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Arbitration Division  
Labor Relations Department

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

Case No. H1C-NA-C26

and

AMERICAN POSTAL WORKERS UNION

APPEARANCES: Edward F. Ward, Jr., Esq. and David P. Cybulski, Esq., for the Postal Service; O'Donnell & Schwartz, by Arthur M. Luby, Esq. and Darryl J. Anderson, Esq., for the Union

#### DECISION

This grievance arose under and is governed by the 1981-1984 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly selected by the parties to serve as sole arbitrator, the matter was heard on 17-18 November 1983 and 12 January 1984, in Washington, D. C. Both parties appeared and presented evidence and argument in support of their respective positions. They were unable to agree on the precise wording of the issues, which the arbitrator finds to be the following:

1. Whether the creation and implementation by the Postal Service of the new Standard Position, Mail Processor, PS-3, constituted an impermissible unilateral midterm modification of the 1981-1984 National Agreement, in violation of either that Agreement or the National Labor Relations Act.

2. Whether the change in the Postal Service's P-1 Handbook to include the new Standard Position, Mail Processor, PS-3, effected changes that are "fair, reasonable, and equitable," within the meaning of Article 19 of the 1981-1984 National Agreement.
3. If the ranking of the new Standard Position, Mail Processor, PS-3, is unfair, unreasonable, and inequitable, what is the appropriate remedy?

A verbatim transcript was made of the arbitration proceeding. Each side filed a post-hearing brief. The record was closed on 21 April 1984.

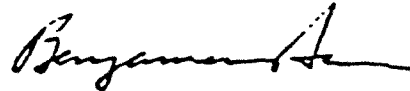
On the basis of the entire record, the arbitrator makes the following

#### AWARD

1. The creation and implementation by the Postal Service of the new Standard Position, Mail Processor, PS-3, did not constitute an impermissible unilateral midterm modification of the 1981-1984 National Agreement, in violation of either that Agreement or the National Labor Relations Act.
2. The change in the Postal Service's P-1 Handbook to include the new Standard Position, Mail Processor, PS-3, effected changes that were not "fair, reasonable, and equitable," within the meaning of Article 19 of the 1981-1984 National Agreement.
3. The proper ranking for compensation purposes of the Standard Position, Mail Processor, is PS-4.
4. All Postal Service employees represented by the

- 3 -

APWU who have been assigned to work as Mail Processors at level 3 shall be reimbursed the difference between level 3 and level 4 pay for all time spent in that position.

A handwritten signature in cursive script, appearing to read "Benjamin Aaron".

Benjamin Aaron  
Arbitrator

Los Angeles, California  
24 April, 1985

In the Matter of Arbitration

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Case No. H1C-NA-C26

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### OPINION

#### I

On 14 June 1982, James C. Gildea, Assistant Postmaster General, Labor Relations Department, sent a letter (JX-4) to the Presidents of APWU, NALC, and the Mail Handlers, advising them of a new bargaining unit position, Mail Processor, PS-3. The letter enclosed a position description (JX-3).

The letter continued:

Based upon our preliminary review, we believe that this new position should most appropriately be assigned to the Clerk Craft of the American Postal Workers Union. However, in keeping with the terms of Article 1, Section 5 of the current APWU/NALC National Agreement, the Postal Service is prepared to consult with you or your representative, prior to making a final craft assignment determination.

The letter concluded by reminding the addressees that the Postal Service was obligated to make a final craft assignment within 30 days, and proposing a meeting on 29 June. After meeting with the Mail Handlers on 30 June, the Postal

Service, on 12 July 1982, formally assigned the new position. to the Clerk Craft, represented by the APWU, on the basis of the six criteria set forth in Article 1 (Union Recognition), Section 5 (New Positions) of the 1981-1984 National Agreement. (The Mail Handlers subsequently filed a grievance against that assignment.)

Meetings between the Postal Service and the APWU to discuss the new position, as provided for in Article 19 (Handbooks and Manuals), were held on 12 August and 8 September 1982. Thereafter, on 1 October 1982, the Union appealed the case to arbitration "[u]nder the provisions of Article 19 of the National Agreement" (JX-4).

On 30 September 1982, Joseph F. Morris, Senior Assistant Postmaster General, Employee and Labor Relations Group, issued instructions to regional directors of employee and labor relations concerning the filling of Mail Processor, PS-3 positions. (JX-17) The instructions stated in part that first consideration for filling vacancies in the new position must be given to clerk craft employees, and that a register of eligible applicants would be used only if positions could not be filled from among the current work force.

On 7 December 1982, the APWU filed an unfair labor practice charge (ULP) with the NLRB against the Postal Service. (JX-5) The charge read as follows:

Since on or about October 25, 1982 and continuing to date, the Employer has failed to bargain in good faith, has made a unilateral mid-term modification in its collective bargaining agreement with the American Postal Workers Union, and has unilaterally taken actions which will change the terms and conditions of employment for bargaining unit employees by downgrading up to 44,000 existing clerk craft positions. We request injunctive relief pursuant to Section 10(j) of the Act.

On 4 February 1983, Louis J. D'Amico, Regional Director of NLRB Region 5, wrote to the parties (JX-6), advising them that he was declining to issue a complaint on the Union's charge because of his determination that "further proceedings. . . should be administratively deferred for arbitration." In accordance with the Board's policy enunciated in Collyer Insulated Wire, as modified by General American Transportation Corp. and Rav Robinson, Inc., D'Amico also advised the parties that if the case went to arbitration, the Union could obtain a Board review of the arbitrator's award, based on the standards laid down in Spielberg Mfg. Co.

## II

To understand the contentions of the parties in respect of the evaluation and rating of the job presently in dispute, it is necessary to review the history of the use of an optical character reader (OCR) system. In 1968, the Postal Service installed the first generation of OCRs, the OCR-I. At the time these machines were first installed, the Postal Service created a new position for those operating the equipment -- OCR Operator, PS-5 (UX-1).

The OCR-I was connected with the Multi-Position Letter Sorting Machine (MPLSM). At its front, the machine had two Mail Transport Units (MTU), each of which handled approximately 20,000 pieces of mail per hour.

The OCR-I was staffed by seven to nine employees: one loader, two feeders (one for each MTU), a "reject" or "O" box operator, and three to five sweepers. No classroom instruction was provided for any of these employees; they learned their duties on the job, with little or no supervisory training. As set forth in the job description for OCR-I Operator, the basic function was to perform "a variety of duties involved in the operation of the . . . [OCR]," and, specifically, to load, sweep-tie, and feed the MTUs, and operate the reject stacker.

The loader on the OCR-I was primarily responsible for bringing the mail into the unit and placing it on the MTU. In some installations, however, Mail Handlers brought the mail into the unit.

The feeder was responsible for keeping the machine loaded after first "culling" the mail; i.e., removing from the mail supply all those pieces that were too large, too thin, or too long, or that contained objects such as pens, coins, or keys, or were bent or stuck together.

The reject box operator was responsible solely for monitoring the reject box. The sweepers extracted mail from the

305 labeled bins in the back, or sweep, side of the 60-foot long machine and placed the mail in trays with corresponding labels. When a dispatch was called for, they also placed the appropriate trays on a conveyor or cart moving to the loading dock. At first, they inspected the mail in the bins piece by piece; later, they resorted to a fast spot check of handfulls of letters by "riffing," a procedure designed to catch only major errors.

The OCR-I was used primarily for large-volume business mailers with machine-printed addresses. The OCR-I could "read" only certain types of business mail on the basis of type font, contrast, and address placement. OCR-I Operators were required to recognize "readable" mail.

Because of the relatively small quantity of letters it could handle, the OCR-I was never a major factor in the processing of mail. It was installed in only the 21 post offices that had a sufficiently large base of printed business mail to sustain a continuous OCR operation. Most of the OCR-Is are now being used as Bar Code Sorters (BCS) to handle bar-coded mail generated by the new OCR system.

In September, 1978, the Postal Service publicly announced its intention to expand ZIP Codes from five to nine digits (UX-9). In a 3 June 1980 issue of the Federal Register, the Postal Service elaborated on how the expanded ZIP Codes, together with more advanced automated mail processing equipment, would improve mail delivery, as follows (UX-9):



The ability to direct mail to the appropriate letter carrier simply by reference to the ZIP Code will make possible additional economy, speed and accuracy in mail processing. These benefits can most readily be maximized through the planned use of advanced mechanization in mail processing. When this advanced mechanization is put into place, an Optical Character Reader (OCR) will read the nine-digit ZIP Code on letter mail, which has a typed or printed address, at the office where such mail first enters the postal system. A printer attached to the OCR will then print a machine readable representation of the ZIP Code, in bar code form, on the lower right hand corner of the envelope and the mail will then be directed to the postal facility serving the addressee. At this facility, the mail can be processed by a Bar Code Reader (BCR), which is a low cost, highly reliable automated distribution system. The BCR will direct the mail to the appropriate delivery route.

In 1980, the Postal Service accepted Pittney-Bowes and Burroughs bids for manufacture of the new generation of OCRs. It spent most of the summer of 1981 evaluating the new machines. The new automated equipment consists of an optical character reader/channel sorter (OCR/CS). After extensive testing, a pay grade was set for the proposed new position of Mail Processor (EX-10). According to the testimony of J. Robert Shoop, General Manager of the Postal Service's Job Evaluation Division (JED), the first step in this process was to draft a job description. The subsequent procedure was prescribed by Section 230 of the Employee and Labor Relations Manual (ELM)(JX-2). Relevant sections of Section 230 read as follows:

231.1 Types of Position Descriptions. The Postal Service provides three types of position descriptions for bargaining unit employees covered by the National Agreement: those covering:

a. Key Positions (KP). Key positions are benchmarks established through legislation to reflect clearly the various level distinctions and are deliberately defined in general terms to describe the duties and responsibilities of more than one employee.

b. Standard Positions (SP). These are based on key positions, and are more specific but still deliberately defined in general terms to describe the duties and responsibilities of more than one employee.

c. Individual Positions (IP). These are based on key positions, but are usually defined in terms that describe the duties and responsibilities of an individual employee. The resulting definition, however, may also accurately describe the duties and responsibilities of additional employees.

231.2 Purpose of Position Description. The purpose of a position description is to describe three components of a position: (a) the primary assignment or basic function, (b) the tasks and skills involved in carrying out the primary assignment, and (c) the organizational relationship. These components constitute the basis for comparing the position with key positions and for aligning it with other positions in the Postal Service.

\* \* \* \*

### 233 Evaluation of Bargaining Positions

#### 233.1 Position Delineation.

Evaluating a position requires a clear understanding of the position's duties, responsibilities and work requirements. Positions must be carefully described to clarify assignments so that equal pay for substantially equal work may be achieved.

#### 233.2 Basis for Ranking Positions

.21 Positions are ranked solely in terms of the level of duties, responsibilities, and work

requirements, as compared to the key positions in Chapter B of Handbook P-1. The evaluator considers the difficulty of the work to be performed; the degree of responsibility to be exercised; the scope and variety of tasks involved; and the conditions under which the work will be performed.

.22 The incumbent's knowledges, skills, and abilities are not considered in the evaluation. The incumbent's previous position title and the designation of the roster from which the employee will be selected are also not considered in determining the rank of the position.

### 233.3 Evaluation of New Positions

When the duties and responsibilities of a newly created position cannot be matched to an existing key or standard position within the authority of the installation head or the regional compensation division, the Form 820 is sent to the Headquarters Office of Compensation for appropriate action. . . . .

Key, or "benchmark," positions were established by Public Law 68 of 1955 (JX-16). The descriptions of those positions are included in the Postal Services Personnel Handbook P-1 (UX-22).

Shoop testified that in determining the pay level for Mail Processor, his division first compared it with certain level 5 key positions, specifically, Carrier, Distribution Clerk, Window Clerk, and Motor Vehicle Operator. He stated that "we felt that there was no match [between any of those positions and] . . . the Mail Processor, because of the simplification of the duties and responsibilities [of the latter]." (Tr. 273) Shoop ruled out the comparability of the positions of Carrier and Window Clerk because of their requirement of

extensive public contact, whereas a Mail Processor has none. He also thought the position of Distribution Clerk was not comparable because of its requirement of "scheme knowledge"; he stated that the Mail Processor position requires no "scheme knowledge or memory item retention." (Tr. 275)

Having eliminated the level 5 key positions as a proper basis of comparison, Shoop and his associates moved to a consideration of a level 4 key position, specifically, Mail Handler. A written comparison was prepared of the Mail Processor and Mail Handler positions (UX-15). The difficulty of the two positions was rated the same; the Mail Handler was deemed to have broader responsibility, including that of "interact[ing] with others in general performance of his work"; the scope and variety of the Mail Handler's work was judged to be broader and more arduous; the skill, knowledge, and experience of the two positions were considered to be about the same; and the Mail Handler, unlike the Mail Processor, was found to have occasional contacts with the public. The Division concluded, therefore, that there was a "bad match" at level 4. (Tr. 282)

The Division then made comparisons between the Mail Processor and two level 3 key positions, specifically, Post Office Clerk and Elevator Operator. In the Mail Processor-Post Office Clerk comparison (UX-16), the latter position was deemed to involve more varied and complex tasks, more

"significant" responsibilities, about the same degree of physical effort, greater required knowledge, and some public contact. The Division concluded that the Post Office Clerk position was "quite superior" to that of the Mail Processor. (Tr. 287)

PS-3

The Mail Processor-Elevator Operator/comparison (UX-17) produced what the Division considered to be the best fit. "The productivity considerations and high speed capability of automated processing equipment" were said to place "a continuing demand for task performance during operations" not present in elevator operation; but responsibilities and variety of tasks were deemed "comparable" for both jobs; physical requirements and working conditions were judged to be more undesirable for Elevator Operators; no "discernible differences" were found in the knowledge, skill, or experience requirements of the two positions; and occasion for public contact occurred only in the Elevator Operator position.

Shoop offered his overall appraisal of the duties of the Mail Processor position as follows (Tr. 294-95):

A. Well, I felt that the level 3 was correct, yes, based . . . on the duties that we had written in the position description and based on an observation of the duties that were being performed . . . in line with the duties as they were stated in the job description.

Q. How would you generally characterize the duties of their performance?

A. Well, I have always felt that they were relatively simple duties which didn't

take much instruction. In fact, the day that we were there to make our observation was the second day that a new group of people were on board that had bid into the level 3 position. They . . . had had some orientation training and this was their first day of hands-on operation of the new equipment.

Q. Did they appear to have any difficulty operating the equipment?

A. No real difficulty . . . . Each machine had three people assigned to it. The normal complement of people are [sic] two. Each machine had two of the brand new people and one person available who had worked on the machine before and was an experienced operator. The job of the experienced operator was to assist if the employees got into trouble in any aspect of operating the equipment and we didn't find the experienced operators getting involved that much. They helped in two ways . . . . In fact, on the loading side of it we never saw the experienced operators get involved but they did help out a few times with jams that occurred on the machine and also from the sweeping side it appeared that the main problem was the . . . reject stacker. There is a little bit of a technique to emptying those when they start to get full so that the letters don't all jam up and create real problems for you, but all-in-all, I would say that for people who had never operated the machine before, they were doing a good job.

The following description of how the new machines work appeared in the 7 September 1982 issue of Postal Leader, pp. 6-7 (EX-15):

The OCR will locate and read the city, state and ZIP Code on the last line of an address. Next, an ink-jet printer will spray on the lower-right portion of the envelope a combination bar-half-bar code corresponding to the ZIP Code. A bar-code reader will then verify that the bar code corresponds with the ZIP Code read by the OCR. Finally, the letters

will be sorted to channel stackers.

The OCRs will have from 32 to 60 channel stackers and can process approximately 28,000 letters per hour. The units will read from 60% to 90% of the mail fed to it, depending on the readability of the mail being processed. Routine productivity rates, however, are expected to average about 10,000 letters per hour with subsequent distribution performed by the smaller, less expensive bar-code sorters.

In the subsequent sorting steps, the bar-code sorters will read the bar code and sort the letters to any of approximately 100 separations. They can process 25,000 to 30,000 letters per hour and have a 99% read rate, yielding a productivity rate of about 8,000 letters per work hour.

As a point of comparison, an MPLSM has a maximum productivity rate of about 1,850 pieces per work hour.

Furthermore, the system offers other possibilities when coupled with the new ZIP /4. While the ZIP Code add-on is not required for the equipment to function, it's use will permit a finer degree of sortation early in the mail processing procedure. Also, changes in sorting schemes caused by the restructuring of carrier routes will require only a simple re-programming of the sorting equipment rather than a relearning process on the part of distribution employees.

The principal witness for the Postal Service in respect of the operational requirements of the OCR-I, the OCR/CS, and the Bar Code Sorter (BCS) machines was Ned E. Braatz, Senior Distribution Procedures Specialist in the Mail Processing Department. He testified that in terms of sophistication and efficiency, the new equipment represented an advance over the OCR-I comparable to that of a Ferrari over

a Model-T. He explained that the OCR-I was merely a replacement for one processing step in the distribution network, whereas the OCR/CS and the BCS comprise an entire network from origin to point of destination. Technologically, he continued, the new machinery possesses the capability to decide whether mail is readable; it is not dependent, as was the OCR-I, on the judgment of an operator. Indeed, he stated, the new system does a kind of pre-sorting by performing a limited number of sorts after a bar code has been imprinted on the mail, which facilitates the rapid movement of large volumes of mail out of the facility.

Braatz testified that as a result of direct observation of the new machinery in operation at various sites, he and his associates felt "that our supervisors were abdicating some of their responsibilities to the craft employees who were working on the . . . equipment." (Tr. 228) Accordingly, he prepared a memorandum to Regional Directors, Mail Processing Department, dated 9 February 1983 (EX-11), clarifying the duties and responsibilities of the new Mail Processor position. The memorandum read in part:

All keyboard interface with the computer systems, whether bringing the logic system up, changing from one sort program to another, or the request for management information, is the responsibility and duty of the supervisor in charge, not that of the clerk craft employees assigned to operate this equipment. These supervisory duties include the loading of sort programs through the use of floppy disks and the disk drive on the Bell and Howell BCS, as well as the placement of



the rotary selection switch on the Burroughs OCR-CS and keyboard entires on the Pitney-Bowes OCR-CS. Verifier and bar code mode switches, where applicable, are also the responsibility of the supervisor, not the clerk craft operators.

Operator duties, in addition to loading, sweeping, and clearing jams, are limited to the power up and power down controls as necessary to begin sorting, recovery from jam and emergency stops, and the termination of sorting as instructed by the supervisor.

Braatz described the training program for Mail Processors as four hours of classroom work, followed by a week of observation and actual hands-on work on the OCR. On cross-examination he testified in part as follows (Tr. 369):

Q. And it [the training program] was carefully drawn up in relation to the features of the machine and the . . . avoidance of safety hazards?

A. Yes, as a matter of fact, they're unique training packages, each based on the type of manufacture of the machine and its individual characteristics.

Q. And you wouldn't put someone on that machine without receiving that training?

A. I personally would not, no, sir

Asked to compare the positions of OCR-I Operator and Mail Processor, Braatz expressed the opinion that the two were probably equal in physical demands, but that the OCR-I was more taxing mentally. Asked to elaborate, he explained (Tr. 231-32):

They [i.e., OCR-I Operators] had to remember a number of things, dispatch schedule, schemes,

riffling, verifying. They had to know what mail would be processed. They had to know where to go get the mail, when to move it, when to move it away from the operation.

The number of things that the new OCR Mail Processor has to know, in terms of movement of the mail, is very limited. Basically, they know how to turn the machine on . . . [and] off, they know how to clear jams, they know how to react to emergency situations, they know safety around the equipment, they know when to call a supervisor and/or maintenance if they perceive that there is a problem. It ends right there.

Braatz testified that the OCR-I Operator had much more responsibility than the Mail Processor now has; that he or she worked in a "much larger environment" (Tr. 233) than that in which the Mail Processor now works; and that the conditions of work of the two positions "would be something of a draw." (Tr. 233) He added, however, that there was less stooping and reaching on the new equipment than there was on the old.

In his opening statement, counsel for the Union readily conceded that the new machines "represent a considerable advance in technology and they sort the mail far faster and far more accurately" than the OCR-I was able to do. (Tr. 14) The Union insists, however, that the new position of Mail Processor is sufficiently similar to that of the old OCR-I Operator to warrant its being placed in the compensation level 5.

The Union's principal witnesses were Shirley Meeks,

who has worked on both the old and the new OCR equipment, and Lawrence Gervais, a National Business Agent. Asked to compare the position of the OCR-I position with that of Mail Processor, Gervais testified in part (Tr. 131-32):

Fundamentally, it's the same job. The operator . . . on both machines culls the mail, feeds it into the machine and then takes it out and sweeps it and places it into the trays for subsequent processing or dispatch outside the installation . . . .

. . . [T]here are some [differences]. The new Mail Processor is not required to do a verification function. The new Mail Processor does a culling. It is not the same level, in terms of some of the things they watch out for, but they also have to do a culling process. On the other hand, in terms of the amount of work and activity on the machine, there's more of an effort and there's more work because there's fewer people. . . processing the mail and handling a volume of mail that a larger number used to have.

Weeks compared the two positions in part as follows

(Tr. 64):

The difference I see between the two is that on the new machine. . .one person is doing almost twice the work as on the old. The new machine reads much, much faster than the old, and there's less people, and everything about the new machine is so much. . .faster than the old.

### III

On 5 January 1983, the Union's counsel sent a letter (UX-18) to NLRB Regional Director D'Amico stating its position in respect of the unfair labor charge it had filed against the Postal Service on 7 December 1982. The letter

read in part:

In this case we are challenging the right of the Postal Service either unilaterally to downgrade existing positions, thereby reducing wages, or else unilaterally [to] establish new bargaining unit positions at compensation levels substantially lower than compensation for present bargaining unit employees performing identical or very similar work.

Counsel for the Union asserted that at least until July, 1982, the Postal Service had led the Union to believe that the labor savings anticipated from the introduction of the new OCR/CS and BCS machines would be achieved by reducing the number of workers per machine and the need for overtime. He also stated that at no time prior to the assignment of the new position of Mail Processor to level 3 did the Union have any idea that the Postal Service meant to "[cut] the wage rate of the employees working the machine." (Tr. 16) Finally, counsel stated that during the negotiations leading to the 1981-1984 National Agreement, the Union had proposed raising the pay level of OCR-I operator from 5 to 6, and allowing interlevel bidding under Article 37 (Clerk Craft) for clerks below level 5. The Union eventually withdrew these proposals because, in counsel's words, "we could live with a Level 5 on the OCR and because we didn't, at least at the time, have enough sub-Level 5 clerks to justify making inter-level bidding for Levels 4 and 3 a high priority item for the Union." (Tr. 18) He added, however, that both proposals would have been insisted upon had the Union known that the Mail Processor

was to be a level 3 clerk.

Relying on the testimony of Union witness Gervais and Postal Service witness Shoop, the Postal Service asserts (P.S. Br., p. 33, n. 31):

The evidence is overwhelming that the APWU knew about the development and testing of the new automated equipment and its connection with the ZIP plus 4 program; that national Union officials were participating on committees dealing the the impact of automation; that the Union received correspondence and was briefed thereon by the Postal Service; that senior USPS officials' Congressional testimony was monitored by the Union; that during the 1981 national negotiations, the APWU unsuccessfully attempted to freeze all jobs, thereby eliminating any Article 4 . . . considerations; and that the draft position description was not submitted to JED until September 1981, after the national negotiations had been completed.

In addition, the Postal Service relies upon various provisions of the Postal Reorganization Act (PRA) and of the National Agreement. The former empowers and directs the Postal Service, among other things, to "plan, develop, promote and provide adequate and efficient postal services at fair and reasonable rates (§403a), and "to maintain an efficient system of collection, sorting, and delivery of the mail nationwide" (§403(b)(1)). Section 1001(e) of the PRA gives the Postal Service the right, consistent with Chapter 12 of the PRA, entitled "Employee-Management Agreements," and applicable laws, regulations, and collective agreements,

- (1) to direct officers and employees . . .  
in the performance of official duties;

- (2) to hire, promote, transfer, assign, and retain officers and employees in positions with the Postal Service . . . ;

. . . . .

- (4) to maintain the efficiency of the operations entrusted to it;
- (5) to determine the methods, means, and personnel by which such operations are to be conducted.

Article 3 (Management Rights) of the National Agreement generally tracks the language of Section 1001(e)(1)-(5) of the PRA.

According to the Postal Service, the PRA and Article 1 (Union Recognition), Section 5 (New Positions), together with Articles 3 and 19 (Handbooks and Manuals), give it "broad and sweeping powers and rights . . . to create new positions, according to its regulations, and implement same, consistent with the dictates of Article 19 (i.e., not inconsistent with the contract and the ranking is fair, reasonable and equitable)." (P.S. Br., p. 36)

Article 1, Section 5 of the National Agreement reads in its entirety:

A. Each newly created position shall be assigned by the Employer to the national craft unit most appropriate for such position within thirty (30) days after its creation. Before such assignment of each new position the Employer shall consult with all of the Unions signatory to this Agreement for the purpose of assigning the new position to the national craft unit most appropriate for such position. The following criteria shall be used in making this determination:

1. existing work assignment practices;
2. manpower costs;
3. avoidance of duplication of effort and "make work" assignments;
4. effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis;
5. the integral nature of all duties which comprise a normal duty assignment;
6. the contractual and legal obligations and requirements of the parties.

B. All Unions party to this Agreement shall be notified promptly by the Employer regarding assignments made under this provision. Should any of the Unions dispute the assignment of the new position within thirty (30) days from the date the Unions have received notification of the assignment of the position, the dispute shall be subject to the provisions of the grievance and arbitration procedure provided for herein.

Article 19 provides in relevant part:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual . . . .

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after

the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

It is obvious that Article 1, Section 5 has not been violated by the Postal Service; indeed the Union makes no such allegation. That provision relates to the assignment of a newly created position to the most appropriate craft unit; it makes no reference to how the compensation level of the new position will be determined. The Postal Service assigned the position of Mail Processor to the APWU clerk craft within the allowable time limit, and only the Mail Handlers challenged its decision on the merits.

A more important question is whether Article 19 forbids the Postal Service unilaterally to introduce changes in its handbooks, manuals, and regulations, assuming that they are not inconsistent with any term of the National Agreement, and are "fair, reasonable, and equitable." I think it is clear that according to the express terms of Article 19, the Postal Service may do so, subject to the Union's right to challenge its action in the grievance and arbitration procedure set forth in Article 15 of the National Agreement.



However, because the NLRB has declined to issue a complaint based on the union's unfair labor practice charge of refusal to bargain, and has referred the issue to arbitration under the National Agreement, and because the Board's policy is not to defer to an arbitrator's decision in such cases unless it purports to deal with the unfair labor practice issue as well as with the contract violation issue, I am compelled to make a ruling on the former, even though I believe it is an unwise policy to require arbitrators to pass upon statutory rights, over which the NLRB has primary jurisdiction, in a private proceeding.

It is my judgment that the Union has clearly and unmistakably waived whatever right it may have had to compel the Postal Service to bargain over either the introduction of new bargaining-unit positions or the assignment of those positions to a given compensation level in any other ways than those specifically set forth in Article 1, Section 5, and in Article 19. Substantially the same procedure is also provided in respect of the introduction of technological and mechanization changes in Article 4, which reads in relevant part:

Section 1. Advance Notice

The Unions party to this Agreement will be informed as far in advance of implementation as practicable of technological or mechanization changes which affect jobs including new or changed jobs in the area of wages, hours or

working conditions. When major new mechanization or equipment is to be purchased and installed, the Unions at the national level will be informed as far in advance as practicable, but no less than 90 days in advance.

## Section 2. Labor-Management Committee

There shall be established at the national level a Joint Labor-Management Technological or Mechanization Changes Committee composed of an equal number of representatives of management and of the Union representatives. Notice to said Committee shall satisfy the notice requirements of the preceding paragraph. Upon receiving notice, said Committee shall attempt to resolve any questions as to the impact of the proposed change upon affected employees and if such questions are not resolved within a reasonable time after such change or changes are operational, the unresolved questions may be submitted by the Unions to arbitration under the grievance-arbitration procedure. Any arbitration arising under this Article will be given priority in scheduling.

## Section 3. New Jobs

. . .

An employee whose job is eliminated, if any, and who cannot be placed in a job of equal grade shall receive rate protection until such time as that employee fails to bid or apply for a position in the employee's former wage level.

The obligation hereinabove set forth shall not be construed to, in any way, abridge the right of the Employer to make such changes.

That the Union has, at least since 1973, repeatedly but unsuccessfully sought amendments to the National Agreement that would have prevented the Postal Service from changing existing position descriptions or introducing new ones without the Union's consent is evidence not only of its dissatisfaction with the bargain struck with the Postal Service,

but also of at least its tacit admission that, as presently written, the National Agreement does not accord it any rights beyond those specifically set forth in the articles previously mentioned.

Substantially the same arguments on this issue advanced by the Union in this case have been made by it in a number of previous arbitration cases decided by Sylvester Garrett, Richard Mittenthal, and myself. In none has the Union been successful.

Without purporting to substitute my judgment for that of the NLRB, I conclude, on the basis of my reading of Board decisions, that in this case the Postal Service has not violated its duty to bargain under Section 8(a)(5) of the National Labor Relations Act.

#### IV

The remaining issue is whether the ranking of the new position of Mail Processor at level 3 was a violation of the requirement in Article 19 that such action be "fair, reasonable, and equitable." The Postal Service's arguments on this point appear to be based upon a syllogism: The major premise is that both the PRA and the National Agreement give it the power to initiate new technology and new positions which in its judgment will improve the efficiency of the Service. The minor premise is that it has faithfully followed the procedures for introducing new positions and determining their

appropriate pay levels in accordance with Public Law 68 of 10 June 1955, Section 230 of the ELM, Handbook P-1, and Articles 1, Section 5, and 19 of the National Agreement. The conclusion is that the placement of the Mail Processor position at level 3 must therefore be correct.

The testimony of the Postal Service witnesses establishes without question that they followed the correct procedures in establishing the new job of Mail Processor. The job description itself was not grieved by the Union; as is made clear by its unfair labor practice charge, the basis of the Union's concern is its claim that the Postal Service "has unilaterally taken actions which will change the terms and conditions of employment for bargaining unit employees by downgrading up to 44,000 existing clerk craft positions." Thus, procedural issues apart, the dispute is over the pay level assigned to Mail Processor.

The conclusion of the Postal Service's syllogistic argument does not follow ineluctably from the preceding major and minor premises. Its conclusion overlooks the decisive role played by subjective judgment in any job evaluation procedure. Had the steps followed by Postal Service personnel in this case led to the rating of Mail Processor at level 5, it would not unavoidably follow that they had violated the guidelines for rating new jobs. This fact is tacitly recognized in Article 19, which specifically provides that disputes

between the parties over the fairness, reasonableness, and equity of the Postal Service's introduction or ranking of a new position shall, at the Union's insistence, be resolved by an arbitrator.

Mail Processor, like OCR-I Operator, is a "standard" position; according to the Postal Service, its compensation level must be determined by reference to the most comparable "key" position. The Union disagrees, citing previous decisions of arbitrators Garrett and Mittenthal jointly submitted as exhibits in this case by the parties. Thus, the Union notes that in Case No. AC-NAT-11991, issued 3 July 1978, Garrett declared: "Given the small number of established Key Positions . . . reliance upon existing Standard Positions (as additional benchmarks in elaboration of the Key Positions) is clearly essential to effective administration of the USPS salary structure." (JX-10, p. 22) The Union also cites to the same effect Mittenthal's decision in Case No. A8-NA-540A, issued 7 July 1981 (JX-14), in which he compared the standard position of Review Clerk with the former standard positions of Distribution Review Clerk and Special Distribution Clerk.

The ELM itself authorizes use of standard positions for comparison purposes. Section 233.3 states in part: "When the duties and responsibilities of a newly created position cannot be matched to an existing key or standard position . . . the Form 820 is sent to the Headquarters Office of Compensation

for appropriate action . . . ." (Emphasis supplied)

According to the Union, the few key positions reflect the state of mail processing as it existed in 1955, whereas new standard positions, such as Mail Processor, reflect the "greater diversity of work which developed in the bargaining unit since the onset of automation," and are "far more likely to supply realistic analogues to new Standard Positions than the older and unchanging key positions." (Un. Br., p. 22) The Union argues, therefore, that the position of OCR-I Operator is a much more appropriate basis of comparison with that of Mail Processor than are any of the key positions considered by the Postal Service.

In his comparison of the Mail Processor position with that of OCR-I Operator, Postal Service witness Braatz stated, in effect, that many of the skills required of OCR-I Operators had been built into the new OCR/CS and BCS machines. He also testified as follows (Tr. 225-26):

. . . [T]he other major difference was the requirement to verify certain separations, to riffle other separations, and to dispatch the mail according to prescribed dispatch schedules. . . .

The skill level of the old position, as it was originally used, required the clerks to be capable of memorizing schemes. They had to know which associate offices, in some instances, had to be processed at certain destinations. They had to know transportation schedules in many instances, and know which mail was critical to be dispatched on which pieces of transportation.

In response, the Union points out that in neither the basic function nor the duties and responsibilities portions of the position description for CCR-I Operator is there any reference to scheme knowledge.

Postal Service witness Shoop testified that the inability to learn a scheme when required to do so "is ground for releasing somebody during a probationary period." (Tr. 275) It is for that reason, the Union points out, that Article 37 (Clerk Craft), Section 3 (Posting and Bidding) provides that any notice of a job vacancy shall specify, among other things:

3. Scheme knowledge (essential and non-essential) and special requirements involving training, where applicable. When the assignment requires scheme distribution, one or more scheme(s) will be listed as essential.

The Union emphasizes, also, that the standard position descriptions in the P-1 Handbook show that scheme requirements are specifically referred to when applicable. Examples are General Expediter (basic function), Review Clerk (duties and responsibilities), and Flat Sorting Machine Operator (basic function).

The Union offers a somewhat similar rebuttal to the Postal Service's claim that the functions of recognizing OCR readable mail, riffling, and dispatching, none of which is performed by a Mail Processor, were all required and performed by OCR-I Operators. It argues in part that these three duties were "never fundamental to performance of the

OCR Operator position and are not listed as part of the basic function of the position." (Un.Er.,p.24) Whether or not "fundamental," the first two of those duties seem to be included, specifically or inferentially, in the following provisions of the duties and responsibilities portion of the OCR-I Operator position description:

(B) Recognizes readable OCR mail . . . .  
(Emphasis supplied)

. . . .

(F) On basis of knowledge of sweeping and dispatch schedules, withdraws mail from bins, verifies as required . . . .  
(Emphasis supplied)

The Union insists, however, that these duties added little to the complexity of the OCR-I position. It cites the testimony of Postal Service witness Braatz and Union witnesses Meeks and Thomas A. Neill, its Director of Industrial Relations, all to the effect that the function of recognizing OCR readable mail "consisted essentially of . . . spotting trays of mail tagged as OCR readable . . . [and] already prepared, faced, and trayed by the mailer and, as such . . . easily identifiable in the acceptance unit." (Un.Br.,p.25) In Houston, this work was performed by Mail Handlers. Meeks testified that no advance training was given to OCR-I Operators and that they learned by experience on the job. Neill testified that no riffling or dispatching was required for incoming mail "because it wasn't leaving the building . . . .



[I]f there was an error, they would catch it on the secondary." (Tr. 447) Neill also testified that dispatch schedules were posted in Houston; and Meeks testified that they were called out by the supervisor in Detroit. The Union concludes that "while dispatching and riffling may have added to the possible diversity of the OCR position, those duties surely did not make the position more complex, nor were they the basis for the Level 5 ranking." (Un.Br.,p.25)

In respect of the level of physical exertion and stress connected with the Mail Processor position, the testimony of Weeks, Gervais, and Neill disputed that of Braatz to the effect that the OCR-I Operator and Mail Processor positions were roughly equal in that regard. As previously noted, Meeks thought "everything about the new machine is so much . . . faster than the old," and Gervais stated that on the new machine, "in terms of the amount of work and activity . . . there's more of an effort and . . . more work." Neill agreed that the pace of the new machine was much faster than on the OCR-I.

Responding to the testimony of Postal Service witnesses that despite the greater speed and productivity of the new machines and their longer sweep sides, tended by one employee rather than three, the physical effort required of a Mail Processor is less than that required of the OCR-I Operator because of a reduction in the necessary amount of stooping

and reaching on the new machines and the improved "interface" between the employee and those machines, the Union declares that these claims are contrary to logic and experience. Even assuming that the stackers at the sweep side of the machine are placed at workbench height, the Union argues, this does not guarantee that their placement will be optimal for all Mail Processors, who may vary widely in height and weight. Moreover, the Union points out, on the Pitney-Bowes machine the trays into which mail is swept are located in a drawer several inches below the stackers, so even if a stacker is at the optimum height for a particular employee, he or she will still have to reach or stoop in order to sweep the mail into the tray.

In addition, the Union emphasizes that Mail Processors work with other equipment besides the OCR/CS and the BCS. The most common device for transporting mail through a postal facility is the tray cart (UX-20), commonly known as a "pie cart." These vehicles have a series of tiers -- some as low as an employee's ankles, and others that may extend as high as eye level. Testimony of both Postal Service and Union witnesses confirmed that Mail Processors frequently feed mail from pie carts or sweep mail into them, and thus are required to bend and stoop quite often.

Finally, the Union disputes the Postal Service's claim that the operator movement on the sweep side of the new machine

is limited by the practice of "coring," i.e., placement of the high density row of stackers near the front of the machine. According to the Union, the OCR-1 also had a high density row in the middle of the machine, and there is no reason to believe that mail can be more effectively centralized on the new machine than it was on the old. It argues that, in fact, coring is probably less effective on the new machine than on the old in preventing excess movement by the operator, because the mechanical reject bin is located at the end of the machine. Braatz estimated that the machine is shut down or jammed 10 to 12 percent of the time, whether because of mechanical failure or operator error. Mail caught in the machine during a shutdown is shot into the reject bin, from which it must be removed by an operator.

The Union also attacks the comparisons made by the Postal Service with the various key positions listed by Shoop; it focuses its strongest objections on the comparison between Mail Processor and Elevator Operator, which it terms "absurd and grossly unfair." (Un.Br.,p.29)

The P-1 Handbook contains the following position description for Elevator Operator-Level 3:

Basic Function. Operates a freight or passenger elevator.

Duties and Responsibilities

(A) Operates elevator.

(B) Cleans cab of elevator and polishes metal fittings.

(C) In addition, may perform any of the following duties:

- (i) Pushes handcarts of mail on and off elevator or assists in loading or unloading material carried on elevator.
- (ii) Tends the heating plant or performs cleaning duties in the vicinity of the elevator.

Organizational Relationships. Reports to an elevator starter or other designated supervisor.

The Union asserts that there are no Elevator Operators in most regions, and certainly none who tend oil and coal burning heating plants. Asked if he knew if there were heating plants on any elevators in the Postal Service today, Shoop replied, "I don't know . . . . All I know is what's on the job description. That is what I go by." (Tr. 302)

A more fundamental flaw in the Postal Service's comparison, according to the Union, is that the Elevator Operator position is classified as "maintenance-custodial," while the Mail Processor position entails responsibility for hands-on contact with the mail. In this connection, the Union cites Braatz's agreement that "the responsibility of hands-on contact with the mail has always been an important operational distinction in the Postal Service." (Tr. 389) Moreover, the Union points out that with the exception of the Post Office Clerk in small offices, no Level 3 employee has responsibility for hands-on contact with the mail.

Another point emphasized by the Union is that prior to the ranking of Mail Processor, no mail processing position has ever been compared or keyed to that of Elevator Operator or placed below level 4. It adds that only two positions -- Mark-Up Clerk -- Automated and Sack Sorting Machine Operator -- out of 14 in the P-1 Handbook involving operation of automated mail processing machinery had been ranked below level 5. The two exceptions are operator-paced rather than machine-paced; no machine-paced position in the Postal Service other than Mail Processor is ranked below level 5.

The Union also challenges Shoop's characterization of the duties of the Mail Processor position as "relatively simple," particularly in light of Braatz's description of the training course given to Mail Processors and his conclusion that he would not put someone who had not received that training on the new machines.

Similarly, the Union criticizes Shoop's judgment that the Elevator Operator's position is more hazardous than that of the Mail Processor. It points out that Shoop's testimony was pure speculation and not based on direct observation or empirical data. In rebuttal, it cites the Pitney-Bowes Operation Manual (UX-19), which spells out emergency operations, which are defined as "those steps taken to prevent death or serious injury to personnel or physical damage to equipment." Meeks also testified about the hazards of the

new machinery, and, among other things, told about an employee who had burned his hand while clearing a stacker.

Finally, the Union observes that the objective of equal pay for substantially equal work set forth in section 233.1 of the ELM "is clearly ill-served if an important new position is ranked based on a comparison to a position which is basically an anachronism and on a description which is two decades out of date." (Un.Br.,p.29)

Regarding the comparison between the Mail Processor and Mail Handler positions, the Union asserts that the former is the more difficult and responsible. It notes, also, that Shoop rated the Mail Handler position higher chiefly because of the requirement to react with others in the general performance of his work and of the occasional contacts with the public. The Union believes these distinctions to be invalid for two reasons: first, because the more varied duties of a Mail Handler (e.g., working as an armed guard, performing simple distribution, or operating fork lifts) are not specifically included in the basic function, and are referred to therein simply as "other duties incidental to the movement and processing of mail"; and second, because

Key Positions which describe catagories of work, will always be broader than Standard Positions, which are created to describe a more specific and normally a new function. Therefore, a Key Position will always list a greater range of duties than a Standard Position, despite the fact that a Standard Position may have a more difficult and important basic function. [Un.Br.,p.37]

v

I agree with the Union that the position description of OCR-I Operator is much closer to that of Mail Processor than are any of the key position descriptions considered by the Postal Service. I also think that the relation between the descriptions of Mail Processor and Elevator Operator is not only a "poor fit," but is plainly unfair, which means, in the terminology of Article 19, that it is also unreasonable and inequitable. I reach that conclusion for all the reasons cited by the Union, and also because the position of Elevator Operator is held only by a diminishing number of employees, is covered by a description that is obviously obsolescent and inaccurate, and, unlike that of Mail Processor, has virtually nothing to do with the success of the Postal Service's efforts to improve the efficiency of the Service through the institution of new technology.

Whether the Mail Processor position, despite its similarity to that of OCR-I, should be ranked at level 4, rather than level 5, is a much closer question; a decision to place the position at either level 4 or level 5 would not be demonstrably unfair. The Postal Service has emphasized that the new OCR/CS and BCS machines are far more sophisticated than the old OCR-I machines, and that, consequently, the duties of the Mail Processors are less complex and easier than those of the former OCR-I Operator.


These arguments are at least partially rebutted, however, not only by the testimony of the Union's witnesses, but also by the descriptions of the two positions. The basic function of the OCR-I Operator is described as follows: "Performs a variety of duties involved in the operation of the . . . [OCR]. Specifically, duties include loading, sweeping-tying, feeding the transport units, and operating the reject stacker." The basic function of the Mail Processor is described as follows: "The operator will be required to bring mail to equipment, load equipment, sweep output and affect [sic] proper movement of output to downstream processing or dispatch operations. Same operator to be capable of carrying out these functions on either OCR/CS, BCS, or both." The duties and responsibilities of the two positions are also similar; but it is clear that the OCR/CS performs some functions automatically that were formerly performed by OCR-I Operators. On the other hand, the OCR/CS and BCS machines process a larger volume of mail much faster than was possible on the OCR-I; and the Postal Service has emphasized that the OCR-I was merely a replacement for one processing step in the distribution network, whereas the OCR/CS and BCS comprise an entire network from origin to point of destination. Thus, the Mail Processor operates "smarter" machinery than did the OCR-I Operator, and does not have as many purely mental functions to perform; but the ultimate responsibility of the Mail Pro-



cessor is much greater than that of the OCR-I Operator, because the OCR/CS and BCS machines comprise an entire distribution network and process a greatly increased volume of mail. Both positions seem to require about the same level of physical effort.

I have already found that the Postal Service followed the specified procedures in initiating and describing the new position of Mail Processor, but I have also pointed out that the ranking of a new position involves subjective judgments that are open to challenge. For the reasons previously stated, the Postal Service's ranking of the Mail Processor position at level 3 seems to me patently unfair; but its judgment that level 5 is too high a ranking should not be overruled unless it can be said to be equally unfair. The choice between levels 5 and 4, as I have said, is a close one, and in the circumstances I do not feel free to substitute my subjective judgment as to which of the two levels is more appropriate for that of the Postal Service. Accordingly, I find that the appropriate pay level for the Mail Processor position is level 4.

All employees who have been assigned to work as Mail Processors at level 3 shall be reimbursed the difference between level 3 and level 4 pay for all time spent in that position.

  
Benjamin Aaron  
Arbitrator

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