

IN ARBITRATION

NATIONAL POST OFFICE MAIL HANDLERS,)
WATCHMEN, MESSENGERS AND GROUP)
LEADERS DIVISION OF THE LABORERS')
INTERNATIONAL UNION OF NORTH)
AMERICA, AFL-CIO)
and)
AMERICAN POSTAL WORKERS UNION,)
AFL-CIO)
and)
UNITED STATES POSTAL SERVICE)

Seattle, Washington
Oakland, California
San Francisco, California
Jurisdictional Disputes

Brief To The Arbitrator
On Behalf of
National Post Office Mail Handlers, Watchmen,
Messengers and Group Leaders Division
Of The Laborers' International Union
Of North America, AFL-CIO

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T A B L E O F C O N T E N T S

	PAGE
INTRODUCTION	1
I. THE COURSE OF PROCEEDINGS AND STATEMENT OF FACTS....	2
A. Seattle	2
B. Oakland	6
C. San Francisco	14
D. The Duties, Qualifications And Compensation Of The Distribution Clerk	21
E. The Duties, Qualifications And Compensation Of The Mail Handler	23
F. The Simple Non-Scheme Separation of Parcels Is Exclusively A Mail Handler Duty	24
G. The Difference In Compensation Between Mail Handlers And Distribution Clerks	28
H. The Influence Of Zip Code Upon Scheme Use And Mail Processing	32
I. Development Of Article XLIII, Section 12	33
II. DISCUSSION AND ARGUMENT	36
A. Article 43-12 Grants The Mail Handlers Exclusive Jurisdiction Over The Jobs Involved Herein	36
B. The Mail Handlers Are Entitled To Be Awarded The Disputed Work Under The July 3, 1973 Stipulation	47
1. Economy and Efficiency	49
2. Equal Pay for Equal Work	51
3. Racial Equity	54
4. Safety and Health	56
5. Employee Morale	57
C. The Failure Of USPS To Assign Mail Handlers To The Disputed Work Violates Article II Of The National Agreement And Title VII Of The Civil Rights Act Of 1964, As Amended	59
D. Article I, Section 1 Does Not Grant APWU Jurisdiction Over The Disputed Work	64
E. The Sullivan Decisions Are Erroneous And Without Foundation	68
CONCLUSION	70

INTRODUCTION

The instant arbitration proceeding arises out of a Memorandum of Understanding entered into on December 14, 1973, between the United States Postal Service ("USPS" hereinafter), the American Postal Workers Union, AFL-CIO ("APWU" hereinafter), and the National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO ("Mail Handlers" hereinafter), which provides as follows:

In circumstances where USPS, APWU and Mail Handlers Union are in dispute over the appropriateness of a USPS work or jurisdictional assignment to a bargaining unit represented by either the APWU or Mail Handlers Union and either of the two Unions appeals an adverse decision involving such a dispute to Step 4 (national level), or either of the two Unions initiates such a grievance at the national level without going through the preceding steps, the USPS will invite both APWU and the Mail Handlers Union to the Step 4 meeting held in the matter. Each of the said three parties at the Step 4 meeting shall be a full participant at the Step 4 meeting in an attempt to resolve such grievances. In the event the parties are not able to resolve such grievances at the Step 4 meeting, USPS will issue a decision within fifteen (15) days. Such decision shall be in writing stating the reasons therefor. Either of the two Unions shall be entitled, as an aggrieved party, to request, within thirty (30) days, that such a matter be processed under the arbitration procedure of Article XV of the National Agreement; the request of only one of the two Unions shall be required to institute the arbitration procedure. In the event an arbitration hearing is held, USPS, APWU and Mail Handlers Union will participate in the arbitration proceeding as full parties. If either of the two Unions fails to appear and/or participate in the arbitration as a party, such non-participating Union agrees that it will be bound by the arbitrator's decision to the same extent that it would have been bound if it participated fully in the arbitration proceeding. (MH Ex. 17.)¹

1. References to the Exhibits shall appear herein as follows:

Seattle Joint Exhibits = (WA-JT-__).
Oakland Joint Exhibits = (OAK-JT-__).
San Francisco Joint Exhibits = (SF-JT-__).
Mail Handlers Exhibits = (MH Ex. __).
APWU Exhibits = (APWU Ex. __).
USPS Exhibits = (USPS Ex. __).

As shall hereinafter be described, separate USPS jurisdictional awards concerning certain duty assignments in Seattle, Washington; Oakland, California and San Francisco, California became the subject of the instant consolidated arbitration proceeding pursuant to the foregoing Memorandum of Understanding. In each of the three cases, the Mail Handlers sought arbitration as a result of being aggrieved by USPS decisions divesting the Mail Handlers of previously awarded work assignments and awarding such assignments to APWU.

In accordance with the agreement of the parties, the Mail Handlers herewith files its brief to the Arbitrator.

I. THE COURSE OF PROCEEDINGS AND STATEMENT OF FACTS

A. Seattle

By letter dated January 11, 1973, then Postmaster James J. Symbol, Seattle, Washington, advised the postal clerks employed in the parcel post and dispatch section of the Postal Concentration Center ("PCC" hereinafter), in Seattle, in part, as follows:

This is written notification that your bid position in the Parcel Post and Dispatch Section ... PCC will be abolished effective January 11, 1973. All clerk positions in the section are abolished as excess by virtue of the duties being assigned to the Mail Handler Craft. (WA-JT-1.)

Thereafter, in a special issue of the Seattle Post Office General Order, the Postmaster posted for bid twenty-five level 4 mail handler positions at the PCC (WA-JT-2). The posting described the jobs in question as consisting of the following duties:

General mail handler duties for separation and dispatch of parcel post mail in Parcel Post and Dispatch Section. Dumping mail on belts, loading and unloading vans. Other duties as assigned. Heavy lifting involved (WA-JT-2, pp. 4-5).

APWU thereafter filed grievances on behalf of the excessed clerks (WA-JT-3-8). By letter dated January 26, 1973, the grievances were denied by local management (WA-JT-9-14).

The letter from the Postmaster's designee denying the APWU grievances, declared in part, as follows:

Violation of Article V is denied. Management took no unilateral action affecting the historical ranking of clerk positions. The duties performed by clerks in the Parcel Post and Dispatch Section at PCC had, over a period of time, overlapped with duties normally performed by Mail Handlers. The Clerk positions were abolished as excess to the needs of the section in strict conformance with Article XII. Moreover, Management must give consideration and emphasis to the MH-5 Memorandum of Understanding reached by USPS and the Mail Handler's Union which mandates that steps be taken to remedy situations where there are overlapping duties.

Violation of Article VII is denied. The intent of Article VII does not apply to the specific situation in question. The duties to be performed in the restructured Parcel Post and Dispatch Section consist of duties described in KP-8 and there is no crossing of craft lines involved. (WA-JT-9-14.)

APWU appealed the foregoing decision to J. J. Costello, USPS Director of Employee Relations, Western Regional Office (WA-JT-15-20). By letter dated February 27, 1973, the APWU appeal was denied by the region (WA-JT-22).

APWU thereafter appealed to Step 4 (WA-JT-23-24). By letter dated September 27, 1973 (WA-JT-25), it was advised by D. P. Dockery, Labor Relations Department, USPS headquarters in Washington, D. C., as follows:

The matters presented by you concerning this grievance, as well as the applicable contractual provisions, have been reviewed and given careful consideration. As a result of this review, we do not believe that the Postal Service has breached the National Agreement by virtue of the conduct complained of; therefore, the grievance is denied. (WA-JT-25.)

APWU thereafter submitted the grievance for consideration under the parties' agreement regarding jurisdictional disputes (WA-JT-28-30).

By letter dated May 31, 1974, James K. Sullivan, Labor Relations Consultant to USPS ("Sullivan" hereinafter), advised the parties as follows with regard to the Seattle dispute:

We have reviewed the operation and work involved, and after full consideration of the contentions of both Unions as to which classification of employees should perform this work. It is our determination that approximately 50 percent of (17)

Distribution Clerk positions should be established to perform parcel post distribution at the PCC in place of the present Mail Handler positions.

The basic reason for our determination is that the work involved in these positions entails more than occasional distribution of mail; i.e., parcel post. In our opinion, this work is encompassed under the basic duties and responsibilities of the Distribution Clerk - Level 5 Job Classification.

Accordingly, it is the Employer's intention to excess the approximately seventeen (17) Mail Handler positions involved and post for Distribution Clerk bidding. (WA-JT-31.)

Thereafter, by letter dated June 6, 1974, the Mail Handlers submitted the Seattle dispute to arbitration (WA-JT-32).

The Seattle dispute arises in Bay C of the PCC. The Bay C operation consists of the unloading of parcels from sacks on vans onto a mechanical belt which conveys the parcels to a "T" at the base of two multislides or "donuts." The parcels are conveyed from the "T" up two belts to a tower at the top of each "donut." At the "T" a separation is made to either the north or south "donut" according to a breakdown between Army Post Office (APO) and Fleet Post Office (FPO) numbers (IV, 22-24).^{1a} The "donuts" were installed at Bay C on April 24, 1969 (IV, 17; APWU Ex. 9).

The Bay C operation involves the simple distribution of parcels not requiring scheme knowledge (MH Ex. 89, p. 17). The existing method of distribution at Bay C relies upon the matching of APO or FPO numbers to the slides at the primary distribution point on top of the "donuts" and then to the mail sacks at the secondary distribution point at the bottom of the slides. Each parcel goes into the sack to which it is clearly marked, so that the system of separation is self-evident to the mail processing employee involved

1a. References to the several volumes of the transcript of the proceedings shall appear herein as follows:

September 9, 1974 = (I, ___).
September 10, 1974 = (II, ___).
September 11, 1974 = (III, ___).
September 12, 1974 = (IV, ___).
November 19, 1974 = (V, ___).
November 19, 1974 (Evening) = (VI, ___).
November 20, 1974 = (VII, ___).
November 21, 1974 = (VIII, ___).

(MH Ex. 89, p. 17). A previous scheme requirement applicable to the Bay C operation was dropped at the time of the installation of the "donuts" (IV, 12).

When the "donuts" were installed, level 4 mail handlers and level 5 clerks were assigned to work Bay C simultaneously. The largest and strongest workers were detailed to the vans regardless of whether they were clerks or mail handlers. These employees emptied the sacks onto the conveyors (IV, 18). Clerks and mail handlers also worked side by side at the "T" (IV, 20). And both clerks and mail handlers worked the crow's nest and the base of the slides (IV, 24-5, 38, 97).

In January 1973, a Mail Handler representative was advised by USPS management in Seattle that it had decided to transfer the clerk duty assignments in Bay C to the mail handlers craft; and that this decision had been approved by the Western Region (IV, 40, 45-7). Accordingly, in February 1973, the entire Bay C operation was assigned to mail handlers (IV, 31). Twenty-five clerks were excessed, and twenty-five new mail handler positions were created (IV, 49-50). When the bidding for these jobs was completed there were about thirty-two mail handlers assigned to Bay C (IV, 50).

The Bay C job was worked exclusively by mail handlers from February 1973, until June 1974, with some minor exceptions (IV, 58). During this period, the duties in Bay C were rotated among the mail handlers on a daily, or even more frequent, basis (IV, 59). The rotations included dumping, working the belt and "T", and working the crow's nest and bottom of the slides. Often those who were dumping sacks onto the conveyor would leave their positions and work the slides if they had emptied a van and another loaded van was not available for unloading (IV, 59-61).

Management in Seattle prepared a study of the Bay C operation while the Mail Handlers had exclusive jurisdiction there, which demonstrated an increase in productivity and a lowering of costs of operation by utilizing mail handlers, instead of clerks, on the job (IV, 70, 86).

When the May 31, 1974 Sullivan decision was implemented in Seattle, approximately seventeen Bay C positions were posted for clerks (IV, 62). From the time of the recent assignment to clerks, mail handlers have not worked the crow's nest or bottom of the slides (IV, 64). If mail handlers in Seattle were temporarily assigned to the slides or crow's nest at this time, they would not receive higher level pay for such work (IV, 65). One of the places where mail handlers presently perform simple, non-scheme, primary distribution of parcels on an exclusive basis is in the Seattle Terminal Annex (MH Ex. 89, p. 18).

B. Oakland

On November 21, 1972, by letter to then Senior Assistant Postmaster General James P. Blaisdell ("Blaisdell" hereinafter), Lonnie L. Johnson, National Director of the Mail Handlers ("Johnson" hereinafter), advised as follows:

Under Article XV, Section 2, Step 4, the Mail Handlers Union is filing a grievance in reference to multi-parcel sorters that were installed in Atlanta, Georgia, Oakland, California, and other cities. Article I, Section 5, has been violated, ther-fore[sic], we are requesting a meeting within 15 days to discuss this matter. In a number of cities, clerks have been assigned to these positions and we feel that the complete operation should be designated to the Mail Handler craft by the terms of the Mail Handler position description (KP-8). (OAK-JT-1.)

By letter dated March 13, 1973, Johnson advised Senior Assistant Postmaster General Dayrell S. Brown ("Brown" hereinafter), as follows:

This is to advise that in accordance with the grievance procedure established under the National Working Agreement, this office has approved for submission to arbitration a grievance involving Violation of Article I inreference [sic] to the Multi-Parcel Sorters.

These Multi-Parcel Sorters have been installed in Atlanta, Georgia, Oakland, California, and other cities. (Please refer to our Step 4 grievance filed on November 21, 1972). (OAK-JT-2.)

By letter dated March 20, 1973, Clyde N. Wilson, Grievance and Arbitration Administrator of the Postal Service ("Wilson" hereinafter), advised Johnson as follows:

This will acknowledge receipt of your letter of March 13, 1973, requesting arbitration on your file number MHNAT-7229.

A review of our records does indicate that this case was properly referred to Step 4 of the grievance procedure on November 21, 1972, but that due to inadvertence, it had not been scheduled for a hearing. We would appreciate having the opportunity to discuss this matter with you at Step 4 for possible resolution and disposition. Please inform us if you will accept a Step 4 meeting on this matter without any waiver of rights for petition to arbitration as set forth in your letter of March 13, 1973. (OAK-JT-5.)

By letter dated March 21, 1973 to Wilson, Johnson advised as follows:

This will acknowledge receipt of your correspondence of March 20, 1973 regarding the above captioned case.

The Mail Handlers Union will be happy to meet with you to discuss this matter for a possible resolution and disposition. We would hope that this matter could be scheduled for a hearing as soon as possible. (OAK-JT-6.)

By letter dated August 9, 1973, from D. P. Dockery, then Manager, Grievance Administration Branch of the Postal Service, to Johnson, Dockery advised as follows:

On July 17, 1973, we met with you to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

A review of the material submitted at the Step 4 meeting indicates that the position in question is a Multi-Slide Parcel Sorter Keyman position in the Oakland, California Post Office. A review of the requirements for this position indicates that it should properly be bid to the Mail Handlers Craft, and it is, therefore, our decision that the Oakland, California Post Office, should bid this position for the Mail Handlers Craft. The grievance is sustained. (OAK-JT-7.)

By letter dated October 2, 1973, Francis S. Filbey, General President of the APWU ("Filbey" hereinafter), advised Brown as follows:

I am enclosing a copy of a decision that was rendered by Mr. Dockery, Manager, Grievance Administration Branch, concerning the ranking of a position which we feel that the opinion is strictly a clerk position.

I regret to say that we just received a copy of this letter dated August 9th on October 1st and we were never advised that the step 4 discussion, which has an impact on our craft, was never discussed at the American Postal Workers Union.

I have great interest in this and do not understand how this decision could be made in the step 4 discussion without ever advising the American Postal Workers Union. Therefore we are requesting a step 4 discussion on this with the intent of going to arbitration if denied at the step 4 level. (OAK-JT-8.)

By letter dated October 23, 1973, from James C. Gildea, Assistant Postmaster General, Labor Relations Department ("Gildea" hereinafter), to Filbey, Gildea advised:

This is in reference to your letter of October 2, 1973, to Darrell F. Brown concerning a decision rendered in case M-NAT-179.

Brian Gillespie, of my staff, has tentatively arranged with Mr. Emmet Andrews, for a meeting on Wednesday, October 21, 1973, at 10:00 A. M., in my office. If that date and time is not convenient for you, will you kindly advise me of another acceptable date. (OAK-JT-9.)

By letter dated January 28, 1974, David H. Charters, Director, Office of Grievance Procedures, Labor Relations Department of USPS ("Charters" hereinafter), advised Johnson as follows:

The Postal Service is in receipt of a request from the American Postal Workers Union for a Step 4 National Level grievance meeting pursuant to Article XV of the current National Agreement. The grievance challenges the craft designation made by the Postal Service on a multi-slide key man position at the Oakland, California Post Office.

Pursuant to the tripartite agreement signed by the Mail Handlers Division of the Laborers International Union of North America, the American Postal Workers Union and the Postal Service on December 14, 1973, attached is a file which encompasses this matter and includes the material from a grievance of the Mail Handlers, M-NAT-179. In the near future we will be suggesting a time and place for a Step 4 meeting to discuss this grievance in accordance with the tripartite agreement. (OAK-JT-10.)

Thereafter, by letter dated January 30, 1974, to Brown, Johnson declared:

On March 13, 1973, pursuant to the provisions of the 1971-1973 National Agreement, the Mail Handlers Division submitted the above captioned grievance to arbitration. However, by letter dated March 20, 1973, a copy of which is enclosed, Clyde N. Wilson, on behalf of the Postal Service, proposed to the Mail Handlers Division that a Step 4 meeting on this grievance be conducted prior to its submission to arbitration.

The Mail Handlers Division agreed to Mr. Wilson's suggestion and, on July 17, 1973, a meeting was conducted with Mr. Dockery of your office to discuss this grievance.

Thereafter, by letter dated August 9, 1973, a copy of which is enclosed, Mr. Dockery advised that the grievance had been sustained, and that the 'multi-slide parcel sorter keyman position in the Oakland, California post office' belonged within the Mail Handlers craft and bargaining unit.

Notwithstanding the foregoing, I am advised that the settlement of the above captioned grievance has not yet been implemented. Since more than five months have elapsed from the date of Mr. Dockery's letter, I am at a loss to understand how this situation could have arisen. Moreover, although I have repeatedly called this situation to the attention of your representatives, including Messrs. Dockery, Wilson and Sullivan, nothing has been done to remedy this situation.

From the foregoing recitation of facts, I have regretfully concluded that the Postal Service has no intention of living up to its contractual commitment in this matter. This is of the deepest concern to me since it calls into question the good faith of the Postal Service in its dealings with the Mail Handlers Division.

I am certain that you understand the seriousness of this situation, and I look forward to hearing from you immediately with regard to its prompt resolution. (OAK-JT-11.)

By letter dated February 14, 1974, Johnson advised Charters as follows:

In reply to your letter of January 28, 1974 referring to the request from the American Postal Workers Union for a Step 4 national level grievance meeting challenging the craft designation by the Postal Service on the multi-slide keyman position at the Oakland, California post office, I am enclosing for your information a copy of a letter sent by me to Senior Assistant Postmaster General Darrell F. Brown on January 30, 1974. As is indicated in my letter, the Postal Service has as yet to implement the grievance settlement which appears to be the subject of the American Postal Worker Union's grievance.

Accordingly, it is the position of the Mail Handlers Division that until such time as the Postal Service implements the August 9, 1973 decision regarding the multi-slide parcel sorter keyman position in the Oakland, California post office, no cognizable grievance on behalf of the American Postal Workers Union exists, and there is no basis for any Step 4 meeting. On the other hand, in accordance with our commitment contained in the APWU-Mail Handlers-Postal Service Tripartite Arbitration Agreement, we would be pleased to participate in a Step 4 meeting at such time as the August 9, 1973 grievance is implemented.

I am taking the liberty of forwarding a copy of your January 28, 1974 letter, as well as my January 30, 1974 letter, and this letter to President Filbey of the American Postal Workers Union, so that he will be apprised of the Mail Handlers position in this matter. (OAK-JT-12.)

By letter dated March 18, 1974, Sullivan notified Johnson as follows:

This is to advise you that the August 9, 1973, Step-4 decision of the U. S. Postal Service in the above referenced grievance will be implemented immediately. The decision, which was based on the oral presentation made to the Postal Service by your representative at the July 17, 1973, Step-4 meeting, and the facts before the Postal Service representative at that time, is limited to the duty assignment of the employee working as the outside piece multi-slide parcel sorter keyman in the Oakland, California Post Office. (OAK-JT-15.)

By letter dated May 31, 1974, from Sullivan to Filbey and Johnson, Sullivan advised that, as the result of a May 7, 1974 meeting conducted under the terms of the tripartite jurisdictional agreement of the parties, USPS was awarding the outside piece, multislide parcel sorter position in Oakland to APWU "principally" on the ground that

... the duty assignment calls for the sorting of parcels and requires a knowledge of 238 scheme items The sorting of parcels on a regular basis requiring the use of scheme knowledge is definitely a clerical craft assignment. (OAK-JT-23.)

Upon the application of the Mail Handlers, the instant arbitration proceeding ensued (OAK-JT-24-26).

The multislide parcel sorter in Oakland is a "donut" consisting of eight slides on which outside parcels^{2/} are distributed (II, 191). The "outsides" move up on a motorized belt to an employee (keyman), who occupies a crow's nest position at the top of the multislide (II, 192). The parcels are loaded manually onto the belt by mail handlers (II, 193-4). The keyman reads the addresses on the parcels and drops them down the appropriate slide (II, 194).

Mail handlers at the bottom of the multislide (1) dump parcels onto the belt leading to the crow's nest; (2) take parcels off

2. "Pieces of mail which must be handled outside mail sacks because of size, weight, shape or nature of contents." Glossary of Postal Terms, (MH Ex. 1).

the bottom of the slide and put them on the appropriate nutting trucks (II, 194-5); and (3) push the nutting trucks to the dock for loading (II, 213).

Normally, mail handlers working the bottom of the multislide unload four slides at a time onto the nutting trucks (II, 195-6). The mail handlers often rotate between working slides one through four and slides five through eight on alternate days (II, 196, 198), in accordance with assignments made by mail handler group leaders (II, 212).^{3/} Reference boards are posted around the multislide to identify the distribution points (II, 205; MH Ex. 38). Depending upon the volume of parcels being handled, between three and nine mail handlers work the bottom of the multislide simultaneously (II, 206-7).

The mail handlers working at the bottom of the slides make the secondary distribution of the parcels. There are a total of approximately 35-37 separations made onto the nutting trucks (II, 209-11).

When the keyman position was posted for level 5 distribution clerks, the qualification was declared to be knowledge of the "Special Sack Sorting Machine" scheme (MH Ex. 37). When the position was posted for level 4 mail handlers, the qualification was declared to be the ability "to sort parcels based on knowledge of 238 memory items, sorting 100 items in 8 minutes with an accuracy rate of 95%" (OAK-JT-21).

The clerks who bid the crow's nest job at level 5 were trained to do the level 6 clerk sack-sorter job (II, 257, 274; APWU Ex. 19E). The level 6 sack-sorter job is performed in Oakland in accordance with the sack-sorter scheme at a keyboard and bucket area to which

3. The position description of the mail handler group leader describes the job as including the following duties:

Controls and guides a work unit of mail handlers and participates in the nonscheme separation of incoming or outgoing bulk mails, the dumping and sorting of incoming and outgoing mails at primary handling units (MH Ex. 13B.)

sacks and parcels drop. The sack-sorter operator presses the buttons on the keyboard pursuant to the scheme and pushes the mail into the tub. The mail is then diverted to its destination. A test on the sack-sorter scheme utilizing live mail is required to qualify for the job (II, 249).

The sack-sorter scheme is assigned for use by the clerks in the crow's nest in Oakland, but, in fact, that scheme cannot be used directly on the multislides. For example, what may go down two different chutes on the sack sorter goes down the same slide on the multislides (II, 380-1). Accordingly, clerks who are qualified on the sack-sorter must receive special training in order to operate the multislides (II, 257). In addition to such training, a brown-and-yellow board is posted above the multislides for the clerk's benefit, which translates the 24 key numbers on the sack-sorting machine to the numbers of the eight slides (II, 257-8, 270; USPS Ex. 2).

However, use of the brown-and-yellow board impedes a direct correlation between parcel addresses and the appropriate slide. Such direct correlation is the most efficient method of working the multislides. And, according to expert witnesses, use of the sack-sorter machine scheme for this job is an impediment to efficient performance of the job (MH Ex. 89, p. 16; VI, 216). In addition, mail handlers who worked the crow's nest were unaware of the significance of the brown-and-yellow board (II, 234-5).

The scheme assigned the clerks for the multislides is not "genuine" (VI, 216), since clerks occupying the keyman position may not be required to take the yearly examination on the scheme since it is not a "live" scheme insofar as the job they are performing is concerned (MH Ex. 89, p. 17).

With respect to performing the keyman job, operationally it is more appropriate to have an employee learn the job that he is doing, than have him learn one job and reassign him to another (VI, 216). A qualification for the keyman job is to know how the mail is distributed -- not only from the crow's nest, but also at the secondary at the bottom of the slide (VI, 214). However, the

clerk does not know the secondary operation (VI, 213-5). In contrast, it requires only a few days of experience at the bottom of the slide to enable any mail handler to satisfactorily perform the keyman position (MH Ex. 89, p. 16). Such distribution, relying upon reference boards at the bottom of the slide, is the actual method of distribution on this job. It does not constitute an established scheme. Rather, the system in use is a direct, self-evident, matching system correlating the state of the address to the nutting truck for that state, with the exception of California and a few "split" states which are worked by Zip Code (MH Ex. 89, p. 17).

In light of the integrated relationship between what is going on at the top and bottom of the multislides, it is more reasonable and logical for the employees at the bottom of the multislides to rotate occasionally to the top than to assign an employee from another location or craft to do the work (VI, 218-9). For example, if a clerk with knowledge of the sack-sorter scheme is working as the keyman, and is absent, he would be replaced by a back-up sack-sorter operator, who is required to be paid at level 6 (his regular rate of pay as a sack-sorter) for the work performed on the multislides (II, 260). And it would take substantial time before such an employee could perform the job efficiently (VI, 219). In contrast, if a level 4 mail handler were regularly assigned to operate the crow's nest, it would be more efficient to fill in with a mail handler who ordinarily works the bottom of the multislides (VI, 219-20).^{4/}

The mail handlers in Oakland had previously worked the keyman position at the Oakland Terminal separating parcels and sacks

4. Indeed, the instant dispute arose out of a grievance relating to the pay which mail handlers would receive while relieving clerks who were working the keyman position at level 5. Although mail handlers would be detailed to work the crow's nest to fill in for clerks on a temporary basis, they would still receive level 4 pay instead of the level 5 pay the clerks were receiving for doing this work. The mail handler grievances were denied, and this prompted them to seek the Oakland keyman position as a mail handler job (II, 283-4).

on a piece of mechanical equipment known as the "green monster" (II, 278, 284-5). There were approximately 360 separate items on the "green monster" for separation into four holes and one conveyor (II, 280). One of the several mail handlers in the keyman position on the "green monster" was designated the "caller." He determined the appropriate separations for the mail, and "called" them to the mail handlers assigned as "pushers" who made the actual separations. These separations were made according to states, cities and Zip Codes with the help of reference boards (II, 279-81). Mail handlers were rotated from the bottom to the top of the "green monster" (II, 281). The "green monster" was in operation at the Oakland Terminal from at least 1968 to 1970 (II, 277-82).

C. San Francisco

By letter dated December 27, 1968 to then Postmaster General Marvin W. Watson ("Watson" hereinafter), E. C. Hallbeck ("Hallbeck" hereinafter) then President of the United Federation of Postal Clerks ("UFPC" hereinafter),^{5/} advised the Postmaster General that UFPC opposed the assignment of the newly created position of sack-sorting machine operator, level 5, SP2-438 to the mail handlers craft, instead of the clerk craft (MH Ex. 41).^{6/}

By letter dated December 30, 1968, Watson advised Hallbeck that the award of this position to the Mail Handlers was in the "best interest of the Postal Service," and was an "equitable decision ..." (MH Ex. 42).

Thereafter, an arbitration proceeding was instituted by UFPC under Executive Order 10988 challenging, inter alia, the award of the foregoing sack-sorting machine operator position to the Mail Handlers.

On November 8, 1971, Arbitrator N. Thompson Powers rendered an advisory arbitration award which upheld the USPS decision awarding

5. A predecessor organization to APWU.

6. The job description of the position appears in the record as MH Ex. 13M.

the sack-sorting machine operator, PS-5, SP2-438 to the bargaining unit represented by the Mail Handlers (MH Ex. 43).

Thereafter, by letter dated December 8, 1971, Blaisdell advised Johnson that the aforementioned positions, among others, were being assigned to the mail handlers craft. This letter was the result of Mail Handler craft negotiations under the 1971 Agreement (SF-JT-1).

Subsequently, by letter dated June 13, 1972, J. Wilson, then Superintendent of the San Francisco Air Mail Facility ("AMF-SF" hereinafter) of USPS, advised Bob Wilson, Management Labor Relations Officer for USPS, as follows:

A memorandum issued by Special Assistant to the Postmaster General James P. Blaisdell dated December 8, 1971 assigned Sack Sorting Machine operator position to the Mail Handler craft.

Presently, these positions are filled by the clerical craft at AMF San Francisco. To facilitate an orderly transfer of these positions, two meetings were held by J. Wilson, Superintendent, AMF; R. Jensen, APWU; and W. Davis, Shop Steward, Mail Handlers.

The following recommendations are made:

1. Establish twenty (20) Sack Sorting Machine Operator positions, PS Level 5 from mail handler craft to operate the input position on the two Sack Sorters.
2. Reassign twenty (20) transfer clerk positions from the input area of the Sack Sorter Machine to: ten (10) Ramp Clerk positions and ten (10) transfer clerk positions to work the area of quality control.

Implementation of this recommendation should achieve the following results:

1. Compliance with the decision of Special Ass't. Postmaster General Blaisdell.
2. Expanded operations of the two sack sorting machine by mail handlers.
3. Improved quality control through closer monitoring of flight activity by Ramp Clerks; and monitoring service standards program (QPS; AIP; ODIS) by Transfer Clerks.

4. Minimize the use of temporary higher level details (204B) by providing a stable, experienced work force.

Following your approval of this procedure, we will submit POD Form 820, staffing assignment or any additional information requested to reach a proposed target date of July 1, 1972. (SF-JT-2.)

By letter dated June 15, 1972, Robert Nolan, Chief Steward, and Robert J. Jensen, Chief Steward, AMF-SF for the APWU, advised C. F. O'Donnell, Director of Operations for USPS in San Francisco, with regard to the Wilson letter of June 13, 1972, as follows:

The subject positions were a matter of Regional Labor-Management discussion and in Regional Bulliten [sic] #36, of September 4, 1969 a decision was rendered as item #23.

Whereas, on December 8, 1971, a letter from Mr. James P. Blaisdell to Mr. Lonnie L. Johnson, President, National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of Laborers' International Union of North America, expresses his, Blaisdells, opinion regarding the craft assignment of the position Sack Sorting Machine Operator, there does not appear to be any reference to counsultation [sic] with the American Postal Workers Union at the national level.

Therefore, before any action at the local level can be accomplished, counsultation with the Headquarters of the American Postal Workers Union must be had. The decision in this matter is theirs.

We have counsulted with our Coordinator at the Regional level, and have been instructed not to make or negotiate any agreement at the local level. (SF-JT-3.)

On October 15, 1972, APWU filed a grievance alleging that management had posted bid notices "showing a change of craft from clerk to mail handler on Sack Sorting Machine, Airport Mail Facility." The grievance alleged that on October 12, 1972, fourteen sack sorter, Level 5 positions had been posted for bid by mail handlers in violation of the 1971 National Agreement (SF-JT-4).

By letter dated October 20, 1972, from C. F. O'Donnell, Director, Operations Division of USPS in San Francisco, to Robert Jensen, APWU Steward, Mr. O'Donnell advised as follows:

As discussed with you on October 19, 1972 it is maintained and agreed to that Sack Sorter

Machine jobs fall within the job description of the Mailhandler Craft and the decision to place these jobs in that craft will be upheld. The grievance is therefore denied. (SF-JT-5.)

By letter dated October 26, 1972, Jensen filed a Step 3 appeal to the USPS Regional Office in San Francisco from the San Francisco decision. The APWU appeal to Step 3 declared as follows:

Under the provisions of Article XV, Section 2, Step 3, an appeal to your office is made in regards [sic] to 14 Sack Sorter Positions, AMF.

The Unions position being that management has violated the contract by not consulting with the American Postal Workers Union at the Headquarters level with regards to changing craft designation. (SF-JT-6.)

By letter dated November 22, 1972, R. H. Stevens, Manager of the Labor Relations Branch of the Western Regional Office of USPS, advised Robert L. Soule, Western Regional Coordinator of APWU, as follows:

In a 3rd Step grievance hearing between your designee, A. Tracey and Ken McCabe of the Regional Office on November 24, 1972, the grievance was denied. There was no violation of the National Agreement. (SF-JT-7.)

Thereafter, by letter dated December 5, 1972, Soule appealed to Step 4 by writing to Blaisdell (SF-JT-8). By letter dated December 14, 1972, Emmett Andrews, Director of Industrial Relations of APWU ("Andrews" hereinafter), advised Blaisdell that APWU headquarters had received a copy of the appeal and file on the grievance and awaited a confirmation of "a date on which this may be discussed as stipulated in Article XV, Step 4, of the National Working Agreement" (SF-JT-9).

By letter dated January 31, 1973, Filbey advised Blaisdell as follows:

On November 8, 1971, N. Thompson Powers rendered his opinion as arbitrator in Case No. 242-PO-9 recommending that Sack Sorting Machine Operators Levels 4 and 5 be assigned to the Mail Handler Craft. The Postal Service accepted Arbitrator Powers' recommendation and assigned SP2-367, Sack Sorting Machine Operator PS-4, and SP2-438, Sack Sorting Machine Operator PS-5, to the Mail Handler Craft. The Arbitrator also recommended that SP2-498, Mail Handler Technician PS-5, be assigned to the Mail Handlers' unit.

SP2-502, Sack Sorting Machine Operator PS-6, was not involved in this Arbitration.

The Postmaster at San Francisco, California, erroneously believing that the Postal Service's decision on Sack Sorter Levels 4 and 5 affected other Sack Sorting positions as well, redesignated 20 SP2-217 Transfer Clerk, AMF, Level 6 Clerk positions as Level 5 Sack Sorter Mail Handler positions. I am attaching a copy of a June 13, 1972, memorandum from the San Francisco Management-Labor Relations Officer recommending this action. On November 6, 1972, the Postmaster, San Francisco, posted a list of 14 successful Mail Handler applicants for bid positions of Sack Sorting Machine Operator, Level 5, at the AMF, San Francisco, California. These applicants were assigned to positions previously held by employees holding positions of SP2-217 Transfer Clerk, AMF, Level 6, also referred to as Billing and Coding Clerk, Level 6, IP 237-12.

I believe this unilateral action of the Postmaster, San Francisco, is a clear violation of our National Agreement and a misinterpretation and application of the Postal Service's decision to implement the recommendation of Arbitrator Powers.

Therefore, in accordance with Article XV, Step 4 of our Agreement, I am grieving the San Francisco Postmaster's decision and request a meeting at your earliest convenience to discuss and resolve this matter. (SF-JT-10.)

On December 14, 1973, USRS, APWU and the Mail Handlers entered into their agreement regarding the settlement of jurisdictional disputes (MH Ex. 17).

On February 26, 1974, a step 4 meeting was held between USPS, APWU and the Mail Handlers in an effort to resolve the instant grievance. However, no resolution was achieved.

A letter dated May 31, 1974, from Sullivan to Filbey and Johnson advised as follows with respect to the San Francisco dispute:

[T]he duty assignment of keying on the machine should be awarded to a clerical craft employee principally because 95 percent of the mail being processed is air and preferential mail in pouches as distinguished from sacks, and because keying is the actual processing of mail and not an incidental duty to processing, nor is it the movement of 'processed mail.' (SF-JT-12.)

Upon the application of the Mail Handlers, the instant arbitration proceeding ensued (SF-JT-13-15).

The sack-sorting machine was installed at AMF-SF in 1967. Thereafter, level 6 transfer clerks worked both the transfer office and the sack-sorting machine, rotating on a daily or weekly basis (II, 327).

The AMF-SF sack-sorting job involves the pulling of a sack or pouch off a conveyor; reading the label on the sack or pouch; shoving the sack or pouch onto a dumper and pushing one of the keys on a console which causes the dumper to drop it onto a conveyor which moves it to its destination. The job also entails communicating by phone with a transfer clerk in the transfer office for instructions as to which airline key should be pushed for a particular sack or pouch (II, 336-7). Approximately 80% of the mail handled by the AMF-SF sack sorter is preferential mail, i.e., air and first-class mail (II, 339). In addition to mail destined for airlines, the sack sorter handles mail arriving on incoming flights. This incoming mail is dispatched by the sack sorter operator to the appropriate in-house destination for further handling (II, 341).

For many years prior to the installation of the sack-sorting machine at AMF-SF, the work involved was performed manually by mail handlers. They were instructed by transfer clerks as to the appropriate nutting truck on which each sack or pouch was to be placed (III, 389-90). At present, when, because of breakdowns or routine maintenance, the sack-sorting equipment is not in operation, level 4 mail handlers separate the mailbags onto nutting trucks on the dock (III, 390-2).

The separations of incoming mail on the sack sorter are the same as the separations previously and presently made by the mail handlers onto nutting trucks on the dock and sawtooth platform (II, 342).

During the period that the sack-sorter machine was being manned by transfer clerks, the transfer clerks complained that they should not be assigned this work since it was not included within the duties set out in their position description, and it was not a job requiring scheme knowledge which they possessed. They complained also that the job required heavy lifting (II, 329-30, 378).

In addition to the foregoing, black transfer clerks claimed that they were being discriminatorily assigned to the sack-sorter machine (III, 374-5); female transfer clerks felt that they ought not be assigned to the sack sorter because it was a dirty job requiring heavy lifting (III, 376-8); and white, male transfer clerks complained that they ought not be required to work the sack sorter because women were not being so required (III, 378). Hence, assigning transfer clerks to operate the sack sorter had created numerous problems for management (III, 386).

Therefore, in late 1969 an effort was made to create a "biller-coder" position which would include the duties of both the transfer clerk and the sack-sorter operator as an "Individual Position" ("IP" hereinafter) (II, 330; III, 422). At first APWU approved of the creation of this IP (III, 421; APWU Ex. 3), but thereafter, it successfully grieved the posting of the job, so that the bids were nullified, and no biller-coder position was ever awarded (III, 426).^{7/}

Another effort to cope with the problem of manning the sack sorter had been proposed by APWU. It sought to have the job rated as a level 6 sack sorter, which is a clerk job requiring scheme knowledge. However, this effort failed since the AMF-SF position was clearly non-scheme in character (II, 332).

The sack-sorting positions were posted for bid by mail handlers on October 12, 1972 (SF-JT-4). Prior to the time the sack-sorter job was assigned to mail handlers, there were twenty transfer clerks assigned to the sack sorter. Subsequently, fourteen mail handlers were assigned to do the same work previously performed by the twenty transfer clerks. The fourteen mail handlers produced the identical volume of mail that the twenty transfer clerks had produced (III, 365). Six of the sack-sorter positions were not filled (III, 366),

7. The difficulties created by the establishment of the biller-coder position related to the seniority rights of the transfer clerks involved (III, 419-20).

although the machines were operated for the same amount of time while the mail handlers were assigned as when the transfer clerks had been assigned (III, 369). In addition, while the mail handlers occupied the positions, one mail handler operated the sack-sorter position simultaneously with operating the adjacent console (III, 371), while when the clerks occupied the sack-sorter positions, the console operator did nothing else (II, 348-55). After the May 31, 1974 Sullivan decision applicable to San Francisco issued, twenty level 5 machine distribution clerks were detailed to work the sack-sorter position at level 5 (II, 334, 372-3). The twenty newly assigned machine distribution clerks are doing the same work as the fourteen mail handler level 5 sack sorters did (III, 373). They are not rotating with the transfer clerks (II, 335-6). However, they are grieving the job, seeking higher-level pay. Their grievance was denied at Step 1 (III, 466-7).

At the same time that the APWU is attempting to achieve higher-level pay for the machine distribution clerks assigned to the sack sorter, it has also filed a grievance seeking to have the work reassigned to the transfer clerks (MH Ex. 69).

Management representatives have advised the Mail Handlers that the mail handlers who occupied the sack-sorter position "did a wonderful job ..." (II, 344). In addition, a San Francisco-based USPS official advised the Mail Handlers that in his opinion the Sullivan decision regarding AMF-SF was "ridiculous" (II, 344-5).

**D. The Duties, Qualifications And Compensation
Of The Distribution Clerk**

The duties of a distribution clerk are contained in Key Position 12 (MH Ex. 16). A distribution clerk is compensated at level 5 (MH Ex. 16) and presently receives the rates of compensation set forth in footnote 8 on page 22 herein.

An applicant for the position of distribution clerk is required to pass a written examination which tests how quickly the applicant can "spot whether two addresses are alike or different."

("This test is harder than the one for the mail handler.") The test also measures whether the applicant can "memorize several groups of names and locations" How well the applicant understands "the meaning of paragraphs that you are asked to read," and, finally, how well he can "discover the relationship between numbers in a series" (MH Ex. 33, p. 12).

The distribution clerk is not given a test of strength and stamina to qualify for his position (MH Ex. 33, p. 12).

The essence of the distribution clerk position is the distribution of mail in accordance with established schemes (MH Ex. 16). "Schemes are lists of States, post offices, firms or streets and house numbers, referenced to Zip Codes, post offices, sectional centers, box groupings, carrier or delivery areas. They are used in sorting mail for dispatch and delivery. There are several kinds of schemes" (MH Ex. 22, p. 1). An established scheme is considered by the Postal Service as one which requires training, extensive memorization and an examination. If a system of distribution is one which can just be picked up by on-the-job training, the Postal Service has not considered it to be an established scheme (VI, 178).

"A scheme is the principal tool of the distribution clerk's trade ..." (MH Ex. 22, p. 2). As put by an APWU representative: "The learning of a scheme makes the distribution clerk a technician [sic], a specialist[,] and as such puts that employee into a needed category" (MH Ex. 56).

The scheme knowledge requirement for a distribution clerk is as follows:

2. Qualification Standards.
 - a. During his first year of service, a distribution clerk must qualify on at least one state

8. The current USPS salaries for levels 4, 5 and 6 are as follows:

	PS Level	Steps	1	2	3	4	5	6	7	8	9	10	11	12
Salary	4		10,054	10,272	10,490	10,708	10,926	11,144	11,362	11,580	11,798	12,016	12,234	12,452
Salary	5		10,586	10,821	11,056	11,291	11,526	11,761	11,996	12,231	12,466	12,701	12,936	13,171
Salary	6		11,157	11,412	11,667	11,922	12,177	12,432	12,687	12,942	13,197	13,452	13,707	13,962

(Source: Postal Bulletin, Nov. 21, 1974, p. 4.)

or city scheme examination and on other distribution schemes that directly relate to his principal work assignment. His exams must not exceed 3,000 scheme items.

b. After his first year of service, a distribution clerk is required to qualify on a minimum of one scheme examination yearly. A live record must be maintained on all scheme examinations covering his assignment.

c. The passing grade for manual distributor examination is 95 percent and 98 percent for machine scheme examination. (Emphasis in original.) (MH Ex. 22, p. 2.)

E. The Duties, Qualifications And Compensation Of The Mail Handler

The duties of the mail handler, KP-8, are contained in Key Position 8 (MH Ex. 13A). This key position is compensated at level 4, which presently entitles employees to the annual rates of pay set forth in footnote 8 on page 22 herein. In order to qualify as a mail handler, a job applicant must pass a written test "which measure[s] ability to follow all directions, gross dexterity, understanding certain word meanings, and ability to remember names and locations as needed for simple sorting" (emphasis added) (MH Ex. 32A). The Mail Handler examination tests "[h]ow quickly can you spot whether two addresses are alike or different? ... How well can you carry out directions that are given to you orally? ... and how well do you understand words of the kind you might have to read on the job?" (MH Ex. 33, p. 12.)^{9/} The test measures both speed and accuracy (MH Ex. 33, p. 14).

In addition to passing the written tests, an applicant for a mail handler position must pass a "test of strength and stamina ... [T]he test ... consist[s] of lifting, shouldering and carrying mail sacks weighing 80 pounds, pushing a hand truck and unloading mail sacks of various weights ..." (MH Exs. 32A, 92).^{10/}

9. "The test in the Clerk-Carrier Examination is harder than the one in the Mail Handler Examination. The Mail Handler test has only names of cities and states with some Zip Codes, while the Clerk-Carrier test has street addresses, also." (MH Ex. 33, p. 14.)

10. The general weight limit for mailbags and parcels is 70 pounds (MH Exs. 68A-D).

Historically, mail handlers have been considered by USPS to be trained personnel who participate in the processing and movement of mail. They are not considered common laborers (VI, 165),^{11/} as are cleaner, level 1 (MH Ex. 66(A)), custodian, level 2 (MH Ex. 66(B)), or laborer-material handler, level 3 (MH Ex. 66(C)). Applicants for the latter positions are not required to pass either a mental or physical test to qualify (VI, 158-61).

F. The Simple Non-Scheme Separation Of Parcels Is Exclusively A Mail Handler Duty.

Parcel post service was initially instituted by the Postal Service in 1913 (V, 6). As early as 1932, mail handlers (then known as "laborers") were assigned to "making simple distribution of parcels by numbers where no scheme knowledge or reading of addresses is involved" Simultaneously, postal managers were instructed that "laborers should not be assigned to clerical duties" (MH Ex. 82).

With minor modifications, USPS continued to define mail handler duties in the foregoing manner until 1955 (MH Exs. 59, 81, 82).^{11a/} In 1955, Congress enacted Public Law 68, entitled the "Postal Field Service Compensation Act of 1955" (MH Ex. 63). The statute established the mail handler job description KP(8). Among the mail handler duties described in subsection (A) thereof was the separation of "all mail received by trucks and conveyors for dispatch to other conveying units" Subsection (B) declared that the mail handler "[p]icks up sacks, pouches, and outside pieces," and "separates outgoing bulk mails for dispatching" Finally, under subsection (F)(ii), the "occasional simple distribution of parcel post mail requiring no scheme knowledge" was declared to be a mail handler duty (MH Ex. 63, p. 6).

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11. In 1944 Congress enacted a law changing the title "laborer" to "mail handler" to correct the impression that mail handlers were merely common laborers (MH Ex. 58; VI 161-6).
- 11a. In 1948, the description had been refined to state that only mail handlers were to make "simple distribution of parcels where no scheme knowledge is involved." (MH Ex. 81.)

In contradistinction to the inclusion of the foregoing duties within the mail handler's job description, the position description of the distribution clerk KP(12) declared that postal clerks were to "separate mail in a post office, terminal, air mail field or other postal facility in accordance with established schemes ..." (emphasis added) (MHI Ex. 16).

Subsequent to the enactment of Public Law 68, USPS continued to assign mail handlers to the non-scheme distribution of parcels on a full-time basis. Hence, official USPS instructions with regard to staffing post offices, which appeared in the 1962 edition of the Regional Manual, provided as follows:

.24 Mail Handler Complement

.241 Definition

All authorized mail handler positions.

* * * * *

.243 Analysis

Determine that:

- a. There are sufficient duties of the type described in items (A) to (E) of key position 8, to warrant arrangement of 8-in-10 hour tour. Mail handler position usually can be justified only at large offices.
- b. No clerical duties will be assigned.

.244 Assignment

See key position 8, for duties of mail handlers and standard position 1-33 as to position of group leader, mail handlers. Mail handlers may not be assigned to:

- a. Work involving rating, checking, or recording of mail.
- b. Distribution of mail matter, other than parcel post as follows:

(1) Incoming Parcel Post

- (a) May sort out a quantity of "outside" parcels addressed to a firm.
- (b) May move bulk quantities of parcels for a firm from the workroom floor to a back platform for delivery to the addressee, provided any necessary recording or taking of receipts is performed by clerks.
- (c) May not make separations according to delivery routes or delivery stations when such sorting is governed by street addresses, even though charts or diagrams are available for consultation.

(2) Outgoing Parcel Post

- (a) May make separations which require no scheme knowledge and which involve only reading the name of the office or State to which addressed.
- (b) May separate outgoing parcel post into direct separations for cities,

separations for States, and into alphabetical groupings of States when the container is plainly labeled to show the alphabetical groups.

- (c) May not make a separation in which certain cities or States are held out, as such "hold-outs", necessitate either a knowledge of the "hold-out" or the consulting of a chart or scheme. (MH Ex. 65.)

USPS reaffirmed the foregoing instructions on January 25, 1968 (MH Ex. 18, pp. 10-11), and November 12, 1973 (MH Ex. 19).

Similarly, the 1962 and 1966 editions of the Regional Manual declared as follows with respect to mail handler assignments and compensation:

b. Mail Handler Positions

- (1) KP-8, mail handler, level 3, provides in item F(ii) for making "occasional simple distribution of parcel post mail requiring no scheme knowledge". To avoid any misunderstanding of the use of the word "occasional" in the key position of mail handler, all mail handlers currently assigned full time or substantially full time to the simple distribution of parcel post requiring no scheme knowledge will continue to be designated as mail handler and ranked in level 3. The law is not interpreted as requiring any change in work assignments.
- (2) Mail handlers may also be assigned to such preferential mail activities as culling, facing, canceling, sweeping boxes as well as work incident to the processing and movement of bulk mail.
- (3) The Postmaster General is required to rank positions, other than key positions, in relation to the key position which is most closely comparable in terms of the level of duties, responsibilities, and work requirements. Even though the position of a mail handler who regularly performs simple distribution of parcel post mail is not treated as identical with the key position, the position would nevertheless be placed in level 3. Obviously, the work of a mail handler assigned only to simple distribution of parcel post mail requiring no scheme knowledge is more closely comparable to the normal duties of the mail handler described in KP-8 than it is to the duties of a distribution clerk (level 4, KP-12), who separates incoming or outgoing mail in accordance with established schemes.

c. Level 4 Distribution Clerk

Although level 4 distribution clerks are assigned in some field installations to the non-schemes distribution of mail, they are also assigned

periodically to separate incoming and outgoing mail, or both, in accordance with established schemes and to qualify for scheme distribution. Under these circumstances, their placement in salary level 4 is proper. (MH Exs. 67 and 84.)^{12/}

More recently, on November 8, 1974, USPS headquarters denied Step 4 mail handler grievances seeking, inter alia, higher level pay for the non-scheme distribution of parcel post, on the ground that such "duties are included in the [mail handler] job description" (MH Exs. 77, 78). Correspondingly, on occasions in which the APWU has sought assignments to non-scheme separation of parcels, USPS has denied such APWU grievances on the ground that non-scheme separation is not within the distribution clerk job description (MH Ex. 79).

Further, in the course of implementing the Postal Management Service Improvement Program (POMSIP), from 1961 through 1965, and in a similar management review program from 1965 through 1971, it was management's practice to assign the working of non-scheme parcel post to the mail handler craft. This was because it was more efficient to use mail handlers in non-scheme distribution of parcels than clerks who are unable to put their scheme training to effective productive use in such assignments. In addition, clerks are not tested for strength and stamina as are mail handlers. Hence, not all clerks are able to satisfactorily handle parcels which weigh up to 70 pounds (MH Ex. 89, p. 14).

Mail handlers are also tested on their mental ability to perform the mail processing duties incident to non-scheme distribution (see MH Ex. 33, p. 14). The test is an examination of sortation skills necessary to non-scheme distribution. Thus, only the mail handler is tested on both requirements necessary to the non-scheme distribution of parcel post: strength and stamina, and mail processing skills (MH Ex. 89, p. 14).

12. These instructions had been issued by USPS immediately upon the enactment of Public Law 68 in 1955 (see MH Ex. 64, pp. 7-8; VI, 183).

A current survey of postal operations in approximately 40 large cities shows that when scheme knowledge is not required, both mail handlers and clerks are almost evenly employed in the primary distribution of ordinary parcels and that for outside parcels the assignment has been overwhelming to mail handlers (MH Exs. 87, 88).

Normally, a multislide is used to work transit sacks and pouches and outgoing parcel post. From the aforementioned recent survey of 40 offices, it would appear that approximately 75% of multislides are used to handle parcel post, while the other 25% are used to separate sacks and pouches (MH Ex. 89, p. 16).

Normally, multislide operations are bid as a single job, consisting of dumping, sorting at the top and bottom and moving the loaded nutting trucks to the dock area. This is the manner in which the multislide was bid and operated in Seattle when the job was assigned to mail handlers. This is the most reasonable way of organizing the operation in view of the interdependency and the common degree of difficulty of the various functions (MH Ex. 89, p. 17).

Prior to Zip Code, parcel post primary operations were generally set up to divide the parcels alphabetically by state or designated "big cities." This non-scheme assignment was historically manned by mail handlers (MH Ex. 89, p. 18).

G. The Difference In Compensation Between Mail Handlers and Distribution Clerks

Historically, a wage differential has existed between the distribution clerk and the mail handler. Hence, in 1945 Congress established the starting salary for clerks at \$3,270 per annum and mail handlers at \$3,170. At that time, common laborers employed by USPS were paid \$2,870 per annum (MH Ex. 60, p. 8).

In 1954, USPS recognized a need to establish a new system of classifying jobs for compensation purposes. Accordingly, it employed Fry Associates to undertake a job evaluation program and recommend a new classification and salary system (VI, 155-6). As

a result of its study, Fry proposed the establishment of approximately fifty benchmark or key positions which were related to twenty salary levels (VI, 155-6).

In the course of its study, Fry evaluated the classic positions of city carrier, mail handler, distribution clerk, laborer and janitor on the basis of the following criteria:

1. Knowledge

This factor measures what is required to do a job in terms of basic skill, but more especially in terms of experience and education. This factor refers to the basic "know-how" necessary to satisfactorily discharge the duties and responsibilities required by the job. (MH Ex. 62, p. 8.)

2. Responsibility

Responsibility is a measure of quality -- of the degree and complexity of analytical ability, judgment, discernment and timeliness involved in making decisions or taking action relating to policies, procedures, methods, and assets. This is call 'responsibility level.'

Responsibility is also a measure of quantity -- of the number of individuals that are dependent upon a supervisory or leading position for

- final decision.
- judgment
- organization

(MH Ex. 62, p. 10.)

3. Contacts

This factor measures the type and level of contacts or human relations required by the job in meeting and dealing with people both inside and outside of the organization. Although it would seem that the contact with the public should be the more important consideration, the very operation of the Post Office, decidedly a service organization, also requires teamwork among the individuals and considerable exchange of information with the operating unit. Tact, courtesy, public relations were considered ... (MH Ex. 62, p. 14.)

4. Physical Requirements

The physical requirements of a job were determined to be composed basically of two elements:

- Working conditions, hazards, etc.
- Effort and strength requirements.

Working conditions are a measure, largely of the surroundings, the conditions of light, heat,

exposure to the outside elements, and to the normal amount of hazards encountered in the performance of the job. It is a yardstick to determine the 'disagreeableness' of a job.

The effort and strength requirements indicate the amount of physical work in a position. The amount of lifting, weight of materials lifted, and frequency of the operation are evaluated. (MH Ex. 62, p. 15.)

On the basis of the foregoing factors, and utilizing a point system, Fry awarded the following ratings and pay grades to the aforementioned positions:

<u>Job Title</u>	<u>Grade</u>	<u>Total Points</u>	<u>Factor Rating Points</u>			<u>Phy- sical</u>
			<u>Know- ledge</u>	<u>Respon- sibility</u>	<u>Contacts</u>	
Carrier - City	4	182	55	55	35	37
Clerk - Distribution	4	173	75	55	20	23
Mail Handler	3	170	50	50	20	50
Laborer	1	132	25	50	20	37
Janitor	1	130	25	50	20	35

(MH Ex. 62, pp. 25-6.)

The fact that Fry awarded the distribution clerk 173 points and the mail handler 170 points indicates that Fry saw very little difference between the two jobs in total (VI, 184). "Where they saw the difference was in terms of knowledge required. The Clerks had to have greater knowledge because they learned the scheme. But, on the other hand, the Clerks' physical requirements were much less because they weren't expected to do some of the heavy work that a mail handler did ..." (VI, 184). According to expert testimony, the Fry evaluations of the clerk and mail handler positions continue to be valid today (VI, 186).

On the basis of the foregoing, Fry recommended that a pay differential in favor of the distribution clerk continue to exist vis-a-vis the mail handler so that distribution clerks would be rated one level above mail handlers (MH Ex. 61, p. 64).

With minor variations, the Fry proposals were embodied in Public Law 68, which was enacted by Congress in 1955 (MH Ex. 63).

The statute established benchmark positions known as key positions, or KP's, which were used as guideposts for ranking other jobs. Two such KP's were KP-8 "mail handler" and KP-12, "distribution clerk," referred to supra. Under the statute, the former was to be compensated at level 3, and the latter at level 4 (VI, 157-8).^{13/} Under the statute, the starting pay for mail handlers was \$3,330 per annum, and the postal clerk, \$3,660 per annum (MH Ex. 63, p. 54).

As of November 21, 1974, the starting salary for a mail handler was \$10,054, whereas the starting salary for a distribution clerk was \$10,586. (See footnote 8 on page 22 herein.)

Section 201(B) of the statute declared that "[i]n ranking positions, the Postmaster General shall apply the principle of equal pay for substantially equal work" ^{14/}

As has been indicated earlier, the duties of the mail handler set forth in key position 8, included simple, non-scheme distribution of parcels (MH Ex. 63, p. 6), while the distribution duties of the clerk KP-12 were limited to scheme distribution (MH Ex. 68, p. 8-9).

A distinction between compensation for scheme and non-scheme distribution has persisted historically and to date. It has consistently been the USPS position that "simple distribution not requiring scheme knowledge is level 4 work" (MH Ex. 24). Indeed, USPS has successfully advanced this position in applying the National Agreement and in arbitration proceedings under the Agreement (See MH Exs. 23, 25, 73, 74, 77, 78, 79; VI, 223).

13. Since upgraded to levels 4 and 5, respectively.

14. Although Public Law 68 was superseded by the Postal Reorganization Act (MH Ex. 2), the principle of equal pay for equal work has been embodied in Section 454.1 of the Postal Manual as follows:

- Equal pay shall be given for substantially equal work. Differences in pay shall be based on:
- a. Substantial differences in the difficulty of the work performed.
 - b. The degree of responsibility to be exercised.
 - c. The scope and variety of tasks involved.
 - d. The conditions of performance

H. The Influence Of Zip Code Upon Scheme Use And Mail Processing

Prior to 1962, at the height of scheme development (VII, 392), a distribution clerk might be required to know as many as three or four outgoing state schemes, as well as an additional city scheme. The swollen size of many schemes required that they be learned and tested in as many as four different parts. For example, in Los Angeles, California, there were three sections of the scheme, later expanded into four sections. The first part of an incoming city scheme would be called the city prime A and would consist of the main arteries and the most used addresses (MH Ex. 89, p. 5).

On a nationwide average, a city primary scheme would have included about 2,500 scheme items. For example, Houston, Texas has presently about 8,000 primary scheme items (MH Ex. 89, p. 5).

At a certain point in time, particularly after the Second World War, it became necessary to adopt a simpler system of distribution because of the difficulty in recruiting workers to master the complicated schemes at the then prevailing low, congressionally established pay scale. Schemes were becoming increasingly more complex with the expanding suburban areas. First, the Postal Service tried the "zone" system for large metropolitan areas. Individual post offices were assigned designations which were the equivalent of the present fourth and fifth numbers in the Zip Code. That is, the zone system associated local offices with what now would be called the main office or SCF^{15/} Thus, by design, the zone system did not facilitate the outgoing separations which today rely upon the first three numbers of the Zip Code. Also, the "zone" system was ineffective because it was a voluntary program, and patrons did not adopt it (MH Ex. 89, p. 5).

Zip Code was introduced by USPS in 1963 (V, 6; MH Ex. 20). At present, patrons utilize Zip Code on more than 90% of all first-class mail. This practice has substantially reduced the need for all schemes except the incoming city secondaries and a few assignments for "nixies"^{15a/} and residue mail. For example, Arden Station

15. SCF abbreviates Sectional Center Facility.

15a. "Letter or package not easily deliverable because of incorrect, illegible or insufficient address ..." (MH Ex. 1).

in Sacramento, California has thirty-four carrier routes, each one having approximately twenty different scheme items. Such a moderate incoming secondary scheme would work out to approximately 700 scheme items. But the previous burdensome primary incoming and outgoing schemes have largely fallen into disuse (MH Ex. 98, p. 5).

Whereas, in prior years the distribution employee needed to know the routing to be given an individual piece of mail through his scheme training, with the Zip Code any mail processing employee knows immediately the routing by reading the first three Zip Code numbers. Thereafter, the distribution method of matching that Zip Code in the address to the container marked with a similar Zip Code is an entirely self-evident form of processing (MH Ex. 89, p.8).

The APWU has responded to Zip Code in several ways. First, it has sought to reduce the number of schemes that need to be learned, especially where clerks were required to pass more than one scheme (MH Ex. 89, p. 6). Hence, APWU and USPS established special joint schemes committees to bring about a situation whereby a clerk would not be required to memorize a scheme and be examined on it unless he was going to use it in his work (VI, 207, 294). The committees were established to avoid the situations in which a clerk, taught and examined on one skill, might be assigned to work on a job in which the skill was not required (VI, 207, 294). The scheme committees are still in existence (MH Ex. 11, p. 63). APWU also sought to keep as many jobs as possible in existence having a requirement of at least one scheme so that the work would justify a level 5 designation (MH Ex. 89, p. 6). Finally, APWU began to claim jobs which had traditionally been performed by mail handlers (VI, 202).

I. Development of Article XLIII, Section 12

The phenomenon of clerks, displaced by the decline of level 5 work requiring scheme knowledge being assigned duties historically performed by mail handlers and receiving pay one level higher than mail handlers for doing such work, accounts for the Mail Handlers'

effort to establish exclusive jurisdiction by contract over its traditional work assignments. The initial Mail Handler jurisdictional provision was contained in the November 30, 1971 Memorandum of Understanding between the Mail Handlers and USPS:

The following is the understanding of the Parties:

A. In all first-class offices with 25 or more employees and other large customer service and mail processing facilities, employees other than mail handlers may be performing full-time duties within the mail handler bargaining unit on a regularly scheduled basis; therefore, the Employer will review the practices in these installations in order to determine the appropriateness of employees' assignments, classifications and wage levels.

Where it is found that full or part-time regularly scheduled employees have duty assignments on a regular basis which are comprised of all mail handler duties, those duty assignments will be delegated to the mail handler craft. If it is found that mail handler duties have been combined with duties of another craft, to make a full or part-time scheduled duty assignment on a regularly scheduled basis, such assignment shall be filled consistent with Article I, Article VII and Article XII. Employees who may be displaced will be reassigned in accordance with Article XII. (MH Ex. 7, p. 3.)

Subsequently, on November 16, 1972, the Mail Handlers and USPS entered into a "Clarifying Addendum" to the foregoing Memorandum of Understanding, which provided as follows:

In settlement of the Union's craft proposal 'Mail Handler - 5' the parties hereby agree to the following addendum clarifying paragraph 'A' of the Memorandum of Understanding entered into by the parties on November 30, 1971.

Paragraph 'A' of the Memorandum provides for Employer review of first-class offices and other large customer service and mail processing facilities with 25 or more employees and states: 'Where it is found that full or part-time regularly scheduled employees have duty assignments on a regular basis which are comprised of all mail handler duties, those duty assignments will be delegated to the mail handler craft.'

It shall be the understanding of the parties that the phrase 'all Mail Handler duties' in paragraph 'A' includes the following duties regardless of whether they appear in any other position description:

1. All duties listed in Key Position Description 8, Mail Handler - Level 4;

2. All duties listed in the currently established and ranked key, standard and individual positions in customer service and mail processing facilities which are set forth in the December 8, 1971, letter from Senior Assistant Postmaster General Blaisdell, to Mail Handlers' National Director Lonnie L. Johnson. Those positions are:

Key Position

Mail Handler, PS-4, KP-8

Standard Positions

Group Leader Mail Handler, PS-5, SP1-33

Label and Facing Slip Technician, PS-5,
SP1-32

Label Machine Operator, PS-4, SP2-579

Label Printing Technician, PS-5, SP2-578

*Laborer, Materials Handling, PS-3, SP1-11

Mail Equipment Handler, PS-4, SP2-247

Mail Handler Technician, PS-5, SP2-498

Mail Processing Machine Operator, PS-5,
SP2-354

*When the 'Laborer, Materials Handling' position is authorized for the post office branch, it is delegated to the Mail Handler craft. When authorized for the maintenance branch, it is assigned to the Maintenance craft.

Mail Processing Machine Operator, PS-5,
SP2-470

Packer-Shipper, PS-4, SP2-581

Sack Sorting Machine Operator, PS-4,
SP2-367

Sack Sorting Machine Operator, PS-5,
SP2-438

Typist-Label Printing, PS-4, SP2-580

Watchmen, PS-4, SP2-216

Individual Positions

Group Leader Mail Handler, PS-6, IP248-7
(Chicago, Illinois)

Group Leader Sack Sorting Machine Operator
PS-6, IP25-11-1 (Ft. Worth, Texas)

Mail Handler Leadman, PS-5, IP32-12-1,
(Los Angeles, California)

Mail Rewrapper, PS-4, IP19-5-4 (Washington, D. C.); IP19-5-8 (St. Louis, Missouri)

(MH Exs. 8, 10.)

The "Clarifying Addendum" was accompanied by a "Stipulation" between the Mail Handlers and USPS which declared in pertinent part as follows:

The parties further agree and understand that, by entering into the aforementioned Clarifying Addendum, they in no way waive their right to advance claims regarding exclusive craft jurisdiction over work or duties not presently defined

as 'all mail handlers duties' and that such Clarifying Addendum shall not be construed to in any way limit such claims; provided, however, that neither party shall be entitled to reopen negotiations seeking to terminate or modify existing agreements regarding assignments or duties, except as provided in Article XX, Section 3 of the 1971 National Working Agreement. (MH Ex. 9.)

The 1973 negotiations regarding mail handler craft items resulted in the provisions of Article XLIII, Section 12 of the National Agreement ("43-12" hereinafter). In addition, a new stipulation, identical to that which was entered into on November 16, 1972, was entered into between the parties on July 3, 1973 (MH Ex.12).

II. DISCUSSION AND ARGUMENT

A. Article 43-12 Grants The Mail Handlers Exclusive Jurisdiction Over The Jobs Involved Herein.

The Mail Handlers submit that in its current form, 43-12 and its related provisions must be read and applied in the following manner:

1. Subsection A of 43-12 declares as follows:

In all first-class offices with 25 or more employees and other large customer service and mail processing facilities, employees other than mail handlers may be performing full-time duties within the mail handler bargaining unit on a regularly scheduled basis; therefore, the Employer will review the practices in these installations in order to determine the appropriateness of employees' assignments, classifications and wage levels.

The reference in subsection A to "all first-class offices with 25 or more employees ..." must be viewed in the context of USPS' traditional system for classifying its offices. This system is set out in MH Ex. 4, which lists some 754 first-class post offices having 100 or more authorized employee positions. Thereafter, reference is made to an additional 1,788 first-class offices having 25 or more employees (MH Ex. 4, pp. 44).

It is clear from the foregoing that the reference in 43-12 to "all first-class offices with 25 or more employees ..." is to a well-defined group of larger post offices in which it was anticipated that "employees other than mail handlers may be performing

full-time duties within the Mail Handler bargaining unit on a regularly scheduled basis." These "offices" are commonly understood to be entire city post offices, such as the Seattle, San Francisco and Oakland post offices, which include all of the facilities, stations and substations within each respective city. Indeed, Arbitrator Gamser, in APWU and USPS, Case No. AB-NAT-1009 (MH Ex. 34), recently held that the term "post office" was used in Article I, § 6, of the National Agreement in the following customary manner:

A Post Office or postal installation is a mail processing and delivery activity under the head of a single manager. That could range from a single small Post Office to a large Post Office with several associated stations and branches which are responsible to the single manager or could include a large Post Office with many stations and branches, even over 100 stations and branches including related activities such as vehicle and motor facility or an air mail facility, all of which are part of that single postal installation. (MH Ex. 34, p. 4.)

Hence, 43-12 may not be applied as if the term "first-class offices with 25 or more employees" referred to a separate facility within an "office." Rather, it must be implemented "office-wide" so as to cover all facilities within any first-class post office with a total of 25 or more employees.

2. Subsection B of 43-12 provides:

Where it is found that full or part-time regularly scheduled employees have duty assignments on a regular basis which are comprised of all mail handler duties, those duty assignments will be delegated to the mail handler craft. If it is found that mail handler duties have been combined with duties of another craft, to make a full or part-time scheduled duty assignment on a regularly scheduled basis, such assignment shall be filled consistent with Article I, Article VII, and Article XII of the National Agreement. Employees who may be displaced will be reassigned in accordance with Article XII of the National Agreement.

The foregoing provision contemplates that subsequent to the review mandated by subsection A, USPS is required to award "all duty assignments [performed] on a regular basis which are comprised of all mail handler duties ... to the mail handler craft." Similarly, where the survey discloses "that mail handler duties have been combined with duties of another craft, to make a full or part-time

scheduled duty assignment on a regularly scheduled basis, such assignment shall be filled consistent with Article I, Article VII and Article XII of the National Agreement." Moreover, subsection (B) anticipates that by reason of its implementation, employees other than mail handlers may be displaced from their duty assignments, and that they are to be "reassigned in accordance with Article XII of the National Agreement."

3. Article VII, which is referred to in subsection B of 43-12, provides in pertinent part as follows:

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time scheduled assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

- 1) All available work within each separate craft by tour has been combined.
- 2) Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in full-time or part-time employee's own scheduled assignment, management may assign him to any available work in the same wage level for which he is qualified, consistent with his knowledge and experience, in order to maintain the number of work hours of his basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Although Article VII, § 2, is not directly involved herein, it serves to make even clearer the intent of 43-12. Hence, the opening declaration of Article VII, § 2, that "[n]ormally, work in

different crafts, occupational groups or levels will not be combined into one job" indicates that well-established distinctions already exist between "work in different crafts, occupational groups" and "levels," and that "normally" management is precluded from combining such work. Moreover, before any permissible combining of work may occur under Article VII, "all available work within each separate craft by tour [must have] been combined" and "[w]ork of different crafts in the same wage level by tour [must have] been combined." For example, under the foregoing principles, to combine the duties of level 6 transfer clerks with those of level 5 mail handler sack sorters into one job would be doubly impermissible because it would involve combining work in different crafts and levels. Hence, Article VII, § 2, establishes that, at least for the purpose of avoiding the improper combining of duties, jurisdictional lines are to be maintained, independently of 43-12.

In this context, the significance of 43-12 is that it serves to provide guidance in the implementation of Article VII, § 2, since 43-12 specifically defines the mail handler duties which may not be combined. For without such a clear definition of mail handler duties, it would be difficult to implement Article VII, § 2. Similarly, unless the so-called "overlapping duties" which appear in the job descriptions of both distribution clerk and mail handler were declared in 43-12(C) to be exclusively mail handler duties, the implementation of Article VII, § 2, with respect to such duties would have been subject to substantial uncertainty, since the question of which, if any, craft these duties belonged to for the purposes of Article VII, § 2, would have been unclear.

Finally, because it prohibits the combining of duties across wage levels and crafts, Article VII, § 2, would also seem to suggest that the parties intended that higher-rated employees were not to be assigned lower level duties on a full-time basis as has occurred herein in Oakland and Seattle, and that clerks were not to be regularly assigned to perform work consisting exclusively of mail handler duties as has occurred at AMF-SF.

4. As has been indicated above, subsection C of 43-12 defines the phrase "all mail handler duties" in subsection B as including "the following duties regardless of whether they appear in any other position description." That the contract specifically defines "all mail handler duties" by reference to the duties listed in the then existing key, standard and individual mail handler positions demonstrates that the term "all" must be understood as having been used synonymously with the term "exclusively." This becomes even clearer when it is noted that they are declared to be "all mail handler ... regardless of whether they appear in any other position description." This signifies that these duties are to be assigned exclusively to mail handlers consistent with 43-12, notwithstanding their appearance in the job descriptions of other employees. Hence, the fact that such duties as operating cancelling machines, opening and dumping sacks and facing mail appear in the position descriptions of both the level 5 distribution clerk and the level 4 mail handler becomes irrelevant for the purposes of assignments since such duties must be assigned solely to mail handlers, at least in the larger facilities.^{16/}

The question of "overlapping duties" does not arise in connection with any of the instant cases, since the simple distribution of parcels not requiring scheme knowledge does not appear within the distribution clerk job description and is to be found solely within the level 4 mail handler KP-8 job description. Nor are the duties contained in the level 5 sack-sorter position overlapping with any duties contained in the job descriptions of the level 6 sack-sorting machine operator (MH Ex. 47), a clerk job which requires distribution in accordance with established schemes requiring "schemes examinations;" the level 5 distribution clerk -- machine

16. The notion of assigning "overlapping duties" to one of two "competing" groups of employees was endorsed by all of the parties to the National Agreement under Article I, § 6, in which supervisors are prohibited from doing bargaining unit work at certain facilities "even though such work is included in the position descriptions for such supervisors" (see decision of Arbitrator Gamser in Case No. AB-NAT-1009, MH Ex. 34).

position (MH Ex. 48), which involves the operation of "an electro-mechanical machine in the distribution of letter-size mail;" or with the level 6 transfer clerk, AMF (MH Ex. 45(a)), who "receives, dispatches, documents and maintains records of all classes of foreign or domestic airmail or both and of other air transported mail." For obviously, while all three of the foregoing clerk positions have either been suggested for, or assigned to, the sack-sorting machine in AMF-SF, none consists of duties which overlap with those of the level 5 sack sorter, or, for that matter, correspond to duties in the AMF-SF job.

But, even if there were any overlap in these cases, it is clear that the jobs in question would have to be declared "all mail handler" and assigned accordingly under 43-12.

5. Consistent with the foregoing analysis, the Mail Handlers submit that the duties involved herein are subject to exclusive Mail Handler jurisdiction under that portion of 43-12(C), which defines "all mail handler duties" by reference to "all duties listed in key position description 8, mail handler-level 4" and "all duties listed in the currently established and ranked key, standard and individual positions in customer service and mail processing facilities which are set forth in the December 8, 1971 letter from Senior Assistant Postmaster General Blaisdell to Mail Handlers National Director, Lonnie L. Johnson."

The foregoing duties include those of Mail Handler, PS-4, KP-8; and Sack-Sorting Machine Operator, PS-5, SP2-438. Among the duties contained in those job descriptions are the following in KP-8:

- (A) Unloads mail received by trucks. Separates all mail received by trucks and conveyors for subsequent dispatch to other conveying units, and separates and delivers working mails for delivery to distribution areas.
- (B) Places empty sacks or pouches on racks, labels them where labels are prearranged or racks are plainly marked, dumps mail from sacks, cuts ties, faces letter mail, carries mail to distributors for processing, places processed mail into sacks, removes filled sacks and pouches from

racks, closes and locks same. Picks up sacks, pouches, and outside pieces, separates outgoing bulk mails for dispatch and loads mail onto trucks.

* * * * *

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

* * * * *

(ii) Makes occasional simple distribution of parcel post mail requiring no scheme knowledge.

* * * * *

(MH Ex. 13A.)

The sack-sorting machine operator, PS-5, SP2-438, includes within its basic functions and duties, the following:

BASIC FUNCTION. Makes separations of sacks of mail on an electro-mechanical sack sorting machine by operation of a keyboard, applying machine codes to accomplish, without scheme examination, distribution by other than ZIP Code, directs, alphabetical or geographical groupings. Must be able to demonstrate and maintain machine distribution at an average of at least 10 sacks per minute with an accuracy rate of 98 percent.

DUTIES AND RESPONSIBILITIES

- (A) Reads sack labels as sacks are fed on a conveyor to the operator; depresses combination of keys to set the triggering mechanism on the sack machine pallets to dump the sack at the desired destination runout belt or chute.
- (B) Pushes sack on to loader tray which trips automatically, dumping the sack on to the machine pallet the keying device has set to trigger at the destination runout.

(MH Ex. 3M.)

That both the Seattle and Oakland jobs fall within the duties set forth in KP-8 is clear. Hence, these duties come within the "separat[ion of] all mail received by trucks and conveyors for subsequent dispatch to other conveying units ..." in subsection (A) and within the separation of "outgoing bulk mails for dispatch ..." in subsection (B).^{17/} parcels clearly come within the definition

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17. As early as 1962, the Regional Manual declared that on the basis of items (a) through (e) mail handlers were to perform separations of parcels "which require no scheme knowledge and involve only reading the name of the office or state to which addressed" (MH Ex. 65). These instructions, which also preclude mail handlers from being assigned to perform clerical duties, were reaffirmed in 1968 and 1973 (MH Ex. 18, pp. 10-11; MH Ex. 19, p. 5).

of "all mail" and "bulk mail" (MH Ex. 1), and, indeed, a mail handler is defined by USPS as "an employee who loads, unloads, moves bulk mail, cancels stamps and performs duties relating to the movement and processing of mail" (MH Ex. 1).^{18/}

It is nevertheless argued by USPS and APWU that the use of the term "occasional" in F(ii) limits mail handler jurisdiction and/or assignments to the simple non-scheme distribution of parcels on an "occasional" or less than full-time basis.

However, this position ignores the following considerations. First, the grant of jurisdiction over this work in (A) and (B) of KP-8 renders F(ii) mere surplusage. As put by the USPS in its brief to Arbitrator Powers in Case No. 242-PO-9:

The Clerks note that the mailhandlers position description, KP-8, which was established by an Act of Congress, indicates 'occasional simple distribution of parcel post,' apparently contending that such language proscribes the mailhandlers from separating bulk mail. Such an interpretation would overlook other portions of the KP-8 position description, namely item (A) of Duties and Responsibilities, which states in part "Separates all mail received by trucks and conveyors for subsequent dispatch to other conveying units, and separates and delivers working mails for delivery to distribution areas." (MH Ex. 43.)

Secondly, while the term "occasional" does appear in F(ii), the duty referred to therein, and incorporated by reference into 43-12, is the "simple distribution of parcel post mail." Hence, the term "occasional" cannot be viewed as modifying or limiting the specific duty involved for the purposes of 43-12, particularly since this duty does not appear in any other position description. Moreover, as a practical matter, the term "occasional" has been given no weight whatsoever by USPS in the assignment of mail handlers to this work from the date of the enactment of Public Law 68 in 1955^{18a/} until the present. Hence, to give 43-12 a fair reading

18. In contrast, the clerk is defined "as an employee who separates incoming and outgoing mail in accordance with established schemes" (MH Ex. 1).

18a. Indeed, NFPC, a predecessor to APWU, complained to no avail to the Senate Committee on Post Office and Civil Service in 1966 that, notwithstanding the amendment to Public Law 68 inserting "occasional" in F(ii), mail handlers were "being assigned to full-time duties on parcel-post distribution" (MH Ex. 64, pp 7-8).

within the context of USPS history and policy requires that it be viewed as assigning mail handlers to perform the simple, non-scheme distribution of parcels full time in accordance with a USPS practice which dates back at least 44 years.

Insofar as the AMF-SF job is concerned, the duties therein are clearly within the standard position of the mail handler level 5 sack sorter. Although the position description refers to the handling of sacks, and the AMF-SF job involves the handling of both sacks and pouches, no functional difference exists between this job and that in the foregoing position description, since sacks are functionally indistinguishable from pouches.

6. The foregoing interpretations of 43-12 are confirmed by the positions taken by responsible high-level USPS officials regarding implementation of the predecessor mail handler jurisdictional provisions negotiated in 1971 and 1972.

For example, on January 15, 1973, J. J. Costello, Assistant Regional Postmaster General, Employee and Labor Relations Group, Western Region, advised all district managers and labor relations representatives in that region as follows with respect to the implementation of the Mail Handler Memorandum of Understanding:

Regional meetings have been held or will be held with representatives from Headquarters, Regional Office and the Mail handlers' Union regarding the implementation of the subject memorandum. The Western Region's meeting was held January 12, 1973 in San Francisco.

The Memorandum of Understanding and the Clarifying Addendum was published in the Postal Bulletin of November 23, 1972 (both of which are attached) are contractual obligations and have as much meaning and significance as does any other provision of our Labor Agreement. Failure to follow these obligations can and probably will result in grievances being filed and processed through the grievance procedure.

It is readily recognized the following of these contractual obligations will cause, in some offices, a revamping of their past and present practices of duty assignments and classification of employees.

Although the Memorandum does not establish a time limit for management to accomplish the "changeover", there is a sense of urgency in doing so.

Please accept this sense of urgency and direct your efforts and those offices under your jurisdiction to accomplish our obligations in a timely manner. (MH Ex. 71.)

Earlier, on February 16, 1972, James J. Symbol, Manager of the Seattle Metro Area, advised the acting sectional center managers for Seattle, Washington and Takoma, Washington as follows:

A mail handler duties survey is to be conducted in all first class post offices with 25 or more employees. Survey information must be forwarded to the Metro office no later than March 20, 1972.

The understanding reached at the national level between U. S. Postal Service and Mail Handlers' Union (Reference Postal Bulletin, 12/30/71) contemplates that full or part-time duty assignments that are performed on a regularly scheduled basis and comprised exclusively of mail handler duties will be assigned accordingly.

Your report must indicate the number of mail handler positions, currently in a non-mail handler craft, requiring reassignment to the mail handler craft. (MH Ex. 71.)

The survey's instructions declared in part as follows:

3. The basis for determining Mail Handler duties is the 3 position descriptions. (Mail Handler - Level 4; Group Leader, Mail Handlers - Level 5; and Mail Handler Technical [sic] - Level 5).

* * * * *

- (g) Enter in Tour/Hours of day Mail Handler work is performed the time of day the mail handler work (other than full time) is performed. This will indicate the possibility or lack of possibility to combine mail handler work to create a full-time position or part-time position in the mail handler craft. (MH Ex. 71.)

The accompanying "Instructions to Regional Directors of Employee Relations re; Mail Handler Study," which appears to have emanated from USPS headquarters, declared as follows:

Where it is found that an employee's full- or part-time duty assignments exist on a regularly scheduled basis and is comprised exclusively of duties in the mailhandler craft and the employee is not in the mailhandler craft bargaining unit, then his assignment shall be delegated to the mailhandler craft and filled in accordance with the Working Agreement.

* * * * *

- B. If an employee's assignment is comprised of a combination of mailhandler duties and duties of another craft, a determination should be made as to whether the assignment has been delegated to the appropriate

craft and is being performed by an employee from the appropriate craft. Where it is determined that such assignment is properly within the mailhandler craft and is presently incumbent by an employee other than a mailhandler, then such assignment should be filled with a mailhandler in accordance with the Working Agreement. Any employee who is not a mailhandler and is presently in such an assignment should be reassigned in accordance with the Working Agreement.

- C. Nothing in this instruction is intended to abrogate the right of management to establish scheduled assignments combining work in different crafts or to work employees in different crafts in accordance with Article VII, Section 2, of the Working Agreement. (MH Ex. 71.)

The foregoing leaves no question that USPS understood that the 1971 and 1972 predecessor provisions to 43-12 required the assignment of mail handler duties to mail handlers and the reassignment of non-mail handlers who had been performing mail handler duties. Indeed, in all three of the instant cases, it was reliance upon 43-12 or its predecessor provisions that resulted in the assignment of the disputed work to mail handlers.^{19/}

8. The impact of the Mail Handlers' having negotiated its jurisdictional provisions in 1971 and 1972 is reflected in the APWU proposal advanced at its 1973 craft negotiations with USPS. It declared:

1. Clerks shall perform all duties listed in all key, standard or individual position descriptions assigned to the clerk craft up to and including any position assigned pursuant to the provisions of PL-68, and subsequent to the enactment of PL-68, and any overlapping duty assignments now contained in the position descriptions for the clerk craft, either key, standard or individual position, and also contained in the position descriptions for any other craft, or the position descriptions of employees outside the bargaining unit, shall be removed from the other craft position description or non-bargaining unit position description and retained only in the clerk craft position. All duties listed in key, standard, or individual position

19. Thus, the suggestion by USPS that the three original assignments herein to mail handlers "were the result of Postal Service managers in three local areas misconstruing a contract proposal from the Mail Handlers Union, the MH-5 proposal" (VIII, 491), is as impoverished and devoid of support in the record as the rest of its case.

descriptions for the clerk craft shall be performed only by clerks in the clerk craft, unless otherwise specifically excepted by the American Postal Workers Union, AFL-CIO.

2. Clerks shall also perform all scheme, zip code, alphabetical, numerical, geographical or other separation and distribution of air mail, first class, second class, third class, parcel post, special rate and all other classifications of mail matter by manual, mechanical or electronics methods.
3. Clerks shall also perform all verification of all classes of mail and make all single piece or package separation and distribution of all classes of mail in cases, sacks, slides and mechanical or electronic distribution systems. They shall perform all dispatch tying out of mail matter and shall label and loose pack all matter which has been processed by mechanical or electronic methods. (MH Ex. 15.)

If the APWU proposal had been accepted, the impact would have been to eliminate the need for mail handlers in anything except unloading of freight cars and trucks. Mail handlers would have been left out of the entire mail processing routine, and they would have been deprived of approximately 3/4 or more of the work they now do (VI, 228-9). However, the APWU did not press its proposal to impasse, and, instead, it entered into its 1973 craft agreement without a "work assignment" clause (MH Ex. 11).

9. From the foregoing, the Mail Handlers submit that under 43-12 the assignments herein must be made in Seattle and Oakland to the level 4 mail handler and in San Francisco to the mail handler-sack sorter level 5.

B. The Mail Handlers Are Entitled To Be Awarded The Disputed Work Under The July 3, 1973 Stipulation

In addition to agreeing to the provisions of 43-12, the Mail Handlers and USPS entered into a stipulation in 1973 which provides in pertinent part as follows:

The parties further agree and understand that, by entering into the aforementioned Memorandum [43-12] they in no way waive their right to advance claims regarding exclusive craft jurisdiction over work or duties not presently defined as 'all mail handler duties' and that such Memorandum shall not be construed to in any way limit

such claims; provided, however, that neither party shall be entitled to reopen negotiations seeking to terminate or modify existing agreements regarding assignments or duties, except as provided in Article XLIV, Section 2, of the 1973 National Agreement. (MH Ex. 12.)

The foregoing stipulation constitutes a reservation by the parties that notwithstanding the award to the Mail Handlers of "exclusive craft jurisdiction" over work or duties defined in 43-12 as "all mail handler duties," the parties remain entitled, during the life of the 1973 Agreement, to advance "claims regarding exclusive craft jurisdiction" over other work. And the Mail Handlers' right to grieve with respect to such claims is clear from Article XV, § 1, of the National Agreement, which defines a grievance as

... a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement
... (MH Ex. 11, p. 25.)

The Mail Handlers believe that even if it is assumed arguendo that the disputed work herein is not subject to exclusive Mail Handler jurisdiction under 43-12, the work must be awarded to the Mail Handlers in accordance with well-established policy considerations which are generally applicable to the settlement of jurisdictional disputes in both the public and private sectors; and, further, that since in the case of USPS the force of law or contract attaches to these policy considerations, their implementation is made mandatory in this proceeding and requires the award of the work in question to the Mail Handlers. These policy factors, which are discussed in detail, infra, include the congressionally imposed obligations upon USPS to (1) maintain and advance the economy and efficiency of postal operations; (2) implement the USPS policy mandating equal pay for equal work; (3) provide employment opportunities for the disadvantaged and cleanse USPS employment and pay practices of racial inequalities and discrimination; (4) insure and advance the safety and health of USPS employees; and (5) improve employee morale and provide USPS employees with "satisfying careers."

1. Economy and Efficiency

The Mail Handlers submit that the disputed positions should be awarded to mail handlers on the ground that they are able to perform the work more economically and efficiently than clerks. The many facts which impel the foregoing conclusion have been set forth in detail supra, and need not be reiterated herein. These facts point to the inescapable conclusion that if the positions involved herein were to be awarded solely upon the basis of qualification, compensation, efficiency, ability and productivity, the jobs would unquestionably be awarded to mail handlers rather than distribution clerks.

The overwhelming weight of the evidence indicates that USPS itself believes that mail handlers possess those skills which are uniquely required to perform the non-scheme distribution of parcels and sacks. This evidence consists of a massive volume of USPS pay and classification data and decisions; operating and testing instructions; higher-level pay decisions; arbitration awards and job descriptions. For example, that USPS believes non-scheme distribution to be work which considerations of economy and efficiency require it to assign to mail handlers is indicated in its brief in the Canton, Ohio case decided in its favor and against APWU by Arbitrator Hays, in which the USPS assignment of the simple distribution of third-class mail to mail handlers was upheld:

The Mail Handler position description (KP-8) clearly addresses skills that are equivalent to those required to perform the duties that gave rise to the duties [involved in the present case.] To assign employees on a higher pay level would not be consistent with Management's obligation to operate the Postal Service in an economic fashion.

The duties outlined and skill levels established in the Distribution Clerk position description (KP-12) clearly exceed those necessary to accomplish the subject duties. ... (Emphasis added.)
(MH Ex. 25, p. 71)

The same distinction between level 4 and 5 distribution skills was recognized by Arbitrator Willingham in the Sells case (MH Ex. 73),

in which he upheld USPS' position that non-scheme distribution is level 4 work:

Examination of the evidence shows that grievant performed none of the duties of KP-12 scheme distribution. What she did do was alphabetically distributing SCF mail into a 77 hole case by associate office name. In other words, 'podunk' went into 'podunk', no special skill, knowledge or expertise was involved. Such clearly is not the 'work' required, expected, anticipated or involved in the duties of a Level 5 Distribution Clerk. Other classifications were also utilized in this function. If, in fact, and no evidence confirms this, Level 5 people were utilized in exactly the same function as was grievant, such, per se, would not establish this work as Level 5 but would, patently, be use of higher level people in a lower level function. (Emphasis added.) (MH Ex. 73, p. 20.)

That considerations of economy and efficiency require USPS to avoid, as it did in the above-cited cases, employing level 5 employees, or providing level 5 compensation, for the performance of level 4 work, is indisputable. However, where, as in the instant cases, the level 5 employees are overqualified to perform the mental skills required in the disputed positions and are underqualified for the physical requirements of the jobs in question, the assignments to such employees become more inefficient and uneconomic than if they were at least appropriately qualified to perform the lower-level work.^{20/}

The criteria of "efficiency and economy" are usually given substantial weight in a work assignment dispute. However, in its unique position as a creature of Congress, USPS has been mandated by statute to operate on a sound economic basis and to maintain "an efficient system of ... sorting ... of the mail nationwide" (Section 403(B)(1), Postal Reorganization Act; MH Ex. 2, p. 5; I, 71-8). In the instant cases, by making improper assignments of

20. As put by Dr. Block:

[T]he whole idea of putting a mail handler on there is because here is a fellow who has passed the strength and stamina test, and he has acquired sufficient on-the-job knowledge to do the distribution work, as well as to do the physical work. It just wouldn't make any sense to put a distribution clerk on the job and expect any efficiency, any real action for any prolonged time out that person (VI, 200.)

work to higher-paid and less-qualified clerks, rather than to mail handlers, USPS has defaulted on its statutory obligation to operate economically and efficiently.

2. Equal Pay for Equal Work

A significant public policy consideration which independently necessitates that the disputed parcel sorting positions herein be awarded to the Mail Handlers is the congressionally imposed requirement that USPS abide by the principle of "equal pay for equal work."

In enacting the Postal Reorganization Act, Congress provided as follows in Section 5(f):

Provisions of title 39, United States Code, in effect immediately prior to the effective date of this section, but not reenacted by this Act shall remain in force as rules or regulations of the Postal Service established by this Act to the extent the Postal Service is authorized to adopt such provisions as rules or regulations, until they are revoked, amended, or revised by the Postal Service. . (MH Ex. 2, p. 57.)

One of the predecessor provisions of Title 39 not re-enacted by the Postal Reorganization Act was § 3501(b), which had been part of Public Law 68 enacted in 1955. It provided:

In ranking positions, the Postmaster General shall apply the principle of equal pay for substantially equal work and give effect to substantial differences in difficulty of the work to be performed, in the degree of responsibility to be exercised, in the scope and variety of tasks involved, and in the conditions of performance. (MH Ex. 64, p. 2.)

Far from revoking, amending, or revising the "equal pay" principle of § 3501(b), USPS has continued to promulgate and pay lip service to it.^{21/}

Hence, Postal Manual § 451 declares in pertinent part as follows:

21. USPS, like any other federal agency, is, of course, bound by its own regulations vis-a-vis its employees. Service v. Dulles, 354 U.S. 363 (1964).

451.1 BASIC PRINCIPLE

Equal pay shall be given for substantially equal work. Differences in pay shall be based on:

- a. Substantial differences in the difficulty of the work performed.
- b. The degree of responsibility to be exercised.
- c. The scope and variety of tasks involved.
- d. The conditions of performance.

451.2 POLICY

Each position will be assigned to an appropriate salary level in the Postal Field Service schedule by:

- a. Comparing the duties, responsibilities and work requirements of the position with those of the key positions in chapter B, Handbook P-1.
- b. Ranking the position in relation to the key position most closely comparable in terms of level of duties, responsibilities and work requirements.

Standard positions, individual positions and ranking criteria will be used along with key positions to facilitate appropriate salary level determinations.

Yet, in awarding the parcel sorting work herein to clerks, the Mail Handlers submit that USPS has done substantial violence to its own congressionally imposed equal pay regulations.

The origins of the concept of equal pay for equal work can be traced at least to the decisions of the War Labor Board. More recently, the concept was adopted in the Equal Pay Act of 1963, 29 U.S.C. § 206(d)(1), which prohibits sex discrimination in pay.^{22/} Although limited to sex discrimination, the principles which have

22. Section 206(d)(1) provides as follows:

No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

been established and developed under the 1963 Act were borrowed from the War Labor Board^{23/} and prior industrial relations experience and are equally applicable herein.

The components of an Equal Pay Act offense are: (1) that the employer is paying male and female employees differing wage rates; and (2) that the two groups are performing jobs entailing "equal work" in the sense that the duties are performed under similar working conditions and require equal skill, effort and responsibility.

Applying these principles, as adopted in Postal Manual § 451.1, to the mail handlers and clerks engaged in the simple, non-scheme distribution of parcels, the first element is satisfied herein in that the former are compensated at level 4 and the latter are paid at level 5 for doing the work.

The second element is confirmed by the facts established in the record, particularly the nationwide survey of simple, non-scheme distribution of parcels, which demonstrates that the identical work is performed by distribution clerks and mail handlers, often side by side (MH Exs. 87 and 88). Such evidence discloses beyond any question that under the applicable standards, "equal work," namely, the simple, non-scheme separation of parcels, is being performed around the nation by clerks and mail handlers for "unequal pay." Hence, USPS is doing violence to its own principle of "equal pay for equal work" insofar as non-scheme separation of parcels is concerned.^{24/}

23. The Legislative History of the Equal Pay Act of 1963 expressly refers to the principles established by the War Labor Board as a source of guidance in the proper application of equal pay policy. Hodgson v. Behrens Drug Co., 475 F.2d 1041, 1049 (5th Cir. 1973).
24. Under the Equal Pay Act the jobs being compared need not be totally identical. Hence, insubstantial differences in skill, effort and responsibility required between two jobs will not justify unequal wages. Brennan v. Cain Sloan Co., 21 Wage & Hour Cas. 955 (6th Cir. 1974); Hodgson v. Brookhaven General Hospital, 436 F.2d 719 (5th Cir. 1970); Wirtz v. Basic Inc., 256 F.Supp. 786 (D.Nev. 1966). Nor is disparate pay to one group of employees permitted under the Act merely on the ground that its members have the ability to perform additional duties over and above their basic work if they are not actually utilized to perform such additional duties. Schultz v. Wheaton Glass, 421 F.2d 259 (3d Cir. 1970), cert. denied, 398 U.S. 905 (1970). Hence, higher pay cannot be justified to distribution clerks performing non-scheme distribution merely because they possess unused scheme knowledge.

And since such non-scheme work has traditionally been rated at level 4 by USPS, the appropriate remedy for the "equal pay" violation herein is to insure that hereafter such work is performed by mail handlers and not by distribution clerks.

3. Racial Equity

Among the many Congressional mandates imposed upon USPS under the Postal Reorganization Act is the requirement in § 1003(b) that it

... follow an employment policy designed, without compromising the policy of section 101(a) of this title, to extend opportunity to the disadvantaged (MH Ex. 2, p. 13.)

Since § 101(a) declares that USPS must "provide prompt, reliable, and efficient services to patrons ..." (MH Ex. 2, p. 1), § 1003(b) must be taken to suggest that the USPS obligation to "extend [employment] opportunity to the disadvantaged ..." may not be permitted to compromise its public service obligations. In the instant case, however, its decision to award the jobs in question to clerks has been at the expense of both efficiency and the disadvantaged! On the other hand, a reversal of the USPS decisions herein would serve to advance both of these congressionally mandated objectives.

Although USPS does not maintain data on employee racial composition by craft,^{25/} available information indicates that the mail handler craft contains at least twice the percentage of minority employees than the clerk craft. In 1972 and 1974, respectively, level 4 consisted of 46% and 49% minority employees, while level 5 was 22% and 24% minority (MH Exs. 29, 30).

Since clerical employees, who are predominantly employed at level 5, total 266,705 (MH Ex. 5), as compared to a total of 437,226

25. Mail Handlers requested such data from USPS in connection with this case, but was advised that such did not exist. Mail Handlers believes that USPS is legally obligated to maintain such data in light of the separate seniority lines which exist between the crafts (MH Ex. 28).

employees in level 5 (MH Ex. 30), it is not unreasonable to attribute the level 5 data to the clerk craft. For mail handlers the figures are 42,327 craft members (MH Ex. 5), compared with 51,400 level 4 employees (MH Ex. 30). Hence, it is reasonable to assume that the clerk craft consists of almost one-fourth minority members while mail handlers are nearly one-half minority.^{26/}

Additionally, two of the three work sites involved demonstrated an imbalance in minority group composition by craft.

In Seattle, Vern Dyer's estimate agreed with the nationwide ratio. Approximately 40% of the mail handler craft is minority, while only 20% of clerical craft employees is (IV, 90). The AMF-SF imbalance is even more striking: 80-85% of the mail handlers are non-white, while only 20% of the clerks are non-white (II, 346, 348).

The racial discrimination occasioned by the USPS decisions herein is manifest. Both non-scheme distribution of parcels and operation of the sack-sorting machinery were taken from members of the substantially minority craft whose members are acknowledged by USPS to be qualified to perform the work and were given to members of the predominantly white craft whose scheme training over-qualifies them for the work, and whose lack of proven physical ability disqualifies them.

Moreover, to add insult to injury, in San Francisco and Oakland, mail handlers had previously performed both jobs under more adverse working conditions. At AMF-SF the work was performed out-of-doors by mail handlers prior to the installation of the sack-sorting machine. The same discriminatory pattern exists in Oakland where mail handlers worked at the top of the more arduous "green monster" (II, 284-5), but clerks secured the work at the multislide.

26. The Mail Handlers own estimate is that its craft is 50% black and 10% Spanish surname.

If the assignments awarded are permitted to stand, discrimination and exploitation of vast numbers of minority postal employees will unquestionably accelerate since USPS and APWU will be given the "green light" to continue the process of "cannibalizing" (MH Ex. 1), the mail handler bargaining unit by assigning mail handler work to unqualified excess level 5 clerks, just as has already occurred as a result of the Sullivan decisions. In fact, this case must serve as a vehicle through which this predatory process is reversed so that the promise of the Postal Reorganization Act of providing employment opportunities for the disadvantaged may be fulfilled and not frustrated.^{27/}

4. Safety and Health

Mail handlers must be assigned the disputed positions in the interest of employee safety and health.^{28/} The handling of sacks and parcels is obviously heavy work involving substantial lifting and other physical effort. In this connection, mail handlers, but not clerks, must qualify for their positions by passing a "Test of Strength and Stamina." Applicants for mail handler positions are given the following description of the test:

You will be required to pass a test of strength and stamina. In this test you will be required to lift, shoulder, and carry two 70-pound-sacks -- one at a time -- 15 feet and lead them onto a hand truck. You will be required to push that truck to where there are some 40-, 50-, and 60-pound sacks. You will be required to load those sacks onto the truck. You will then have to unload the truck and return the truck to its original location. (MH Ex. 92.)

27. Additional claims of racial discrimination arising out of Article II of the National Agreement and Title VII of the Civil Rights Act of 1964, as amended (MH Ex. 28), are considered infra at p. 59. They are incorporated herein by reference.

28. Article XIV, Section 1, of the National Agreement provides:

Responsibilities. It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Unions will cooperate with and assist management to live up to this responsibility. (Emphasis in original.) (MH Ex. 11, p. 23.)

In its "Information to Personnel Officers," USPS acknowledges the safety factor involved in such work:

Since this test is one in which the competitor can injure himself, it is extremely important that he be shown the correct way to lift, etc., and that he be observed carefully in order to be sure that he is working safely. It is important that proper safety precautions be taken so that there will be no basis for a claim of negligence. It is recommended that the safety officer or some other safety-conscious individual either administer or assist in administering the test of strength and stamina. (MH E.: 92.)

Since the test does not involve activity more strenuous than that actually performed in the work involved herein, it is obvious that the same safety concerns should attach to the performance of the jobs themselves. However, if clerks, who have not taken the strength and stamina test, are permitted to lift parcels and sacks, it must be expected that a substantial percentage of them will be injured because the safety precaution of testing was not imposed so as to screen out those physically unqualified for lifting.^{29/}

Hence, safety considerations impel that those employees who have qualified for the work in question be allowed to do it rather than those who have not. To rule otherwise would be compromising the safety of unqualified employees who are presently being assigned the work.

5. Employee Morale

Another factor supporting assignment of the instant positions to mail handlers is employee morale. In the past, newly hired clerks have been assigned to heavy, non-scheme mail processing work typically associated with mail handlers. Such clerks have been understandably displeased with being assigned to heavy loading and unloading after accepting employment as distribution clerks (VI, 205 -6). For example, APWU witness Morgan felt impelled to make

29. For example, APWU witness John Morgan testified that while doing heavy work as a substitute clerk in Minneapolis, he injured his back and was thereafter required to wear a brace (VIII, 443).

an obscene gesture when he considered the time he spent working as a substitute clerk doing heavy work side by side with mail handlers (VII, 448-9).

The confusion and distress of clerks when assigned to heavy mail handler work was noted by Dr. Block with regard to his recommendation, made while employed as a high official of USPS, that more mail handlers be employed by USPS:

Q. (By Mr. Jordan) Wasn't that [that mail handlers were less costly labor] one of the factors?

A. (By Dr. Block) That was one of the factors, but I also thought in terms of the personal satisfaction and motivation a man gets out of doing his job. If he is hired as a clerk, he expects to do clerk work. And I, from my observations, there were many fellows who were hired as clerks and women hired as clerks, and they were really doing mail handler work.

So it is a question of personal motivation and job satisfaction.

Q. Rather than just doing physical work, some other kind proves more self-satisfying. Is that the idea?

A. We were kidding ourselves and we were misrepresenting the job to the employees.

Q. I'm sorry. I don't understand.

A. I say, in effect, we were misrepresenting the job to the employees.

Q. Which job?

A. Clerk job.
(VI, 284.)

Mail Handlers' expert witness Garren referred not merely to the disgruntled state of distribution clerks forced to do work beneath their scheme training, but also to the substantial motivation of mail handlers toward the performance of work involving more than mere brawn (MH Ex. 89, p. 19).

In addition, the demoralizing impact upon mail handlers of being required to work side by side with clerks while receiving lesser compensation for performing the identical work needs no explication.

Under § 101(c) of the Postal Reorganization Act, the Postal Service is required to "place particular emphasis upon opportunities for career advancements of all officers and employees and the achievement of worthwhile and satisfying careers in the service of the United States" (emphasis added) (MH Ex. 2, p. 1). For the foregoing reasons, in the instant case advancing the cause of "employee morale" and "worthwhile and satisfying careers" requires a reversal of the USPS assignments herein.

From all of the foregoing, the Mail Handlers believe that its burden of proof under the July 3, 1973 stipulation has been met and that the arbitrator is required to reverse the USPS decisions herein and award the disputed positions to mail handlers.

C. The Failure Of USPS To Assign Mail Handlers To The Disputed Work Violates Article II Of The National Agreement And Title VII Of The Civil Rights Act Of 1964, As Amended.

Article II of the National Agreement entitled, "Non-Discrimination and Civil Rights" declares in part as follows:

Section 1. The Employer and the Unions agree that there shall be no discrimination by the Employer or the Unions against employees because of race, color, creed, religion, national origin, sex, age or marital status or because of a physical handicap with respect to a position the duties of which can be performed efficiently by an individual with such a physical handicap without danger to the health or safety of the physically handicapped person or to others.
(MH Ex. 11, p. 3.)

In addition, Public Law 92-261, enacted in 1972, which amended Title VII of the Civil Rights Act of 1964 to extend coverage to the federal government, provides that USPS employees "shall be made free from any discrimination based on race, color, religion, sex or national origin" (MH Ex. 28).^{30/}

30. Under Section 717 of the Act, USPS is required to submit a plan to the Civil Service Commission which must include "provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential" (emphasis added) (MH Ex. 28).

Although USPS has previously been subject to constitutional, regulatory and contractual prohibitions upon racial discrimination,^{31/} the 1972 Act brought USPS more squarely within the body of law previously developed in the private sector under Title VII.

This body of law includes the prohibitions upon discriminatory employment practices arising out of invidious testing policies enunciated by the Supreme Court in Griggs v. Duke Power, 401 U.S. 424 (1971) (MH Ex. 28A).

In Griggs, the Court held that to avoid racial discrimination in employment, job testing practices must be job-related, and that the imposition of testing requirements that exceed the requirements of the position for which the test is being given runs afoul of Title VII. In so holding, the Court declared as follows:

The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices.

* * * * *

Congress has now provided that tests or criteria for employment or promotion may not provide equality of opportunity merely in the sense of the fabled offer of milk to the stork and the fox. On the contrary, Congress has now required that the posture and condition of the job-seeker be taken into account. It has -- to resort again to the fable -- provided that the vessel in which the milk is proffered be one all seekers can use. The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

31. Section 717(e) of the 1972 Act declares:

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government. (MH Ex. 28.)

* * * * *

Nothing in the Act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualification as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that tests used must measure the person for the job and not the person in the abstract. (MH Ex. 28A.)

In 1970, prior to Griggs, because Equal Employment Opportunity Commission compliance activities had revealed "a marked increase in doubtful testing practices which ... [tended] to have discriminatory effects," EEOC issued Guidelines on Employee Selection Procedures (29 C.F.R. § 1607), "to serve as a workable set of standards for employers, unions, and employment agencies in determining whether their selection procedures conform with the obligations contained in Title VII" (29 C.F.R. § 1607.1).^{32/} The Guidelines initially define testing discrimination as "the use of any test which adversely affects hiring, promotion, transfer, or any other employment ... opportunity classes protected by Title VII ..." (29 C.F.R. § 1607.3). The Guidelines recognize that a test may be used to "adversely affect" employment opportunities in two ways. First, the test may not be "valid" (29 C.F.R. § 1607.3). "Validity" denotes that the test is "predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated" (29 C.F.R. § 1607.4). Secondly, irrespective of whether a test is "valid," or in fact measures skills necessary for job performance,

32. The Supreme Court declared in Griggs that the EEOC Guidelines on testing "are entitled to great deference" by the judiciary, supra, at 165. Since Griggs, the Guidelines have become an important source of authority for the courts in dealing with the testing area. United States v. Georgia Power Co., 474 F.2d 906, 913 (5th Cir. 1973).

a testing device "adversely affects" a protected group if the employer unfairly administers or applies the test. As stated in § 1607.11 of the Guidelines:

The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard - even though validated against job performance in accordance with the guidelines in this part - cannot be imposed upon any individual or class protected by Title VII where other employees or applicants ... have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, [or] transfer ... opportunities as have been made available to other employees or applicants"

An illustration of such disparate treatment is provided by U. S. v. Lee Way Motor Freight, Inc., 7 F.E.P. 710 (W.D. Okla. 1973). Lee Way, a commercial freight transporter, required over-the-road drivers to meet a minimum traffic conviction standard. However, it hired many whites who did not meet this standard, while consistently applying the standard to black job applicants. Id. at 716. Lee Way applied weight and height requirements to blacks but not to whites. Id. at 717. It required road drivers to have five years prior diesel tractor experience but waived this requirement for whites while applying it to blacks. Id. It required all road drivers to pass a road test, but whites, who were unable to perform gear shifting patterns, were hired over blacks who succeeded in gear shifting. Id. at 738. On these facts, the court concluded that Lee Way violated Title VII by "administering the practical road test and physical stature requirements in a racially discriminatory manner," and that blacks "have not been considered and hired on the same basis that whites have been considered and hired." Id. at 746. Citing U. S. v. Jacksonville Terminal Co., 451 F.2d 418 (5th Cir. 1971), the court in Lee Way declared:

It is a violation of Title VII to impose more stringent requirements, such as the company's minimum traffic conviction standard and minimum height and maximum weight requirement on blacks aspiring to road driver jobs than were imposed on white persons who were hired, assigned, or transferred to those jobs. Id. at 747.

The Mail Handlers submit that Lee Way establishes several principles which are directly in point herein. Like Lee Way, USPS subjects non-whites to a more stringent and job-related entrance requirement than it does whites who apply for the same jobs. Hence, mail handlers, who desire to perform non-scheme distribution of parcels, must pass a test of strength and stamina to qualify for the work, while clerks are assigned the work without passing such a test. Moreover, as in Lee Way, while predominantly non-white mail handlers take and pass the job-related tests, the whites who do not, get the jobs, as the Sullivan decisions demonstrate. And, correspondingly, if the Sullivan decisions are allowed to stand, non-white mail handlers will have to give up their mail handler craft seniority and pass the non-job-related Clerk-Carrier examination in order to become a substitute clerk who would not become entitled to bid until he made regular.^{33/}

The Mail Handlers submit that the foregoing demonstrates that if the Sullivan decisions are upheld, an overt and virulent form of racial discrimination in employment will be permitted to continue within USPS. Accordingly, for this reason, if for no other, the Sullivan decisions must be reversed.

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33. That the mail handlers craft is much more highly non-white in composition than the clerks has been demonstrated supra at pp. 54-5. And because racial discrimination is generally recognized as discrimination against a class, the courts in Title VII cases, have given great weight to statistical evidence of disproportionate concentration of blacks in lower-level, lower-paying jobs. U. S. v. N. L. Industries, 5 F.E.P. 823,835 (8th Cir. 1973); see also, Leisner v. N.Y. Telephone Co., 5 F.E.P. 739 (S.D.N.Y. 1973); U.S. v. Central Motor Line, Inc., 4 F.E.P. 216, 237 (W.D.N.C. 1971).

In the instant case, USPS has not provided Mail Handlers with requested statistics regarding the racial composition of the two crafts. See footnote 25, p. 54 supra. Hence, if USPS should protest the imprecision of our statistics, it becomes subject to the ancient apothegm quoted by Judge Lay, concurring in Green v. McDonnell Douglas Corp., 463 F.2d 337, 344-5 (8th Cir. 1972): "They tie our hands and then reproach us that we do not use them."

D. Article I, Section 1 Does Not Grant APWU Jurisdiction Over The Disputed Work.

At the hearing it was suggested by both APWU and USPS that "Article I, Section 1 of the National Agreement^{34/} gives to each of the designated Unions the full scope of the job duties performed by the particular crafts ..." (I, 49).^{35/}

Apparently, APWU and USPS take the position that the bare recognition clause in the National Agreement effects a permanent exclusive assignment of duties listed in the various job descriptions worked by bargaining unit members to the union representing the unit. However, this proposition has been uniformly rejected by the courts, the National Labor Relations Board and arbitrators.^{36/}

34. Article I, § 1 provides as follows:

Unions. The Employer recognizes each of the Unions designated below as the exclusive bargaining representative of all employees in the bargaining unit for which each has been certified and recognized at the national level:

National Association of Letter Carriers, AFL-CIO
-- City Letter Carriers.

American Postal Workers Union, AFL-CIO -- Maintenance Employees.

American Postal Workers Union, AFL-CIO -- Special Delivery Messengers.

American Postal Workers Union, AFL-CIO -- Motor Vehicle Employees.

American Postal Workers Union, AFL-CIO -- Postal Clerks.

National Rural Letter Carriers Association -- Rural Letter Carriers.

National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO - Mail Handlers.
(MH Ex. 11, p. 1.)

35. As formulated by APWU: "The standard that we're applying in this case is the standard set forth in Article I, Section 1, which is a recognition standard" (I, 15).
36. Even if this proposition were correct, Mail Handlers believe that the jobs involved herein should be awarded to Mail Handlers since the work involved is within the mail handler job descriptions. (See pp. 41-44, supra.)

Hence, in Carey v. Westinghouse, 375 U.S. 261 (1964), the Supreme Court quoted with approval the Traditional National Labor Relations Board distinction between recognition and jurisdiction:

. . . a Board certification in a representation proceeding is not a jurisdictional award; it is merely a determination that a majority in the employees in an appropriate unit have selected a particular labor organization as their representative for purposes of collective bargaining. It is true that such certification presupposes a determination that the group of employees involved constitute an appropriate unit for collective bargaining purposes, and that in making such determination the Board considers the general nature of the duties and work tasks of such employees. However, unlike a jurisdictional award, this determination by the Board does not freeze the duties or work tasks of the employees in the unit found appropriate. Thus, the Board's unit finding does not per se preclude the employer from adding to or subtracting from, the employees' work assignments. While that finding may be determined by, it does not determine, job content; nor does it signify approval, in any respect, of any work task claims which the certified union may have made before this Board or elsewhere. (Emphasis added.) Plumbing Contractors Assn., 93 NLRB 1081, 1087; 357 U.S. 261, 269

The proposition that a NLRB certification does not award exclusive jurisdiction over particular work, cf. H. K. Porter Co. v. NLRB, 397 U.S. 99 (1966), is paralleled in the well-established doctrine that a recognition clause in a collective bargaining agreement does not award any jurisdictional rights. Indeed, USPS took this position recently with respect to Article I, § 1, in its brief to the arbitrator in the Mechanical Markup case, which involved both the APWU and the National Association of Letter Carriers.^{37/} (See the relevant cases and argument in the USPS Brief, MH Ex. 80, pp. 9-13, which are incorporated herein by reference.)

37. Under this circumstance, the Mail Handlers believe that the USPS contention advanced herein regarding Article I, § 1, is deserving of no consideration whatsoever, except to demonstrate the desperation of the USPS case!

Moreover, the arbitration decisions on this point are legion. See, e.g., Olin Mathieson, 42 Lab. Arb. 1025, 1031 (1969); National Lock Co., 6 Lab. Arb. 826 (1947); North American Aviation, Inc., 17 Lab. Arb. 692 (1951); Columbus Bolt & Forging Co., 35 Lab. Arb. 397 (1960); American Sugar Refining, 37 Lab. Arb. 335 (1961); Joy Manufacturing Co., 48 Lab. Arb. 563 (1967); Rockwell Standard Corp., 43 Lab. Arb. 1065 (1967); Olin Mathieson Chemical Corp., 43 Lab. Arb. 1064 (1964); Worthington Corp., 46 Lab. Arb. 1065 (1966); In Re Metals Co., 55 Lab. Arb. 348 (1970); Sinclair Refining Co., 38 Lab. Arb. 719 (1962); Celotex Corp., 40 Lab. Arb. 554 (1963).

As put by Professor Gray in Hearst Consolidated Publications, Inc., 26 Lab. Arb. 723, 725 (1956):

In my view the purpose of the recognition clause is not more than to enunciate the legal status of the bargaining union. It describes the unit of the employees for whom the union treats and thus delineates the operative scope of the agreement itself. It serves no substantive function. That is, it does not deal with and has no bearing upon the terms and conditions governing the employment itself. These constitute the subject matter of the body of the agreement which follows the introductory words of the preamble. To read substantive provisions into the recognition clause through arbitration decisions is, in my judgment to use arbitration as a means for expanding the agreement which the parties have made rather than just interpreting and applying its provisions in specific situations.

Moreover, even if a recognition clause could under some circumstances be held to grant jurisdiction over specific work, in this case APWU has waived such a claim.

As has been indicated supra, during the course of the tripartite arbitration in mid-1973, over USPS' award of the mechanical markup clerk position to APWU, APWU heard USPS advance the proposition against the National Association of Letter Carriers that Article I, § 1, did not protect jurisdiction. Moreover, there had previously been prominent publication in the Postal Bulletin of the clarifying jurisdictional addendum entered into by Mail Handlers and USPS in late 1972 (MH Ex. 10). These lessons were not entirely

lost on APWU. Hence, in its 1973 craft negotiations it too sought to obtain a comprehensive jurisdiction clause. The APWU proposal laid specific claim, inter alia, to both the parcel and sack-sorting work at issue in the present case:

Clerks shall also perform all scheme, zip code, alphabetical, numerical, geographical or other separation and distribution of air mail, first class, second class, third class, parcel post, special rate and all other classifications of mail matter by manual, mechanical or electronics [sic] methods. (MH Ex. 15.)

However, APWU concluded its negotiations with USPS in 1973 without obtaining any jurisdictional grant (MH Ex. 11).

It is a well-established canon of labor contract construction that when a party attempts but fails to secure specific contract language governing jurisdiction, it waives its claim to control over the work included in the rejected contract proposal.

For example, in General Drivers, Local 968 (Farnsworth & Chambers), 115 NLRB 617 (1956), a § 10(k) jurisdictional dispute proceeding, a Teamster claim to "material checker" work was based upon a general jurisdiction clause appearing in the applicable contract. In concluding that the Teamsters were not entitled to the disputed work, the Board declared as follows:

We find nothing in these contract provisions which has the effect of exclusively assigning to employees represented by the Teamsters the duty of signing for materials. In fact, these provisions do not mention the duty of signing for materials as being among the material checkers' duties. Accordingly, it is clear that the contract on its face makes no exclusive assignment of the disputed work to employees represented by the Teamsters. Further, uncontradicted evidence introduced by the Company shows that during 1954 contract negotiations the Teamsters had proposed contractual assignment of the disputed work, that the AGC negotiators had refused to agree to this proposal, and that the proposal had been withdrawn by the Teamsters. Apparently the Teamsters did not reiterate its demand during the 1955 negotiations resulting in the current contract which is unchanged with respect to the matters at issue here, as compared to the 1954 agreement. (115 NLRB at 621.)

Similarly, in Schlitz Brewing Co., 51 Lab. Arb. 41 (1968), the arbitrator declared as follows with respect to the Machinists'

claim that it, rather than the Operating Engineers was entitled to the disputed work:

Obviously the language here made specific reference to maintenance on the equipment operated by the operating engineers. This language which dealt specifically with work jurisdiction now in dispute was not adopted at the 1964 negotiations. It would appear to the arbitrator that this is evidence that the machinists are now attempting to secure through arbitration a work jurisdiction that they could not secure in bargaining. (51 Lab. Arb. at 45.)

As put by the arbitrator in Falstaff Brewing Corp., 52 Lab. Arb. 473 (1969):

If a party attempts but fails, in contract negotiations, to include a specific provision in the Agreement, an arbitrator is not empowered or authorized to read such provision into the Agreement through the process of interpretation. (52 Lab. Arb. at 476.)

Thus, it is clear that even if a recognition clause might on some occasion support a claim of jurisdictional protection, in the instant case, APWU waived the right to advance such a claim. Its attempt in 1973 to secure a fully developed definition of its jurisdiction was a frank admission of the absence in Article I of any jurisdictional bite. APWU's failure to reach agreement on jurisdiction in the face of its knowledge of the extensive reach of 43-12 was thus a knowing waiver of its claim over the work in dispute herein.

E. The Sullivan Decisions Are Erroneous
And Without Foundation.

The Sullivan decisions can only be characterized as a confused hodgepodge of spurious and unsupportable suppositions, irrelevancies and contradictions. Indeed, they are so removed from the point that they fail to mention the National Agreement or 43-12.

1. As to AMF-SF, Sullivan awarded the work to APWU on the grounds that (1) "[p]ouches are distinguished from sacks and are processed and dispatched by clerks . . .," and that "95 percent of the mail being processed is air and preferential mail in pouches . . .;" (2) the job requires "keying;" and (3) it involves the

"actual processing of mail" and is not "an incidental duty to processing" or "the movement of 'processed mail" (SF-JT-12).

As to the USPS claim regarding pouches, the fact is that the handling of pouches has never been restricted to clerks. Mail Handlers have traditionally loaded and unloaded pouches and sacks on trucks. After mailbags are taken off trucks, they are separated by mail handlers according to classes of mail in a bullpen operation; or if a sack-sorter machine is in use, there is a special runout for pouches, which usually ends on a sawtooth platform. Mail handlers man approximately 75% of such sawtooths with a mail handler technician in charge. The sawtooth operation is responsible for breaking down pouches for either dispatch or further working within the facility (MH Ex. 89, pp. 9-11). Indeed, the job description of the level 5 mail handler technician declares that he "performs the sorting of pouches ... [a]t a centralized pouching point or opening unit or routing point (in the largest post offices)" (MH Ex. 13H).^{38/}

Sullivan's claim that mail handlers are precluded from "keying" entirely ignores that in 1968 USPS awarded both the level 4 and level 5 sack-sorter positions to the Mail Handlers (MH Exs. 41-3), and that both of these jobs require "keying." Both are, of course, expressly included with the provisions of 43-12.

Finally, Sullivan's claim that mail handlers are precluded from mail processing work is also totally fallacious.

The processing of first-class mail, for example, consists of the following five sub-functions: (1) culling, (2) facing,

38. Paragraph (B) of KP-8 similarly declares that the level 4 mail handler's duties include the following:

Places empty sacks or pouches on racks, labels them where labels are prearranged or racks are plainly marked, dumps mail from sacks, cuts ties, faces letter mail, carries mail to distributors for processing, places processed mail into sacks, removes filled sacks and pouches from racks, closes and locks same. Picks up sacks, pouches, and outside pieces, separates outgoing bulk mails for dispatch and loads mail onto trucks. (Emphasis added.) (MH Ex. 13A.)

edging and stacking, (3) cancelling, (4) sorting, (5) bundling, tying, sacking and pouching.^{39/} The first three of these sub-functions, as well as the last, are, and have traditionally been, mail handler duties. Sorting, which is the fourth sub-function, also involves a significant number of mail handler duties including the loading and sweeping of manual distribution cases (MH Exs. 13A and 89, p. 2).

2. The Sullivan decision regarding Seattle rests upon the proposition that the work "entails more than occasional distribution" of parcels, and that "this work is encompassed under the basic duties and responsibilities of the Distribution Clerk - Level 5 ..." (WA-JT-31). This contention is fully refuted elsewhere herein. See especially pages 24-28, supra.

3. With regard to Oakland, Sullivan concluded that the job required "a knowledge of 238 scheme items ...," so that it was "definitely a clerical craft assignment" (OAK-JT-23). This argument is disposed of at pages 10-14, supra.

The foregoing analysis serves to strip the Sullivan decisions entirely bare, disclosing the absence of a single redeeming feature which might render any one of them sustainable.

CONCLUSION

In the instant case, USPS concluded agreements with the Mail Handlers which were designed to protect traditional mail handler jobs from incursions by the clerk craft, which, because of changes in USPS operations, has experienced a serious diminution in recent

39. The Glossary of Postal Terms (MH Ex. 1) provides the following definitions:

Processing: consists of preparing the mail by canceling and sorting so that it can be sent from a post office. All subfunctions performed to accommodate these two basic steps, including in-office-movement, are considered a part of the processing activity.

Sub-Function: one of the main subdivisions of processing; namely, culling, edging and stacking, facing and canceling, sorting, tying, pouching, bundling, and sacking.

years of its traditional scheme distribution work. Thereafter, USPS, acting through its local, regional and national offices, implemented such agreements and awarded the jobs herein to Mail Handlers. Subsequently, the work involved was performed by mail handlers to the satisfaction of USPS.

As the result of USPS' excessing clerks from the three positions originally awarded to Mail Handlers, APWU grievances were filed alleging that the excessing of such clerks violated APWU rights arising under the National Agreement.^{40/}

In a Step 4 proceeding to consider the APWU grievances, in which Mail Handlers, APWU and USPS participated, USPS reversed each of the three assignments to mail handlers and reassigned the work to clerks. However, in the ensuing arbitration hearing instituted by the Mail Handlers, which lasted some seven days, the entire USPS case consisted of a few photographs of the jobs in question, no testimonial or other documentary evidence, and argument by counsel which was totally unsupported by record evidence. Neither Sullivan, who rendered the USPS decisions herein, Del Grosso, a USPS Operations official who was present during the entire hearing, nor any other USPS official involved in the instant cases, testified in support of the USPS decisions, although four hearing days were spent at the worksites and three at USPS headquarters in Washington. Instead, on at least two occasions during the hearing, USPS hoisted the "white flag" and announced itself "neutral" (I, 21, 26; VIII, 497). Indeed, USPS was characterized by its counsel as an "innocent bystander in this jurisdictional dispute between the two unions" (VIII, 497).

From the foregoing, the suggestion becomes strong that the Step 4 decisions rendered herein by Sullivan were more political than juridical. Indeed, the historic dominance of clerks in USPS

40. The APWU grievances in the instant cases made reference to Article V (SF-JT-10); Article I, § 5 (OAK-JT-17); and the "job description of Clerk KP-12" (WA-JT-21).

congressional and management affairs is well known (VI, 241-2).^{41/} Numerically, clerks are presently the largest craft in USPS, numbering approximately 266,705 (MH Ex. 5). And APWU represents approximately 319,000 postal workers, if the sister crafts within APWU are included (MH Exs. 5 and 11, p. 1). In contrast, the Mail Handlers presently represent approximately 42,327 postal employees (MH Ex. 5).

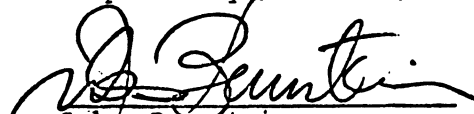
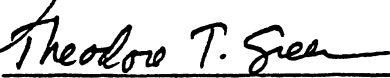
It is understandable that APWU would seek to protect its members from a decline of employment opportunities caused by changes in postal operations.^{42/} However, doing so in this case has and will continue to result in a serious dislocation of, and discrimination against, the mail handlers craft, which, with its high minority composition, has long been the victim of discrimination,^{43/} both in the community and in the workplace.^{44/} In addition, it is serving to undermine important congressionally imposed, national and postal policies and objectives (supra, at 47-59). Accordingly, the Mail Handlers submit that the proper mode of disposition of this case, as well as the literally hundreds of Mail Handler and APWU grievances involving jurisdiction which are lined up behind it would be to require prompt and full implementation of 43-12 under

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41. For example, in 1956 the Senate Post Office Advisory Committee was chaired by Mr. Hallbeck, a revered leader of the Clerks Union, and consisted of other union leaders. However, no mail handler representative served on the Committee (MH Ex. 64). Similarly, no mail handler has ever been appointed to the Postal Advisory Committee established under the Postal Reorganization Act (MH Ex. 2, § 206, p. 4), although four union positions were created by Congress. APWU representatives now hold three of the four positions on the Committee (V, 28-9).
 42. For example, legislation was enacted in 1950 to protect railway post office clerks who were adversely affected by the decline of rail service (MH Ex. 60, p. 47; VI, 181).
 43. Unlike APWU, which chose at the hearing to characterize the Mail Handlers as "scabs" engaged in "industrial aggression" (I, 18), the Mail Handlers have not described APWU's efforts in this case with epithets which might portray APWU's activities herein in a less charitable light.
 44. For example, until recently, a mail handler could not take the Supervisor's examination unless he had first passed the Clerk-Carrier exam (VI, 239). The reverse was never the case.

the arbitrator's supervision and the attendant reassignment of any
excessed clerks under the provisions of Article XII of the National
Agreement.^{45/}

The instant case demonstrates that if ever there was a
patient in dire need of the "therapy of arbitration," Carey v.
Westinghouse, 375 U.S. 261, 272 (1964), it is USPS. It remains
for the arbitrator to write the necessary prescription.

Respectfully submitted,


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45. The parties to 43-12 recognized that its implementation might
necessitate the reassignment of non-craft employees. Hence,
they made reference in 43-12(B) to the reassignment principles
of Article XII of the National Agreement. Article XII in turn
refers to Appendix A, Section II of which applies to the reassign-
ment of clerks (MH Ex. 11, p. 138). It contemplates first the
possibility of clerks being excess to the needs of a section
and then to the needs of the installation. Clerks excess to
the needs of a section are "reassigned outside the section
but within the same craft or occupational group" (MH Ex. 11,
p. 142). The excessed clerk retains the right to retreat
back into his section (MH Ex. 11, p. 142).

Where a clerk is excess to the needs of his installation, as
well as his section, other rights are activated. First, all
casuals, postal and seasonal assistants, and public policy
employees must be terminated where feasible (MH Ex. 11, pp.
17-8, 148), and part-time flexible hours must be reduced
(MH Ex. 11, p. 143). If still excess, the clerk is reassigned
to another craft where vacancies exist. If such reassign-
ment is to a job in a lower pay level, the salary protection
plan provided under Article IX, § 6, maintains the higher
salary for a protected employee (MH Ex. 11, p. 11, and Postal
Manual § 733.422(b), MH Ex. 55). A clerk who continues to
be excess may be reassigned to another facility (MH Ex. 11,
pp. 143-4), or may opt to become a part-time flexible at his
home facility (MH Ex. 11, p. 144).

In addition, under the "no-layoff" provision of the
Agreement "no employee employed in the regular work force
will be laid off on an involuntary basis ..." (MH Ex. 11,
p. 5).