

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

Case No. A8-NA-0371

and

NATIONAL POST OFFICE MAIL HANDLERS,
WATCHMEN, MESSENGERS, AND GROUP
LEADERS DIVISION OF THE LABORERS
INTERNATIONAL UNION OF NORTH AMERICA

APPEARANCES: Howard J. Kaufman, Esq., for the Postal Service;
Cafferky, Powers, Jordan & Lewis, by Thomas P.
Powers, Esq., for the Postal Workers; and
Connerton & Bernstein, by James S. Ray, Esq.,
for the Mail Handlers

DECISION

This grievance arose under and is governed by the 1978-1981 National Agreement (JX-1A) between the above-named parties. The grievance was filed by the American Postal Workers Union (hereinafter APWU). The undersigned having been jointly appointed by the Postal Service and the APWU, a hearing was held on 17 June 1980, in Washington, D. C. At the commencement of the hearing, the National Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders Division of the Laborers International Union of North America (hereinafter

Mail Handlers) intervened pursuant to Article XV, Section 4-A-(9) of the National Agreement, which provides in pertinent part as follows:

In any arbitration proceeding in which a Union feels that its interests may be affected, it shall be entitled to intervene and participate in such arbitration proceeding. . . .

The general issue to be resolved is whether the Postal Service, when it engages in the experimental use of new machines, must assign the operation of such machines exclusively to a particular craft. More particularly, the issue is whether the Postal Service violated the National Agreement when it assigned mail handlers, rather than clerk craft employees, to the AEG Telefunken Optical Character Reader (OCR) in an experimental program at its Boston facility.

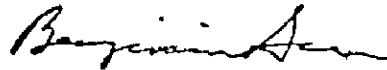
All three parties appeared and presented evidence and argument on the issue. A verbatim transcript was made of the arbitration proceedings. Each party filed a post-hearing brief. Upon receipt of the three briefs, the arbitrator officially closed the record on 5 September 1980.

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

AWARD

The Postal Service did not violate the National Agreement when it assigned mail handlers, rather than members of the clerk craft, to the AEG Telefunken Optical Character Reader in an experimental program at its Boston facility.

The grievance is denied.



Benjamin Aaron
Arbitrator

Los Angeles, California
31 October 1980

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OPINION

I

Article IV of the National Agreement (Technological and Mechanization Changes) provides in Section 1 for advance notice to the various unions party to the Agreement of technological or mechanization changes which affect jobs, specifically, "[w]hen major new mechanization or equipment is to be purchased and installed." Such notice is to be provided "as far in advance of implementation as practicable." Section 2 provides for the establishment at the national level of a joint Labor-Management Technological or Mechanization Changes Committee, charged with the duty of attempting "to resolve any questions as to the impact of the proposed change

upon affected employees." If such questions are not resolved within "a reasonable time after such change or changes are operational," they may be submitted to arbitration by any of the unions involved.

Article I (Recognition), Section 5 (New Positions)
provides in part:

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

1. existing work assignment practices; . . .
5. the integral nature of all duties which comprise a normal duty assignment;
6. the contractual and legal obligations and requirements of the parties.

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

In a Memorandum of Understanding dated 15 September 1978 the parties to the National Agreement provided for the establishment of a standing national level Committee on Jurisdiction, comprised of representatives of each party, to resolve current and jurisdictional disputes.

Nothing in Articles I or IV or the Memorandum of Understanding, however, refers to the assignment of work on experimental machinery.

On 3 August 1979, James C. Gildea, Assistant Postmaster General, Labor Relations Department, addressed a letter (JX-1E) to officials of the three unions party to the National Agreement which read in part:

As a matter of information, the Postal Service intends to undertake the evaluation of additional Optical Character Recognition (OCR) systems in a live mail processing environment. This activity is basically a continuation of our Research and Development effort and, under the present plan, OCR equipment will be obtained under a loan arrangement with various machine manufacturers. Depending upon final equipment availability, the machines will be installed in six separate sites as follows:

<u>Equipment Manufacturer</u>	<u>Tentative Site</u>	<u>Tentative Installation Date</u>
.
AEG Telefunken	Boston, MA	February 1980
.

The testing plan calls for each machine to remain in the installation for approximately 20 weeks with equipment installation and maintenance primarily accomplished by the machine manufacturer. We plan that the equipment will be operated by representatives of the manufacturer for the first 12 weeks of the evaluation period, with more formal testing taking place during the last eight weeks. The equipment will be staffed by Postal Service employees during this eight-week period and we expect to have the machines in operation approximately eight hours a day, five days a week with daily sortation of 200,000 to 250,000 mail pieces.

These OCR systems differ from the type of OCR equipment we have utilized in the past? . . . We anticipate the

need for two or three employees for each machine engaged in feeding and sweeping functions with an additional three or four employees assigned data collection sweepside verification responsibilities. Within the limits of operational practicality, loading and sweeping functions will be staffed during the period of testing with clerks (or mail handler) volunteers regardless of category or present pay level. The data collection function will be performed by clerk craft employees with appropriate scheme knowledge. . . .

In fact, only five of the machine tests were conducted. These included the AEG Telefunken OCR equipment at the Boston Post Office. In the other four postal facilities involved in the program, clerk craft employees were assigned to operate the machines during the final eight weeks of the test period. In Boston the Postal Service assigned excess mail handlers to the Telefunken equipment during the final eight weeks.

In a letter dated 16 October 1979 (JX-1D), the President of APWU advised the Postal Service that the arrangements outlined in Gildea's letter of 3 August were

in violation of Article IV, Section 2 [of the National Agreement], and the Standard Position Description 2-528, OCR Operator, PS-5, and the U. S. Postal Service Regional Instructions, Filing No. 399, dated February 16, 1979, entitled "Mail Processing Work Assignment Guidelines" and revision thereto dated June 15, 1979, which clearly delineates this work as being in the clerk craft.

The specific issue to be resolved is the utilization of mail handlers on these machines.

Standard Position Description 2-528 (OCR Operator), (APWU Ex. 1) indicates that this job belongs to the clerk craft.

The Postal Service "Mail Processing Work Assignment

Guidelines" issued on 16 February 1979 (APWU Ex. 3), provide in part:

I. INTRODUCTION

The enclosed "Mail Processing Work Assignment Guidelines," provide primary craft designations relative to the performance of specific mail processing work functions. Compliance with the principles contained therein is mandatory and applicable to the assignment of all categories of employees in the regular work force. These assignment guidelines are to be implemented at all postal installations which perform mail processing, in accordance with the implementation criteria outlined below and consistent with the terms of the 1978 National Agreement. . . .

II. IMPLEMENTATION CRITERIA

. . . .

C. Distribution Activities

Where the functions of obtaining empty equipment, obtaining unprocessed mail, loading ledges and sweeping are an integral part of the distribution function and cannot be efficiently separated, the entire operation will be assigned to the primary craft performing the distribution activity.

D. Changes in Duty Assignments

No employee's current duty assignment will be modified by removing functions designated to another primary craft until and unless such duty assignment becomes vacant through attrition. . . .

E. Assignment of New-and/or Additional Work

Assignment of new or additional work, not previously existing in the installation, shall be made in accordance with the primary craft designations contained in this instruction.

In the list of primary craft designations dated 15 November 1978 (APWU Ex. 3), operation 088-089 Optical Character Reader Distribution, involving OCR machine distribution of

all classes of letter mail, is assigned to the clerk craft. An applicable footnote reads: "In offices where the tasks of obtaining empty equipment, obtaining unprocessed mail, loading ledges, sweeping and containerizing is [sic] an integral part of the distribution function, the entire operation is a function of the primary craft performing the distribution."

A meeting between APWU and Postal Service representatives on 29 November 1979 failed to resolve the issue raised by APWU, and the dispute was referred by APWU to arbitration on 20 March 1980 (JX-1B). Inasmuch as mail handlers, rather than clerks, were assigned to the experimental equipment only at the Boston facility, it is the only one of the five that is involved in this proceeding.

II

APWU emphasizes at the outset that in the instant case mail was actually being processed with the aid of the Telefunken equipment at the Boston facility. This being so, it argues, "the Postal Service cannot avoid its responsibilities to the APWU or any other Union simply by designating a position or set of duties as 'experimental' or part of an 'experimental' program" (Br., p. 3). It continues (ibid.):

The Employer in making craft designations of assignments or positions must adhere to the provisions of the collective bargaining agreement. In this case, since the Postal Service has long since assigned the OCR operation to the Clerk Craft, it must choose between

using clerks in its testing of new OCR machines or changing the craft designation pursuant to Article IV and/or Article I.

According to APWU, the parties to the National Agreement "have fully and completely negotiated and agreed on procedures to govern all assignments of bargaining units employees" (Br., p. 4; underscoring added).

APWU challenges the statement by the Postal Service, supported by recent examples of "courtesy correspondence" sent by the Postal Service to the unions prior to the start of an experimental program, that the Gildea letter of 3 August 1979 in the instant case was merely another in a long series of similar letters never previously challenged by any union. APWU points out, correctly, that except for one letter, dated 20 March 1980, dealing with Flat Sorter Machine Operators, no designation of craft assignment is mentioned. That letter stated in part: "Based upon our preliminary review, we believe that these new positions should most appropriately be assigned to the Clerk Craft of the. . .[APWU]." The Gildea letter of 3 August 1979 is thus, so far as it appears from this record, different from any other previously sent to the unions by the Postal Service.

APWU further points out that the testimony of Postal Service witnesses William Downes and Robert Krause demonstrated that the Postal Service "has no policy, regulation or any written pronouncement of any kind governing the assignment of employees in 'experimental' programs," and

also that programs so designated have no time limits. (Br., p.7)

Anticipating the Postal Service's reliance on Article III (Management Rights) of the National Agreement, APWU calls attention to the qualifying language of that provision: "subject to the provisions of this Agreement. . ."; and it particularly emphasizes that "[t]hose provisions to which the Employer is subject in making assignments are extremely detailed and specific" (APWU Br., p. 7). In addition to Article I, Section 1 (previously quoted), APWU relies upon Article XIX (Handbooks and Manuals), which reads in pertinent part:

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

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

According to APWU (Br., p. 9),

If the Postal Service wished to establish a procedure for assignment of employees to "experimental" programs and "experimental" machines that would differ from the assignment provisions of the contract, then it should have done so through a handbook, manual, or published regulation susceptible to collective bargaining under Article XIX. They have not done so however.

In respect of the assignment of mail handlers to work on the Telefunken OCR equipment at the Boston facility, APWU stresses the following points. First, in 1970, in an advisory arbitration decision on a grievance brought by the Mail Handlers, the arbitrator found that the Postal Service's assignment of clerks to OCR equipment was proper. Second, the Postal Service's job description of OCR Operator, its Mail Processing Work Assignment Guidelines, and its list of primary craft designations, previously quoted, all recognize that the operation of OCRs is clerk's work. Third, this case does not involve a claim that a new job be assigned to the clerk craft, nor does it concern a jurisdictional dispute. Rather, APWU concludes (Br., pp. 14-15):

Since there has been no action or decision by the Employer under the contract to change the craft designation of OCR operator and since the Employer lacks the authority to unilaterally operate outside the contract, despite the Employer's designation of this program as "experimental", this is and continues to be a clerk craft position. Accordingly, the assignment of Mailhandlers to the Telefunken OCR machine(s) in Boston when it is actually processing the mail was in breach of the collective bargaining agreement. . . .

III

The Postal Service argues that inasmuch as the National Agreement is silent on the staffing of experimental programs, management "is empowered to make these temporary assignments consistent with the inherent powers contained in Article III of the National Agreement" (Br., p. 7). Alternatively, the Postal Service takes the position that if the relevant language of the National Agreement is ambiguous, "the past practice between these parties allows the Postal Service to make the final decision as to staffing assignments on experimental programs." (Ibid.)

Noting that APWU's grievance in this case is based on Article IV, Section 2 of the National Agreement, previously quoted, the Postal Service points out that the procedures of Section 2 cannot be invoked because the equipment in question has never been "purchased." The Postal Service also insists that its acceptance of voluntary applications from both clerks and mail handlers to staff the experimental program, proves that there has not been a permanent assignment to either craft. It argues that if APWU has a valid claim to the work, this claim must first be submitted to the Committee on Jurisdiction established by the 15 September 1978 Memorandum of Understanding, previously mentioned. Because APWU has not done so, the Postal Service contends that its grievance is not arbitrable.

In the event the grievance is determined to be arbitrable, the Postal Service's position, as already noted, is that a decision in its favor is justified by past practice.

"The evidence is undisputed," it asserts, "that the Postal Service has always made the decision as to work assignments on experimental programs. Moreover, both the APWU and the Mail Handlers have always been aware that the power to assign work on experimental programs has always been repositied in the Postal Service" (Br., pp. 9-10). In support of this contention the Postal Service cites the testimony of two APWU witnesses, John Morgan, President of the Clerk Craft Division, and Matthew Bowen, Chief Steward and Director of Mechanized Distribution for the Boston office. Asked who made the decision to staff the OCR machine when it was installed on an experimental basis in the St. Paul, Minnesota Post Office in 1954, Morgan replied: "I don't know who made the decision. I would imagine the Postal Service" (Tr. 32). Similarly, when Bowen was asked if he knew who made the decision to staff experimental flat sorter machines in the Boston Post Office, he replied: "No. I know a posting was put up by personnel for clerks to bid a detail on the flat sorter, so I would imagine it was Postal Service" (Tr. 38). Accordingly, the Postal Service declares (Br., pp. 10-11):

The conclusion is inescapable that the Postal Service has the right to unilaterally choose from among the volunteers who will be assigned to experimental machinery. The APWU had the burden to

affirmatively change the collective bargaining agreement if it intended the practice to be other than the past practice of allowing the Postal Service to make the final decision as to the staffing of experimental programs. This practice had been in effect for years and the APWU's failure to act affirmatively to change the practice must be deemed as acquiescence in the Postal Service's favor. . . . Indeed, the fact that the APWU has never filed a single grievance as to the staffing of experimental programs is further evidence of their acquiescence.

Addressing APWU's arguments based on the Postal Service's OCR Operator job description, work assignment guidelines and primary craft designations, the Postal Service relies upon Labor Relations Executive Downes' testimony that it was never his understanding that any of those documents applied to experimental programs (Tr. 46-47). Moreover, it states,

In addition, none of the APWU-submitted documents are relevant to experimental jobs inasmuch as they describe existing work. Clearly, the APWU exhibits only have possible applicability in a hearing pursuant to Article I, Section 5 where there has been a permanent assignment of work - not in the present situation where the process is in an experimental stage.

IV

The position taken by the Mail Handlers is, with one, significant exception, substantially the same as that of the Postal Service: no reliance is placed on the argument based on past practice. The Mail Handlers' statement of position concludes as follows (Br., pp. 5-6):

It is arguable, perhaps, that the APWU's claim that the Postal Service had misassigned the experimental work could have been properly entertained by the tripartite Committee on Jurisdiction established by the Memorandum of Understanding on Jurisdiction which

is included in the National Agreement. However, the APWU elected not to invoke the Jurisdiction Committee's special procedures in this matter.

The record indicates that in prior experimental situations the APWU accepted unilaterally made assignments from the Postal Service outside the tripartite procedures of Article IV, Section 2 and Article I, Section 5 Indeed, in the instant matter, the APWU does not bemoan the failure of the Postal Service to follow those procedures with respect to the four machines to which its members were assigned but rather seeks their enforcement only with respect to the Telefunken to which mail handlers were assigned. Such selectivity belies the APWU's true purpose.

It may be that in future National Agreements the Postal Unions should seek more influence in the assignment of work on experimental programs. However, the 1978-1981 National Agreement, under which this case arises, fails to provide any basis for any Postal Union to claim exclusive jurisdiction over such work.

V

The determining factor in this case is the status of "experimental programs," which are nowhere mentioned in the National Agreement. APWU argues that such programs have no special status, and that whether or not new machinery used for processing mail is purchased outright or is merely being tried out with no obligation to purchase, the provisions of the National Agreement must apply. The weakness of this argument is that, as already noted, Article IV, Section 2 of the National Agreement, which APWU claims has been violated, applies only when "major new mechanization or equipment is to be purchased and installed" (Section 1), and when "such change or changes are operational" (Section 2). Admittedly, it could be argued that the term "operational"

means simply that mail is being processed using the machinery or equipment in controversy; but there is no getting around the requirement that the equipment must first be "purchased."

It is also true, as the Mail Handlers concede, that the assignment of mail handlers to the Telefunken equipment in Boston might have been sufficient to trigger the jurisdictional disputes-settlement mechanism established by the Memorandum of Understanding of 15 September 1978; but APWU elected not to invoke that procedure in view of its claim that no jurisdictional dispute exists.

Article I, Section 5 of the National Agreement, previously quoted, also cannot provide a suitable predicate for APWU's grievance, because it applies only to "newly created" positions. APWU insists, however, that the position of OCR Operator is already established and has been awarded to the clerk craft.

Finally, Article XIX of the National Agreement, previously quoted, refers to "wages, hours or working conditions," not to job assignments. Moreover, even if job assignments were deemed to be included in the term "working conditions," Article XIX throws no light on the question whether "experimental programs" are covered by the Agreement.

In these circumstances I find it unnecessary to resolve the argument between APWU and the Postal Service over past practice. It is sufficient to find that no provision in

the National Agreement provides the basis for APWU's grievance, although, conceivably, the issue might have been disposed of by the tripartite Committee on Jurisdiction, had APWU invoked its processes. APWU argues that the question of assignments of bargaining unit employees has been "completely negotiated and agreed on" (Br., p. 4), and that the National Agreement "is probably second to none in the detail and the specificity given to jobs, position or duty assignments within the context of multicraft jurisdictions" (Br., pp. 3-4). This argument, however, cuts both ways; for, given the meticulous detail in which these subjects are dealt with in the National Agreement, it may be as persuasively argued that "experimental programs" were deliberately excluded from coverage as it may be contended that they were included by implication.

On the basis of the evidence and arguments submitted, I believe these programs were excluded from coverage, whether accidentally or by design, and that the manner in which the experimental program was initiated at the Boston facility in the instant case did not violate the National Agreement. The grievance is accordingly denied.

Benjamin Aaron
Benjamin Aaron
Arbitrator

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