Automated Flat Sorting Machine (AFSM 100). Such pending activities brought the matter directly within the application of Article 12.6B2. A conversion of the grievant from a PTF to that of a regular employee during the period of withholding would have violated the National Agreement.

The decision of the Arbitrator was influenced by two previous arbitration awards: a decision of Regional Arbitrator Holly and a decision of National Arbitrator Gamser, both of whom decided issues involving the relationship between Article 7.3 and Article 12.6. Speaking to the intent of Article 12.6 provisions in the contract before him, Arbitrator Holly said,

Obviously, their intent was to give Management the right to withhold sufficient full-time regular and part-time flexible positions within the area for employees who may be involuntarily reassigned. They agreed to this withholding because of their stated desire to minimize dislocations and inconvenience to employees.

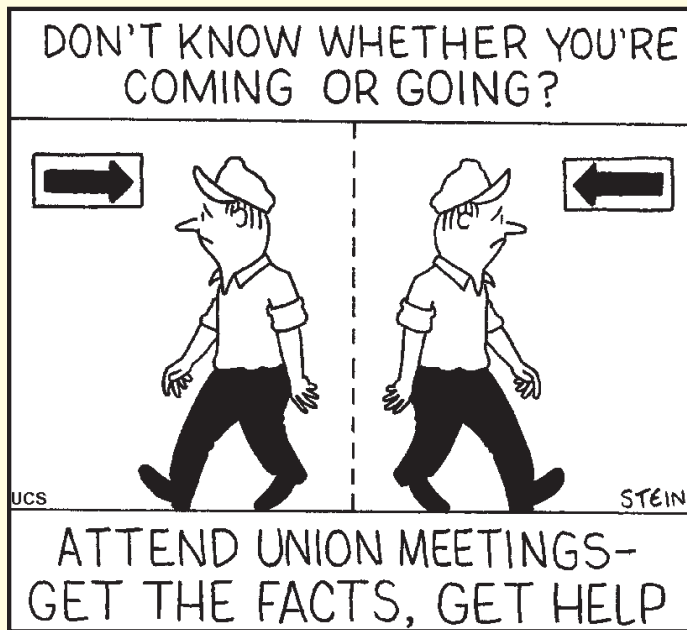
Arbitrator Gamser voiced even stronger emphasis on the withholding language, by referring to withholding as an “obligation” on the part of the employer. He stated as follows:

The findings and conclusions of Arbitrator Holly are basically sound and based upon long accepted principles of contract language construction and

interpretation. There is no question that Article 12, section 5 of the National Agreement imposed upon Management an obligation to anticipate dislocations which might occur and to withhold full-time vacancies for the purpose of preserving as many opportunities for regular full-time employees to avoid the dislocation of moving out of the area by bidding into such full-time positions when they were forced out of their regular positions. Such a requirement was agreed to by the parties to several previous national negotiations, regardless of the craft or crafts represented on the union side of the bargaining table, because both labor and management recognized that full-time employees, in this instance, were members of a career work force, with tenure and stability of employment to be protected wherever possible, with rights which superseded those with a less protected career status regardless of craft. That is obviously why the provisions of... [Article XII, section 5 and its predecessor provisions] . . . did not impose a restriction upon the Area Postmaster General to withhold vacant full-time positions only for the benefit and protection of employees who are members of the same craft as that in which the vacancy exists.

After discussing these two cases, Arbitrator Mittenthal concluded: “The prior discussion shows that the maximization requirement of Article 7, Section 3B must defer to the withholding obligation of Article 12, Section 5 (Section 6 for the NPMHU). Maximization, in other words, does not demand the immediate filling of full-time carrier vacancies when Management is at the very same time obliged by Article 12, section 5 to withhold those vacancies in order to protect clerks who are soon to be displaced because of some technological or operational change.”

It is clear from the above interpretive rulings by such leading arbitrators that the conversion of PTFs to a regular position must yield to the withholding instituted under Article 12.6.



Article 12.6C3 Transfer of a Classified Station, Classified Branch or other Facility to the Jurisdiction of Another Installation or Made an Independent Installation (Arbitrator Holley, 8/3/2001)

GRIEVANT: Class Action (Memphis BMC)

CASE NO.: USPS: H98M-IH-C 00107198

BACKGROUND: On February 23, 2000, employees at the Memphis MTEC [Mail Transport Equipment Center] in the mail handler craft were issued an official notice indicating that effective March 24, 2000 all bid assignments will be abolished at the Memphis MTEC. On March 6, 2000, during the course of an investigation of a possible contract violation, a Special Bulletin/Posting was obtained from the Main Post Office in Memphis. In this bulletin/posting, aimed at all mail handlers at the Memphis Main Post Office and other facilities under the jurisdiction of the Memphis Post Office, there were 7 new job postings at Memphis MTEC with an effective assignment date of March 25, 2000.

The Union filed a grievance alleging that the Postal Service violated Article 12.6C3 (Transfer of a Classified Station, Classified Branch or other Facility to the Jurisdiction of Another Installation or Made an Independent Installation), particularly subsection C3a, which reads in its entirety:

When a classified station, classified branch or other facility is transferred to the jurisdiction of another installation or made an independent installation, all full-time employees shall at their option remain with the classified station, classified branch or other facility without loss of seniority, or remain with the installation from which the classified station, classified branch or other facility is being transferred.

The union claimed that management deprived all MTEC mail handlers of their right under Article 12 to remain with the other facility. The union also contended that management violated the contract by failing to notify the union at the regional level of the facility transfer. The Union also argued that the Memphis MTEC had not closed and continued to operate as a MTEC,

The Union asked that management abide by Article 12.6C3, and give the employees involved at Memphis MTEC the option to remain with Memphis MTEC as part of the Memphis Post Office or move to the Memphis BMC.

ISSUE: Did the USPS violate the National Agreement when it required mail handlers to move to the Memphis BMC? If so, what is the appropriate remedy?

AWARD: The Union successfully proved that Article 12.6C3 applied to 7 mail handler jobs. The 7 successful mail handler bidders are to be paid out-of-schedule pay for their hours from the date on which they were returned to the Memphis BMC to the date on which their successful bid takes place.

OF NOTE: Management contended that the MTEC operation was not to be considered a separate facility. All employees who worked this operation were assigned to the Memphis Bulk Mail Center, were compensated under its finance number, and were returned to the BMC when the BMC no longer was responsible for the MTEC operation.

The Service further claimed that it had only one facility, one installation: It had an annex to the Memphis BMC, not a separate facility.

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In the arbitrator's analysis and discussion, he noted the following:

Employees under the National Agreement may not transfer from one installation to another, except as provided in the Agreement. Although the Postal Service showed that it properly notified the Union in advance of any agency action and therefore met its obligations under Article 12.5B3, the arbitrator is bound by the words the parties have negotiated into the Agreement and the evidence presented by the parties.

Because the parties have chosen not to define the word "facility" in the Agreement, there are other generally accepted sources for definitions. At the hearing, there was confusing and conflicting testimony over the use of certain words. Frequently, the witnesses used the term "facility" interchangeably with other similar words, such as operations, buildings, locations, and installations. However, Article 12.6.C3 refers to "facility," and leaving out words that do not apply, Article 12.6.C3a states as follows: "When . . . other facility is transferred to the jurisdiction of another installation . . . , all full-time employees at their option remain with the . . . other facility without loss of seniority, or remain with the installation from which . . . other facility is being transferred."

After consideration of the contract language and the evidence and testimony, the conclusion was reached that the Union prevailed in proving that Article 12.6.C3 applied to this situation. Specifically, the employees were required by management to return to the BMC, but they should have been given the option to go to the BMC or to go with their prior MTEC facility to the Memphis Post Office. The grievants therefore have the option to bid for the 7 jobs as identified by the Postal Service. The successful bidders are to be paid out-of-schedule pay for all those hours from the date on which they were returned to the Memphis BMC to the date they successfully bid for these jobs. Those mail

handlers who are not successful in bidding for the 7 jobs are not entitled to any out-of-schedule pay.

Article 12.3B6 and 12.3B4 Changes in Fixed Scheduled Days Off and Changes in Starting Time (Arbitrator Brock, 12/8/2007)

GRIEVANT: Class Action (Northeast Region)

CASE NO.: 07053106 (Regional)

BACKGROUND: In December 2006, two Mail Handlers were forced to bid into new assignments due to adjustments and changes made by management to hours and non-scheduled days. They both filed grievances, claiming that the USPS violated the National Agreement by not allowing them to retain their jobs even though the work-hours that were posted on the December bid cycle should have allowed them to accept the new assignments under Article 12.3B6.



ISSUE: Did the Postal Service violate Article 12.3B6 by not allowing two Mail Handlers to accept new work-hours in December 2006? If so, what should the remedy be?

AWARD: The grievance is denied. Management did not violate Article 12.3B6 because the bids con-

tained a change of nonscheduled days, and the Union did not meet its burden of showing a violation of Article 12.3B4.

OF NOTE: The Union position was that there was no reason to make these changes. Both of these grievants had regular schedules. The contract states that if changes in starting time are more than 1 hour and less than 4 hours, then the incumbents shall have the option to accept such new reporting time. Both of the grievants' assignments fell into that time frame of 1 hour to 4 hours. Nonetheless, both were forced to re-bid to new assignments. Moreover, the Union argued that the hours of these bids could have remained the same. All of the jobs were indistinguishable. There was no reason for the changes that were made. The Union met with management and made many suggestions but management did not listen. With regard to Article 12.3B4 (requiring posting of a bid when fixed days off are changed), there was no reason to change their non-scheduled days. Everything could have remained if a part-time regular were in place.

The Postal Service, on the other hand, argued that although the National Agreement permits the incumbent employee to maintain his or her assignment when a change in starting time is between 1 and 4 hours, that was not the only change made in this situation. Rather, the days off in both bids also were changed, and thus Article 12.3B4 takes precedence and its intent is clear. It states that if the fixed scheduled days of work in the basic work week for craft assignments are permanently changed, the affected assignments shall be re-posted. For both of the assignments involved in this case, the scheduled work days were changed. One assignment was changed from a Friday and Sunday off to a Saturday-Sunday off, effectively changing the work week. The other assignment changed from a Saturday-Sunday off to a Sunday-Friday off. The Service had no choice but to re-post those assignments as per the National Agreement. The decision made by management was based on a complete review of staffing operations, involving supervisors at all management levels, and included meetings with Union representatives.

Moreover, the Postal Service argued, the Union's argument that management should have or could have adjusted hours

to permit the grievants to maintain their assignments, simply by using a PTR position, cannot trump management's exclusive right under Article 3 to manage the business and to maintain the efficiency of the operations. This decision was not arbitrary or capricious, but was well thought out as per the testimony of the management witness.

At bottom, the arbitrator concluded, this case was grounded in Article 12.3B4 and Article 12.3B6.

Article 12.3B6 reads: "No assignment will be posted because of change in starting time unless the change exceeds an hour. Any change in starting time that exceeds one (1) hour shall be posted for bid, except when there is a permanent change in starting time of more than one hour and less than four hours, the incumbent shall have the option to accept such new reporting time. If the incumbent does not accept the new reporting time, the assignment will be posted for bid."

On the face of it, 12.3B6 would clearly resolve the issue in favor of the Union. However, the hour changes involved here are subjugated by Article 12.3B4, which states as follows: "When it is necessary that fixed scheduled day(s) of work in the basic work week for a craft assignment be permanently changed, the affected assignment(s) shall be reposted."

There is no question that in this dispute Article 12.3B4 is controlling. For both bids at issue, the scheduled reporting days and non-scheduled days were adjusted, and thus the re-postings were mandated by the contract. The Service is correct; not to repost surely would have been a contract violation.

Lastly, Arbitrator Brock discussed the Union's argument that the Service did not have a solid basis to make the changes in the schedule that necessitated the re-postings. However, he found that the Union did not meet the burden of proof necessary to show that management acted arbitrarily or capriciously, unreasonably, or in a discriminatory manner, and thus the Union failed to show that management acted in a manner inconsistent with Article 3.

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