

An Arbitration Between
UNITED STATES POST OFFICE DEPARTMENT

-and-

NATIONAL ASSOCIATION OF POST OFFICE
MAIL HANDLERS, WATCHMEN, MESSENGERS
AND GROUP LEADERS

-and-

UNITED FEDERATION OF POSTAL CLERKS

-and-

NATIONAL POSTAL UNION

Case No. 268-PO-13

ADVISORY OPINION
(Bargaining Unit)

June 15, 1970

For the Post Office Department: Mr. Eugene N. Scallan, Attorney,
Office of General Counsel; and Mr. Martin H. Steckel, Labor
Relations Assistant, Bureau of Personnel.

For the Mail Handlers: Mr. Henry T. Wilson, Attorney; and
Mr. Al Kinsey, Administrative Aide.

For the Postal Clerks: Mr. Herbert Thatcher, Attorney; Mr.
Francis S. Filbey, President; and Mr. Donn E. Dunn, Executive
Vice President.^{1/}

For National Postal Union: Mr. David Silvergleid, President.

Before: Samuel H. Jaffee, Arbitrator.

This is an advisory arbitration proceeding begun under
Section 11 of Executive Order 10988 involving a unit clari-
fication problem. The Mail Handlers group had requested the
arbitration because of the decision of the Post Office Department,
duly reached, to assign employees working in the positions of

^{1/} Mr. Thatcher died some days after the hearing. I am
informed that he was succeeded, as counsel for the
Postal Clerks, by Mr. Don Murtha.

Postal Source Data Technician (SP2-501), Data Collection Technician (SP2-506), and Optical Character Reader Operator (SP2-528), to the Postal Clerk Craft.^{2/}

The Postal Clerks was made a party to the proceeding at the outset, being named in the Mail Handlers' Request for the Nomination of Arbitrators. The National Postal Union thereafter made a request to intervene; its motion was allowed at the hearing over the objection of the Mail Handlers and of the Clerks. It developed at the hearing that the National Postal Union was in accord with the position of the Clerks that the Department had properly placed the three positions here involved in the Clerks' bargaining unit. The basic question on the merits, then, reduces itself to whether the three positions identified above more properly belong in the Clerks' unit or in the Mail Handlers' unit.

Before considering this basic question, however, it is necessary to discuss a threshold question.

2/ Abbreviations used herein are as follows:

POD or Department - United States Post Office Department
Mail Handlers - National Association of Mail Handlers, etc.
Clerks - Postal Clerks
PSDT - Postal Source Data Technician
DCT - Data Collection Technician
OCRO - Optical Character Reader Operator.

The Preliminary Question
of Arbitral Jurisdiction

As earlier indicated, this proceeding was begun under Section 11 of Executive Order 10988. My first contact with it was a letter to me, dated December 5, 1969, from the Assistant Secretary of Labor advising me, on behalf of the Secretary, "of your nomination and selection, pursuant to Section 11 of the Executive Order 10988, to serve as an arbitrator in a dispute in connection with [the present] unit clarification problem." Section 11 of E.O. 10988 provides for advisory arbitration of unit questions. On October 29, 1969, however, the President signed E.O. 11491, effective January 1, 1970 which, with exceptions not here material, revoked E.O. 10988. E.O. 11491 does not provide for such arbitration; rather, under Section 6 thereof, it is provided in part that the Assistant Secretary shall "decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for his consideration".

This suggests the possibility that the present unit issue should, since the matter of the proper tribunal to deal with it perhaps relates to "procedure" rather than substance, be dealt with by the Assistant Secretary rather than via arbitration, albeit in the form of an advisory opinion.

Naturally all concerned were aware of the impending effective date of Executive Order 11491 when this proceeding began; and thereafter. Yet it was decided to follow the procedure, relating to arbitration, set out in Executive Order 10988. At the arbitration hearing, the Post Office Department, beyond pointing out this preliminary problem at the outset,

took no position either way on this aspect, and the three participating labor organizations expressed a desire to continue with the hearing nevertheless. It was understood that I would consider this aspect with the arbitral (advisory) decision.

It is important to emphasize the fact that this decision is advisory only, and binds no one. It seems to me reasonably clear that at least where, as here, the parties have all consented to the use of the advisory arbitral decision technique, the fact that such technique is mentioned in the earlier Executive Order, but not in the later superseding one, is no bar to the procedure here used, whatever the situation might be in other circumstances, on which last it is unnecessary to express an opinion. ^{3/}

^{3/} Counsel for the Department also pointed to another asserted procedural problem. Section 11 of E.O. 10988 provides for arbitration of unit questions "Upon the request of any agency, or of any employee organization which is seeking exclusive recognition and which qualifies for or has been accorded formal recognition . . ." But the Mail Handlers, asserted counsel for the Department, is not seeking exclusive recognition, no election being asked for, and the Department has not asked for arbitration. In short, it is argued, the Mail Handlers is not within the class defined by Section 11 as entitled to ask for arbitration in this matter. I am not persuaded by this approach, and for these reasons: The Mail Handlers instituted this proceeding by way of a request for "clarification" of an existing unit. It seeks to include in the unit for which it is certified the three new jobs here involved, and of course it has already been accorded "exclusive recognition", the only question here being the scope of the jobs covered. It is difficult to believe that any gap (which in essence is what the Department claims) was intended in Section 11. This is reinforced by the language of Section 1 of the "Rules For the Nomination of Arbitrators Under Section 11 of Executive Order 10988, As Amended", issued by the Department of Labor. Section 1 says in part: "A request for a nomination will be considered as contemplating the performance of functions within the above

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At the arbitration hearing all parties were offered the opportunity to be heard, and to argue. A brief was thereafter received from the Mail Handlers. The stenographic transcript consists of 226 pages, and there were some 31 exhibits, some of the latter quite lengthy.^{4/}

I turn to the merits.

3/ (Continued from page 4)

categories if it specifies as a purpose obtaining an advisory decision on one or more questions involved in a unit determination . . . such as . . . [emphasis added]." This language indicates that the scope of the request for arbitration is not quite as narrow as counsel for the Department suggests.

4/ The arbitration hearing was held on February 11, 1970, the transcript received on March 4. Under date of February 20, 1970, I received a letter from counsel for the Mail Handlers (copies to the other parties), wherein he asked that the hearing be reopened so that the Mail Handlers "have the opportunity to properly present its views". Counsel also suggested 5/ "a visitation of work sites". It was not pointed out what additional evidence the Mail Handlers desired to present. The Department and the Clerks objected to these requests on various grounds. I responded in substance that I did not desire to be "overly technical in this matter"; that as Mail Handlers' counsel did not indicate the proposed additional evidence, he should "file an affidavit or affidavits indicating what he proposes to prove, with copies to the other parties"; that on receipt of such material, the parties might agree to the purported statements of fact in them, or might wish to file counter-affidavits; and that it could then be determined if a further hearing was necessary. In a supplementary letter (the transcript having been received), I said that the Mail Handlers' affidavits should be filed with its brief, the brief to be filed by March 26. I added, with reference to the requested "visitation of work sites", that I suggested one of two stated dates, and counsel for the Mail Handlers was asked to indicate which date he preferred, and where. Thereafter I received a brief from the Mail Handlers but no affidavits, and no response was received as to "visitation". In this posture, it is clear that the request to reopen the hearing and for such visitation has been waived.

The Merits

I

Section 6(a) of Executive Order 10988 says that bargaining units "may be established on any plant or installation, craft, functional or other basis which will ensure a clear and identifiable community of interest among the employees concerned. . . ." It is clear from this, borrowed from National Labor Relations Board criteria, that the key words here are "community of interest". This, then, is the basic standard to be applied. "Community of interest" is, said the Civil Service Commission in 1962, according to the testimony, "the essential ingredient in every appropriate unit . . . should share certain things such as skills, working conditions, common supervision, physical location, and function to such a degree that it makes sense for them to deal collectively with management through a single voice. . . ."

Unfortunately for the position of the Mail Handlers, a close study of the history of the work of the Clerks and of the Mail Handlers, with relation to their qualifications, duties, responsibilities, skills, pay rates, and allied aspects, with relation in turn to the jobs here in dispute, makes it quite evident that the Post Office Department was correct when it assigned these three new jobs to the Postal Clerks bargaining unit. It should be emphasized that it is not enough for the Mail Handlers to show that there is some (claimed) overlap between their traditional work and that entailed in the new jobs. The question, rather, is which bargaining unit's work comes closest. Note the matter of "degree" stated by the Civil

Service Commission in defining "community of interest", as quoted above. Note, too, that the Commission gave its definition in the converse. It said: "Conversely, no unit can be appropriate if its members are so divided by different interests arising from their work, skills, location or function that it is unreasonable to assume that they can speak with a single voice." Which again is a matter of degree.

Moreover, the Mail Handlers may be said to have weakened its position somewhat, or has taken somewhat inconsistent positions. At the arbitration hearing it sought exclusive recognition with relation to the three new jobs. In its brief, however, it said at the end that "The Mail Handlers is convinced that the original assignment; namely, to the best qualified, regardless of craft, makes real sense with respect to the three positions." (This, of course, would leave a void; for example, one man (say a Clerk), "best qualified" at one location, would become a Postal Source Data Technician, while another man (Say a Mail Handler) "best qualified" at another location, would also become a Postal Source Data Technician, which could then result in Postal Source Data Technicians in both bargaining units -- a result not at all in keeping with the basic purpose of the separateness of the different "craft" units.) However, I have not used this aspect in reaching my ultimate conclusions; I mention it simply for the information of the Assistant Secretary.

between each of the different units and

II

Examination of the relevant job descriptions is revealing. Thus, the job description of Mail Handler (Level 4) shows that his basic function is the loading, unloading, and moving of bulk mail, and incidental duties, within the facility. It is essentially a physical task. It may be noted that he may take a non-competitive examination, and that physical strength (handling mail sacks up to 80 pounds) is required, for which he is tested. On the other hand, an examination of the job descriptions of the various types of Clerks who would or could be involved, shows that their basic work is essentially mental, rather than physical. For example, the basic function of the Accounting Clerk (Salary Level PFS-5) states that he "Performs clerical accounting tasks of statistical computing and calculating machine operations in the chief accountant's office; three positions." This, of course, would leave the basic function of the Time and Attendance Clerk (also PFS-5) is stated in words pretty well indicated in the title of that job; the basic function of the Accounting Technician (Cost Ascertainment) (PFS-6) indicates that his basic function is "Examines cost ascertainment sample data submitted by post offices and prepares it for processing at a postal data center both or Headquarters"; and the job description of Accounting Technician (PFS-6) says that his basic function is: "Serves as an accounting technician and assumes responsibility for the proper completion of a designated major segment of accounting work in a large post office where the position of chief accounting has been authorized; or serves as assistant to postmaster or assistant postmaster in performing accounting and clerical

duties involved in the preparation, maintenance and consolidation of accounts and related reports. . ."

Let us now compare the above with the job descriptions of the three new jobs here involved. As the basic function of the Postal Source Data Technician (SP2-501) (Salary Level PFS-6) the description says: "Serves as operating technician in the data collection site of a post office operating under the Postal Source Data System and/or serves as technician responsible for activities at a control center in the PSDS system in a post office involving control of weighing and recording of mail processed, ATAL, WLRS, and related statistical activities."

As the basic function of Data Collection Technician (SP2-506) (PFS-6), the description says: "Collects and analyzes a variety of statistical data on selected operating and financial activities in the post office in order to serve management needs for these data and performs in relief assignments for postal source data technicians are [sic: as?] required." [Note:

Actually the jobs of PSDT and DCT more or less rotate.] As the basic function of the OCR Operator (SP2-528) (PFS-5), the description says: "Performs a variety of duties involved in the operation of the Optical Character Reader. Specifically, duties include loading, sweeping-typing, feeding the transport units, and operating the reject stacker."

I have mentioned the "basic function" of these jobs as indicated in their job descriptions. These descriptions go on to detail the duties and responsibilities related to these basic functions. I have taken these details into account, though not here spelled out (they are exhibits in the case).

As was stated earlier, "it is not enough for the Mail Handlers to show that there is some (Claimed) overlap between their traditional work and that entailed in the new jobs. The question, rather, is which bargaining unit's work comes closest." It is a matter of degree. The Mail Handlers' position tends to indicate some overlap, perhaps mostly with relation to the job of OCR Operator; that is, the Mail Handlers points to some traditional duties which, it says, is the same or similar to those involved in the three new jobs. I have carefully studied the evidence on this aspect. It is clear enough that, in essence, the items the Mail Handlers relies upon have to do with more or less incidental or peripheral items, or with smaller post offices, with fewer employees, offices where the new system (reflected in the new equipment) is not used. In any event, as I see it, even if it could be said that, to a degree, the Mail Handlers has made out a "bare" case, the fact remains that the Postal Clerks organization has made out a better one. The Clerks' unit is more appropriate than that of the Mail Handlers, and this, at the end, is the ultimate test. The Clerks' unit says: "Performs a variety of operations. It remains to say something of the nature of the new equipment which has brought about these three new jobs. Something of its nature has already been indicated in the job descriptions of these jobs, as indicated above with relation to their basic functions. The new equipment is designed to enhance the efficiency and economy of operations. It is costly and quite "sophisticated". Improper handling can result in substantial damage, let alone make for delay in mail

processing and delivery. I don't believe it necessary to go into the technical details of this equipment, reflected in the testimony and the exhibits relating to the same.

III

A substantial amount of evidence was received relating to history. It is enough here, I think, to say that an examination of it indicates that the past, when coupled with the present, simply doesn't add up, fairly, to a case for the Mail Handlers, and that it does make the case for the Postal Clerks. The requisite "community of interest" is lacking in the case of the former. It exists in the case of the latter.

I have considered the entire record, including the testimony, the exhibits, and the brief received, and based upon it, give the following:

ADVISORY OPINION

The Post Office Department correctly assigned the positions of Postal Source Data Technician (SP2-501), Data Collection Technician (SP2-506), and Optical Character Reader Operator (SP2-528) to the bargaining unit of the United Federation of Postal Clerks.

Respectfully submitted,
Samuel H. Jaffee
Arbitrator