

Article 1

P. 78
136-219

.....
UNITED STATES POSTAL SERVICE

and

NATIONAL POST OFFICE MAIL HAN-
DLERS, WATCHMEN, MESSENGERS
AND GROUP LEADERS DIVISION OF
THE LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO

and

AMERICAN POSTAL WORKERS UNION,
AFL-CIO
.....

OPINION AND AWARD

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

Grievances: AW-NAT-5753,
A-NAT-2964 and A-NAT-5750.

ISSUED:

April 2, 1975

BACKGROUND

These cases from Oakland, San Francisco, and Seattle
are before the Impartial Chairman for decision pursuant to
Article XV of the July 21, 1973 National Agreement and a Decem-
ber 14, 1973 Memorandum of Understanding among the above named
three parties (herein called the Postal Service, the Mail Han-
dlers, and the APWU, respectively).

Each of the three cases involves a dispute as to
assignment of work within the meaning of the Memorandum of
Understanding and each party thereto will be fully bound by the
decisions herein. In each case the Mail Handlers urge that
work assigned to employees in the APWU bargaining unit should
be reassigned to employees in the Mail Handler unit because of
various agreements between the Mail Handlers and the Postal

1

2

Service. The Postal Service and the APWU oppose the requested reassignments. The issues raised are of vital importance to each of the three parties, and this decision will substantially affect the future course of relations among them.

Each case was considered under the Memorandum of Understanding, with the APWU and Mail Handlers participating both in Fourth Step and in arbitration. The cases were consolidated for purposes of arbitration by agreement of the parties. Hearings were conducted in Oakland on September 9, 10, and 11, 1974; in Seattle on September 12, 1974; and in Washington, D. C., on November 19, 20, and 21, 1974. Each party thereafter filed a comprehensive brief as of January 27, 1975. 3

Some reference to historical background is essential before noting the basic facts in each case. In June of 1955 Congress enacted the Postal Field Service Compensation Act, which undertook to provide a basis for a comprehensive job classification system to be used by the Post Office Department. This legislation set forth 49 (now 50) so-called Key Positions to be used as benchmarks in determining appropriate rates of pay, both for existing Post Office positions and for positions which thereafter might be created. Two such Key positions are particularly pertinent here. The duties of Key Position 8 (Mail Handler) are described as follows: 4

"BASIC FUNCTION--Loads, unloads, and moves bulk mail, and performs other duties incidental to the movement and processing of mail.

"DUTIES AND RESPONSIBILITIES.--

- (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.
- (C) Handles and sacks empty equipment, inspects empty equipment for mail content, restrings sacks.
- (D) Cancels stamps on parcel post, operates canceling machines, carries mail from canceling machine to distribution cases.
- (E) Assists in supply and slip rooms and operates addressograph, mimeograph, and similar machines.
- (F) In addition, may perform any of the following duties:

- "(i) Acts as armed guard for valuable registry shipments and as watchman and guard around post office building.
- (ii) Makes occasional simple distribution of parcel post mail requiring no scheme knowledge.
- (iii) Operates electric fork-lift trucks.
- (iv) Rewraps soiled or broken parcels.
- (v) Performs other miscellaneous duties, such as stamping tickets, weighing incoming sacks, cleaning and sweeping in workrooms, offices, and trucks where such work is not performed by regular cleaners.

"ORGANIZATIONAL RELATIONSHIPS.--Reports to a foreman or other designated supervisor."

The duties of Key Position 12 (Distribution Clerk) are described as follows:

5

"BASIC FUNCTION.--Separates mail in a post office, terminal, airmail field, or other postal facility in accordance with established schemes, including incoming or outgoing mail or both.

"DUTIES AND RESPONSIBILITIES.--

- (A) Makes primary and one or more secondary distributions of incoming mail by delivery point (for example, classified or contract station or branch or other delivery unit, general delivery, lockboxes, rural or star route, or city carrier route) based on a knowledge of the distribution scheme established for that office.
- (B) Makes primary and one or more secondary distributions of outgoing mail for dispatch (for example, by city, State, region, train, highway or railway post office, or airmail flight) based on a knowledge of the distribution scheme prescribed by the Postal Transportation Service.
- (C) In addition, may perform any of the following duties:
 - (i) Maintains records of mails.
 - (ii) Examines balances in advance deposit accounts.
 - (iii) Faces and cancels mail.
 - (iv) Ties mail and inserts facing slips.
 - (v) Opens and dumps pouches and sacks.

- "(vi) Operates cancelling machines.
- (vii) Records and bills mail (for example, c.o.d., registered, and so forth) requiring special service.
- (viii) Renders service at public windows.

"ORGANIZATIONAL RELATIONSHIPS.--Reports to a foreman or other designated supervisor."

When the above job descriptions were adopted by the Congress, Key Position 8 essentially represented the principal duties performed in the Mail Handler craft, and Key Position 12 essentially represented the principal duties performed by the Clerk craft (then represented by the United Federation of Postal Clerks and now represented by APWU). Promptly following approval of the Compensation Act on June 10, 1955, the Post Office Department started work on the monumental task of slotting each of the existing Post Office jobs into its proper position in the pay scale, using the Key Positions as benchmarks for this purpose. Unfortunately the Post Office was required to complete this undertaking by December 31, 1955, and there was no opportunity to develop effective centralized control of the process. Responsibility for effectuation of the program essentially was left to local management in the various Post Offices throughout the country. After this process had been completed, an auditing procedure was utilized by the Post Office Department to provide a narrowly limited opportunity to review the accuracy of the rate assignments which had been made -- some such issues were raised by

"PAPER NO. MH-5

DATE: 3/10/71

WORK ASSIGNMENTS

"Mail handlers shall perform all simple separation, distribution of mail routing, facing and canceling of mail, operating and dumping of pouches and sacks, operating a canceling machine, loading and unloading mail, pulling pouches and sacks from racks, the withdrawing of mail from distribution cases, and all bulk mail handling work and mail processing assignments that do not require scheme knowledge.

"All overlapping duty assignments pertaining to the Mail Handlers craft in the Clerk Key Position job description shall be removed. And this work shall be performed only by mail handlers within the Mail Handler craft. Only in the case of an emergency may employees in other crafts be assigned to perform these duties.

"Definition of an emergency shall be by agreement between the Mail Handlers craft and the employer.

"Supervisors will not perform work that is assigned to employees in positions in the Mail Handlers craft."

individual complaints as to rate assignments and there also were some spot checks on the initiative of the Compensation Division of the Post Office Department.

In August of 1970 Congress enacted the Postal Re-
organization Act in which Section 10-(a) directed the Post-
master General and the labor organizations then holding
"national exclusive recognition rights" to negotiate a col-
lective bargaining agreement. Both the Federation of Postal
Clerks and the Mail Handlers Union at this time held national
exclusive recognition rights for their respective crafts by
virtue of elections which had been conducted under Executive
Order 10988. Subsequent collective bargaining between the
Postal Service and all involved Unions produced the National
Working Agreement dated July 20, 1971. Bargaining was con-
ducted on a coordinated basis among all 7 Unions then holding
exclusive collective bargaining rights, and the resultant
National Agreement was embodied in a single document, with
provision for further negotiations concerning separate craft
proposals advanced by each of the involved Unions.

One Mail Handler craft proposal, designated as MH-5,
read:

The negotiations initiated by MH-5 ultimately produced a November 30, 1971 Memorandum of Understanding, as follows:

"MEMORANDUM OF UNDERSTANDING

"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.

"B. The parties recognize that the posting procedures as incorporated in Article XII of the Working Agreement provide that normally an employee shall work the duty assignment for which he has been designated as the successful bidder and should not normally be displaced from his duty assignment by an employee from his or another craft. The parties further recognize that nothing herein is intended to restrict the right of the Employer to make work assignments in accordance with Article VII.

"C. The parties recognize the statutory obligation to follow an employment policy designed to 'extend opportunity to the disadvantaged and handicapped.' In implementing this statutory obligation, the Employer will make every effort to insure that employees hired through the Mental Retardation Program shall not be given mail handler bargaining unit work assignments to the detriment of mail handler craft employees.

"Before such employees can be considered for an opening in a position in the regular work force as defined in Article VII, they shall meet all of the requirements of the position.

"D. When a new or vacant regularly scheduled full-time mail handler assignment contains four or more hours a day, five days a week, of handling of mail by operation of a jitney, fork lift or pallet truck, such assignment may be posted for bid."

Shortly after this Memorandum was negotiated Senior Assistant Postmaster General Blaisdell wrote Mail Handler National Director Johnson on December 8, 1971, as follows:

"In response to our mutual understanding of November 30, 1971, the Postal Service is hereby submitting a list of currently established and ranked key, standard and individual positions in customer service and mail processing facilities which are assigned to the Mail Handler craft (except as noted):

"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
 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
 Watchman, PS-4, SP2-216

"*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.

"Individual Positions

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

Group Leader Sack Sorting Machine Operator,
PS-6, IP25-11-1 (Fort 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)

"It must be understood that the existence of these positions in some customer service or mail processing facilities does not create an obligation to continue existing positions or to establish them in any other facilities. If the Postal Service determines that there is a need for any of these positions, they shall be authorized and assigned (except as noted above) to the Mail Handler craft."

On November 16, 1972 the Postal Service and the Mail Handlers negotiated a Clarifying Addendum, as follows: 11

"CLARIFYING ADDENDUM TO MAIL HANDLERS"
MEMORANDUM OF UNDERSTANDING
ENTERED INTO NOVEMBER 30, 1971

"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
Watchman, 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)

Signed:

James P. Blaisdell 11/16/72
 Lonnie L. Johnson 11/16/72"

On November 16, 1972 the Mail Handlers and the Postal Service also executed a Stipulation precluding either party from introducing into evidence in any proceeding (or otherwise relying upon) documents, notes, oral testimony, or other evidence relating to the bargaining history of Mail Handlers 5, which resulted in the November 16, 1972 Clarifying Addendum. This Stipulation also fully preserved the right of either party to advance claims regarding exclusive craft jurisdiction over work or duties not then defined as "all mail handlers duties." 12

One week later the Postal Bulletin, addressed to all Postal installations, printed the full text of the Clarifying Addendum. 13

The current National Working Agreement became effective July 21, 1973 and was preceded by separate craft negotiations with each of the four recognized Unions. (The United Federation of Postal Clerks and three other craft Unions by this time had merged to form APWU.) The separate Mail Handler craft agreement was printed as Article XLIII of the National Agreement. Its Section 12 includes the following:

"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.

"B. 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.

"C. It is the understanding of the parties that the phrase 'all mail handler duties' in Paragraph B 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. These 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

*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 Equipment Handler, PS-4, SP2-247
Mail Handler Technician, PS-5, SP2-498
Mail Processing Machine Operator, PS-5, SP2-354
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
Watchman, PS-4, SP2-216

"Individual Positions

Group Leader Mail Handler, PS-6, IP248-7
Group Leader Sack Sorting Machine Operator
PS-6, IP25-11-1
Mail Handler Leadman, PS-5, IP32-12-1
Mail Rewrapper, PS-4, IP19-5-4, IP19-5-8"

During the period from the November 30, 1971 Mail Handler Memorandum of Understanding through the negotiation of the present Article XLIII, Section 12 of the Mail Handler craft Agreement, Article I, Sections 1 and 5 in both the July 21, 1971 and July 21, 1973 National Agreements provided, insofar as here relevant:

"ARTICLE I--UNION RECOGNITION

"Section 1. 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:

(Listing the certified unions)

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"Section 5. New Positions. 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. Disputes arising out of such assignments shall be subject to the provisions of the grievance and arbitration procedure provided for herein. All Unions party to this Agreement shall be notified promptly by the Employer regarding assignments made under this provision."

Various seniority provisions in the 1973 National Agreement are relevant here to the extent that they reflect the parties' intent that seniority rights are to be exercised by employees primarily within their respective craft units. These provisions include Articles XII, XIII and XXXII as well as Appendix A. Other more directly relevant provisions of the National Agreement include:

"ARTICLE III--MANAGEMENT RIGHTS

"The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

"A. To direct employees of the Employer in the performance of official duties;

"B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

"C. To maintain the efficiency of the operations entrusted to it;

"D. To determine the methods, means and personnel by which such operations are to be conducted.

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"ARTICLE VII--EMPLOYEE CLASSIFICATIONS

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"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."

In this contractual context, as will be seen below, only a very brief description of the basic facts in each of the present three cases is necessary as a basis for the ultimate Findings set forth in this Opinion. No effort need be made to resolve numerous minor factual differences suggested in the presentations of the two Unions.

17

The Oakland Case

This case involves a work assignment known as "Keyman" on an outside piece Multi-Parcel Sorter at Oakland. Outside parcels are brought into the sorting area on hand trucks. Mail Handlers place individual parcels on a conveyor belt running up to the Keyman, stationed in a "crow's-nest" in the

18

center of the Multi-Slide. After reading the Zip Code (or address where no Zip Code is shown), the Keyman pushes the parcel down any one of 8 slides without using a scheme. Each slide represents a mixture of Zip Codes, domestic destinations by name rather than by Zip, foreign destinations, customs mail, and other destinations. Reference boards are posted around the Multi-Slide to identify the distribution points, but extent to which these actually are used in practice is unclear. The APWU and the Postal Service claim that 238 memory items must be learned to perform the job adequately, but there is no need here to determine the validity of this claim. At the bottom of the slides, Mail Handlers place individual parcels on hand trucks, each with a header showing the destination of the mail to be placed therein. There may be from 3 to 6 hand trucks for each slide. When the Multi-Slide began operating in the Oakland Facility, the Keyman position was filled by a Clerk in Job Class 5. Management requires that the Keyman be qualified on a scheme for a Sack Sorting Machine (Level 6), although such scheme appears not essential, or even significantly desirable, for performance of the job on the Multi-Slide. Apparently some time in 1972 local Mail Handler officials in the San Francisco-Oakland area requested Management to fill the Keyman position with Mail Handlers rather than Clerks. On November 21, 1972 Mail Handler National Director Lonnie Johnson filed a Step 4 grievance in reference to Multi-Parcel Sorters "in Atlanta, Georgia; Oakland, California; and other cities." Johnson's letter asserted that Article I, Section 5 had been violated and that the operation of the Multi-Parcel Sorters should be "designated to the Mail Handler craft by the terms of the Mail Handler position description (KP-8)." After some procedural confusion, this grievance (designated N-NAT-179) was discussed in a Fourth Step Meeting on July 17, 1973. Thereafter D. P. Dockery, Manager of Grievance Administration, granted the grievance in the following language:

"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 APWU was not consulted during processing of Grievance N-NAT-179 and learned of the decision only after its issuance. APWU General President Filbey on October 2, 1973 then requested a Step 4 discussion of the situation, with the intent of carrying the matter to arbitration if necessary. The Postal Service wrote Mail Handler National Director Johnson suggesting a tripartite meeting to consider the matter, but the Mail Handlers declined to participate until the Dockery decision had been implemented. Ultimately the Dockery decision was implemented and a meeting of the USPS and the two Unions was held May 7, 1974. At this meeting the Postal Service spokesman was Labor Relations Consultant James K. Sullivan. Under date of May 31, 1974 Sullivan gave his decision on behalf of the Postal Service, ruling that the Keyman assignment should be returned to the APWU bargaining unit, which was done. Sullivan's ruling letter included the following pertinent paragraphs:

"In establishing the respective bargaining units represented by the parties to this dispute and in determining the craft to which new positions will be assigned, the U. S. Postal Service has considered certain general broad guidelines which were founded to some degree on the duties of the positions of KP-8 Mail Handlers and KP-12 Distribution Clerk. In addition, the Postal Service has considered community of interest, common supervision, skills and other guides customarily used in making such decisions in government and the private sector.

"In general terms, the broad criteria followed by the Postal Service are that clerks process, including distribution, all kinds of mail, letters, papers, parcel post, bulk, etc., whereas mail handlers batch, face, postmark mail, load, unload and move only bulk mail, and may perform duties incidental to the processing of other mail, and may make occasional simple distribution of parcel post not requiring scheme knowledge. Sacks of mail are considered bulk mail and may be processed by mail handlers. However, if a scheme is required, it is a clerical function. In every process, regardless of the category of mail, if a scheme is required, it is a clerical craft assignment. Pouches are distinguished from sacks and are processed and dispatched by clerks. After mail has been 'processed,' it is normally moved by mail handlers.

"The foregoing criteria constitute general broad guidelines. Often mail handler functions are an integral part of the mail processing work performed by the clerks. In such cases, it is impossible to separate the mail handler functions out of the clerical duty assignment. Therefore, the assignment will be made to the clerical craft because of the higher level duties and skills required. Where it is found however, that mail handler duties are performed by clerical employees on a regular basis and they can be reasonably combined into a regular position, such duties should be assigned to the mail handler craft. Furthermore, where such mail handler duties comprise the entire assignment and appear in both the mail handler and clerk job descriptions, then such assignment should be made to the mail handler craft.

"Principally because the duty assignment calls for the sorting of parcels and requires a knowledge of 238 scheme items, I must find that the assignments are in the clerical craft bargaining unit. The sorting of parcels on a regular basis requiring the use of scheme knowledge is definitely a clerical craft assignment.

"Insofar as this decision conflicts with the August 9, 1973 fourth step grievance decision of Mr. D. P. Dockery in case M-NAT-179 this decision supersedes that decision.

"The undersigned has been designated as the United States Postal Service official to consider these cases and to issue this decision for the United States Postal Service."

The San Francisco Case

A Sack Sorting Machine initially was installed in the San Francisco Air Mail Facility about October of 1967. Transfer Clerks in Level 6 were assigned to operate it, as well as to perform clerical and coding work in the Transfer Office. The incumbents were rotated among the various work stations, and there was no separate Sack Sorting Machine Operator duty assignment posted for bid, as such. The assignment of Sack Sorting Machine Operator requires positioning pouches or sacks so as to read the labels when they reach the Sack Sorter's work station, by passing down a slide. After the label is read the sack or pouch is pushed on to a dumper. Then the appropriate key (for the required destination) is pushed on a console and the dumper drops the sack or pouch onto the machine's conveyor. This has been programmed (by the keying) to push the sack or pouch off the belt at the appropriate point for its further processing. From time to time the individuals operating the Sack Sorter must communicate by phone with other Transfer Clerks, who are stationed in the Transfer Office, to learn which air line should receive a given sack or pouch. About 80% of the mail handled over the Sack Sorter is preferential. The Sack Sorting Machine also handles some mail arriving on incoming flights, for dispatch to appropriate in-house destinations for further handling. More than a year after the present manning arrangements at San Francisco had been established, President Hallbeck of the United Federation of Postal Clerks protested to the Postmaster General at the national level that certain newly created Sack Sorting Machine Operator Standard Positions, in both Level 4 and in Level 5, were being assigned to the Mail Handler craft rather than to the Clerk craft. Subsequently an arbitration proceeding took place under Executive Order No. 10988 challenging the Post Office

decision to assign such new Sack Sorting positions to the Mail Handler bargaining unit. Ultimately Arbitrator N. Thompson Powers rendered an Advisory Arbitration Award on November 8, 1971, which found that the assignment of the new Sack Sorting Machine positions to the Mail Handler unit was proper. As Arbitrator Powers' decision reveals, Sack Sorting Machine Operator assignments had originated perhaps as early as 1960, when such machines first were utilized in the Post Office. According to Powers' Opinion, the Sack Sorting Machine Operator "essentially ... separates sacks of non-preferential mail and directs them along an electro-mechanical conveyor to outgoing points of destination." His Opinion indicates that under the Postal Service policy at that time, Level 4 Sack Sorting Machine Operators might be required to make up to 30 separations based on Zip Codes, directs, alphabetical and geographical groupings. Level 5 Sack Sorting Machine Operators, also involved in the Powers decision, were said to make separations which were a "little more complicated" or to work under "more rigorous" conditions. The Post Office Department in that case emphasized that the disputed assignments there had been made on the basis of giving "significant if not controlling weight to the fact that the Sack Sorter jobs were replacing traditional Mail Handler positions."

Thereafter efforts apparently were made by San Francisco Mail Handler representatives to have the presently disputed work assigned to Mail Handlers. On June 13, 1972 the then Superintendent of the San Francisco AMF wrote the Regional Officer for Management Labor Relations in San Francisco, stating in relevant part:

"A memorandum issued by Special Assistant to the Postmaster General James P. Blaisdell dated December 8, 1971 assigned Sack Sorting Machine Operator positions 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, in 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 (2048) 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."

In October of 1972 new Sack Sorter Operator positions (in Level 5) were posted and filled by members of the Mail Handlers Union. The resultant APWU grievance ultimately reached Step 4, and a tripartite meeting was held February 26, 1974. After further discussions, the decision of the Postal Service was announced on May 31, 1974 by letter of Labor Relations Consultant Sullivan. This found that the assignment of keying on the Sack Sorting Machine at the San Francisco AMF should be awarded to a clerical craft employee "principally because 95% 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." This Sullivan letter also included several paragraphs of general observations such as already quoted from his letter ruling on the Oakland case. Its implementation resulted in removing Mail Handlers from the Sack Sorting Machine Operator assignment.

The Seattle Case

The disputed work assignments in Seattle are related to operation of a Twin Multi-Slide Parcel Sorting unit at the Postal Concentration Center. The machine, nicknamed the "Donut," began to operate in Bay C of the PCC in April of 1969. Parcels are unloaded from vans or trucks in Bay C by Mail Handlers and dumped onto a conveyor system. This carries the parcels to a "T", at the base of the two Multi-Slides on the Donut. From the T the parcels are conveyed up separate belts to a tower atop each Donut. A separation is made at the T, to either the north or south Donut, according to a simple breakdown between APO numbers and FPO numbers. No scheme is required in making the relatively simple separations among the various slides atop the Donut. There is some conflict in the evidence as to just how the work around and atop the Donut was performed prior to the inception of the present case, and the situation apparently varied to some degree among the three daily tours. According to Mail Handler Local President Dyer, who at one time worked in Bay C on third tour, Clerks and Mail Handlers on his tour worked side by side both at the T and

at the base of the two sets of slides. He also testified that Mail Handlers frequently worked in the crow's-nest. On other tours, however, the crow's-nest position apparently was manned by a Clerk normally and the distribution of the parcels from the base of the Donuts also apparently was performed by Clerks. Dyer testified that during 1972 he had sought to have all work at the Donut reassigned to Mail Handlers, since he regarded the duties there as exclusively within the Mail Handler craft under the December 8, 1971 Postal Service agreement with the Mail Handlers. On January 11, 1973 the Seattle Postmaster advised the Clerks that their 25 bid positions in this operation would be abolished and the work reassigned to Mail Handlers. After this action was effectuated, and the work assigned to Mail Handlers, the APWU filed numerous grievances which were denied by the designee of the Seattle Postmaster. The denial letters asserted that the duties of the Clerks at the Donut had overlapped duties normally performed by Mail Handlers and that the Clerk jobs were abolished as "excess" in accordance with Article XII of the National Agreement. The denial letters also went on to state: "Management must give consideration and emphasis to the MH-5 Memorandum of Understanding reached by USPS and the Mail Handlers Union which mandates that steps be taken to remedy situations where there are overlapping duties." (Underscoring added.) After appeal to Step 4 an APWU national grievance as to the Seattle situation ultimately was considered under the tripartite procedure for jurisdictional disputes and ruled upon by Labor Relations Consultant Sullivan in a letter dated May 31, 1974. This letter, in addition to including paragraphs similar to those already quoted from Sullivan's letter concerning the Oakland case, also stated:

"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 seventeen (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."

Since the Sullivan ruling was implemented in June of 1974, Clerks apparently have performed all work in the crow's-nest and at the bottom of the slides, to the exclusion of Mail Handlers.

CONTENTIONSA. Mail Handlers

The Mail Handlers strenuously contest both the results and the reasoning set forth in each of the three May 31, 1974 ruling letters of Labor Relations Consultant Sullivan, from which it now appeals. The Mail Handlers have no doubt that Article XLIII, Section 12 recognizes exclusive Mail Handler jurisdiction over the work assignments here in issue. It emphasizes that Paragraph A of this provision requires that a review be made in all first-class offices with 25 or more employees (as well as certain other facilities) to determine the appropriateness of employees' assignments, classifications, and wage levels. Under Paragraph B the Postal Service is obliged to delegate to the Mail Handler craft all duty assignments which are found to be comprised of all Mail Handler duties. Additionally, where Mail Handler duties are found to be combined with duties of another craft, to make a full or part-time scheduled duty assignment on a regularly scheduled basis, this Paragraph obliges the Postal Service to fill the assignment consistent with Article I, Article VII, and Article XII of the National Agreement. It further contemplates that employees displaced as a result of action under Paragraph B will be reassigned in accordance with Article XII of the National Agreement.

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The Mail Handlers assert that MH-5 was pressed in the 1971 negotiations in part because the Clerks had begun to claim jobs which traditionally had been performed by Mail Handlers. This development is said to have flowed from introduction of the Zip Code system in the early '60's which

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reduced the need for scheme knowledge in separation and distribution of mail. As the overall need for scheme knowledge was reduced, there is said to have been a tendency to assign Clerks to distribution of mail where no scheme knowledge was required. Thus the Mail Handlers assert that MH-5 was in response to the fact that displaced Clerks were assigned to Mail Handlers' work. The November 30, 1971 Memorandum of Understanding resulted, as did the subsequent understandings which culminated in Article XLIII, Section 12.

The Mail Handlers find the reference to Article VII in Article XLIII, Section 12, to be particularly significant. Article VII, Section 2, recognizes that Management may establish full-time scheduled assignments including work within different crafts or occupational groups, but only under carefully defined conditions. Moreover, the opening sentence of Article VII, Section 2 declares that normally work in different crafts will not be combined into one job. Thus the Mail Handlers urge that Article XLIII, Section 12 specifically defines Mail Handler duties "which may not be combined" under Article VII, Section 2.

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The Mail Handlers emphasize also that Paragraph C in Article XLIII, Section 12 defines the term "all Mail Handler duties" as including "the following duties regardless of whether they appear in any other position description." In the Mail Handler view, the word "all" in this context means that such duties are exclusively duties to be performed by Mail Handlers to the exclusion of any other craft. Thus the fact that some Mail Handler duties (as operation of canceling machines, opening and dumping of sacks, and facing of mail) may appear in position descriptions of Level 5 Clerks is said to be irrelevant in applying Article XLIII, Section 12.

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As for the San Francisco case, the Mail Handlers see no overlap between the duties of a Level 5 Sack Sorter position (listed as a Mail Handler job in Article XLIII, Section 12) and the Level 6 Sack Sorting Machine Operator Position filled by Clerks. The latter contemplates distribution in accordance with schemes, and requires "schemes examination." It also distinguishes a Level 5 Distribution Clerk position which involves operation of "an electro-mechanical machine in the distribution of letter-size mail." Even assuming some overlap with Clerk jobs, moreover, the Mail Handlers deem the San Francisco position to constitute "all Mail Handler" duties within the meaning of Article XLIII, Section 12.

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Occasional

The Mail Handlers also characterize the disputed assignments in Seattle and Oakland as clearly within the duties set forth in Key Position 8, as simple distribution of parcels, not requiring scheme knowledge. While the modifying word "occasional" appears in Item F(ii) of this description, this is said to be "mere surplusage." Here the Mail Handlers cite a passage from the Postal Service brief before Arbitrator Powers in Case No. 242-PO-9. According to the Mail Handlers, the word "occasional" does not limit the duty involved for purposes of Article XLIII, Section 12, since this specific duty is not enumerated in any other position description. Finally, the word "occasional" has not been treated in practice as a word of limitation since many Mail Handlers have been assigned (full time) to the simple distribution of parcel post where no scheme knowledge is required.

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Even if all of the disputed assignments were not held to be exclusively Mail Handler jobs under Article XLIII, Section 12, the Mail Handlers suggest that, in view of its

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July 3, 1973 Stipulation with the Postal Service, the work nonetheless should be given to 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." It further suggests that certain statutory policy considerations require assigning the work to the Mail Handlers, since this case involves the Postal Service. These considerations are: the need to maintain and advance the economy and efficiency of Postal operations; the need to implement the policy of equal pay for equal work; the need to provide employment opportunities for disadvantaged individuals, and to cleanse the Postal Service employment and pay practices of racial inequalities and discrimination; and the need to advance safety and health, as well as to improve employee morale by providing satisfying careers for Postal Service employees. In elaborating these contentions, it asserts that the same non-scheme distribution of parcels actually is being done by both Distribution Clerks and Mail Handlers in some Post Offices, but at different rates of pay--at Level 4 when performed by Mail Handlers and at Level 5 when performed by Clerks. The Mail Handlers also characterize the handling of sacks and parcels as obviously heavy work and notes that Mail Handlers specifically are qualified to perform such work: Mail Handlers must take a strength and stamina test, while Clerks do not. The Mail Handlers suggest that many Clerks may be injured if required to handle sacks.

The Mail Handlers also contend that the failure to assign these duties to Mail Handlers constitutes a violation of Article II of the National Agreement and Title VII of the Civil Rights Act of 1964, as amended. Article II, Section 1 prohibits any discrimination against employees because of

race, color, creed, religion, national origin, sex, or marital status. Moreover, in 1972 Public Law 92-261 extended coverage of Title VII to the Federal Government and requires that USPS employment "shall be made free from any discrimination based on race, color, religion, sex, or national origin." Here the Mail Handlers stress Griggs vs. Duke Power (401 U.S. 424) holding that job testing practices must be job related in order to establish equality of employment opportunities. As matters now stand in the present three cases (under the Sullivan rulings) the predominantly non-white Mail Handlers must pass job-related tests, but predominantly white Clerks can handle the same assignments without taking job-related tests.

In the Mail Handler view Article I, Section 1, cannot grant the APWU jurisdiction over the disputed assignments. They cite a long series of judicial and arbitral decisions, starting with Carey vs. Westinghouse (375 U.S. 261) as confirming that a recognition clause serves only to confirm the legal status of the bargaining representative for the given unit and that an NLRB determination of appropriate unit "does not freeze the duties or work tasks of the employees in the unit." Even if Article 1, Section 1, arguably might recognize jurisdiction over particular work, the Mail Handlers say that the APWU has waived the right to advance any such claim here--in the mechanical mark-up case, APWU was the beneficiary of a USPS argument that Article I, Section 1 did not protect craft jurisdiction.

Finally, the Mail Handlers characterize the three Sullivan rulings as a confused hodge-podge of spurious and unsupported suppositions, irrelevancies, and contradictions. The assertion in the San Francisco case that pouches always

are processed by Clerks is totally erroneous. The indication that Mail Handlers are precluded from keying ignores the 1968 Post Office Department decision (confirmed by Arbitrator Powers) that Level 4 and Level 5 Sack Sorter positions should be assigned to Mail Handlers. The Sullivan ruling as to Seattle seems to rest heavily on the proposition that the disputed work "entails more than occasional distribution" of parcels. This purported distinction simply cannot be maintained in light of the evidence here. Finally, the claim that the Oakland job requires a knowledge of 238 scheme items plainly conflicts with the evidence.

B. APWU

The APWU notes that Congress expressed concern that work assignment disputes should be disposed of in an orderly manner when it amended the National Labor Relations Act in 1947 so as to include Sections 8-(b)(4)(D) and 10(k). Thus the NLRB was empowered to decide such disputes and it subsequently developed a number of factors to be applied for this purpose, including: (1) the skills and work involved; (2) any NLRB certification; (3) practice in the given Company and industry; (4) agreements between Unions and between employers and Unions; (5) arbitration awards in the same or related cases; (6) assignments made by the employer; (7) efficiency of operation; (8) whether the work claimed was in substitution for a function previously performed by members of a given Union; and (9) whether the assignment to one group would cause a loss of employment to the competing group.

The APWU emphasizes, however, that in virtually all of the jurisdictional disputes decided by the NLRB, or in arbitration, the issue was precipitated by some change affecting the way the work was performed (technological, work site, new operation, methods change, or the like). This contrasts with the present case, where the Mail Handlers seek work previously done by Clerks, without any change in conditions affecting the specific assignments.

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Even if it could be assumed that Article XLIII, Section 12, has the meaning claimed by the Mail Handlers, the APWU emphasizes that this in no way could bind it since it had no part in the negotiations for the Mail Handler craft. The APWU notes that Section 10-A of the Postal Reorganization Act directed the Postmaster General and the then exclusively recognized National Unions to negotiate agreements concerning wages, hours, and working conditions "of the employees represented by such labor organizations." Under this directive the recognition clauses in both the 1971 and 1973 National Agreements state that the employer recognizes each of the designated Unions as exclusive bargaining representative of "all employees in the bargaining unit for which each has been certified and recognized at the National level."

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The APWU thus holds that the recognition clause, negotiated in this setting, reflects agreement by the Postal Service to respect the identity of the Clerk craft and not to undermine it. It deems this conclusion to be confirmed by the inclusion of Article I, Section 5 in the National Agreement, requiring that newly created "positions" shall be assigned "to the national craft union most appropriate for such position."

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Even if Article I did not expressly bind the Postal Service to maintain the craft assignments in existence when the National Agreement was signed, the APWU sees an implied covenant of good faith springing from the Agreement to bar the Postal Service from making unilateral craft reassignments to deprive APWU represented employees of their jobs. Here, the APWU refers to various other provisions of the National Agreement which seem to recognize that the integrity of the separate craft units must be maintained: Article I, Section 5; Article I, Section 6; Article IV (relating to technological and mechanization changes); Article V (barring unilateral action by the employer); Article VII, Section 2 (imposing restrictions on the employer's right to combine crafts); Article XII (seniority--recognizing craft as a factor entering into reassignments); as well as Articles XIII, XXV, XXXII, and Appendix A, all of which recognize seniority rights of employees within their respective crafts.

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The APWU flatly rejects the Mail Handler contention that simple distribution of parcel post, not requiring scheme knowledge, is exclusively a function of Mail Handlers. It urges that Clerks historically have performed this function, and that any work more complicated than loading and unloading trucks and moving bulk mail within an installation (which may require a simple separation) is Clerk work. It suggests that Key Position 12 was intended to reflect this situation, and reviews the history of the Mail Handler and Clerk positions as well as the legislative history of the Postal Field Service Compensation Act of 1955. Against this background, the APWU asserts that the 1955 Act contemplated that "Mail Handlers were primarily concerned with the basic functions of

39

loading, unloading and moving bulk mail (meaning mail in bulk quantities) and other duties incidental to the moving of mail and incidental to the processing of mail." The APWU urges that one incidental Mail Handler duty might involve distribution of parcel post "but only when no scheme was involved and even then only on an occasional basis." The word "occasional," it notes, earlier had been defined by Assistant Postmaster General for Personnel Lyons as meaning "infrequently." (During hearings before the House Committee on Post Office and Civil Service.) While the KP-12 Clerk description does not expressly mention non-scheme distribution, it is a fact that in 1955 it was extensively performed by Clerks and this has continued up to the present. The action of the Post Office Department in reading the KP-8 description, after 1955, to permit full-time distribution of parcel post is characterized by the APWU as a "typically bureaucratic form of sophistry."

The APWU believes that the three disputed rulings of Special Consultant Sullivan reflect the criteria applied by the Postal Service in work assignments. While not necessarily subscribing to all such criteria, the APWU believes that they embody a rational approach to craft determination. As for the Mail Handler contention that it is cheaper to use Mail Handlers at Level 4 for simple distribution of parcel post, the APWU notes that overall efficiency is a function of many complex inter-acting factors, including such matters as the generally higher level of distribution skills of the Clerks; whether Clerks or Mail Handlers mesh better with related elements of the work force; whether supervision can more readily be accomplished with Clerks or Mail Handlers; how employee attitudes vary depending on their assignments; and the like. As for the claim of racial discrimination, the

APWU sees nothing here to substantiate any actual discrimination, and nothing to warrant application of any principles under Title VII of the Civil Rights Act. If real problems of discrimination exist in respect to seniority and pay practices, this is not the proper forum in which such matters may be handled.

C. Postal Service

The Postal Service disagrees with the Mail Handler interpretations of Article XLIII, Section 12 and its antecedents. Paragraph A of Section 12, in its view, simply provides that the Postal Service will review work assignment practices to determine the appropriateness of employee assignments, classifications, and wage levels and it has complied with this obligation. The action which it must take under Paragraph B of this Section occurs only when a full-time or part-time regularly scheduled employee is found to have a duty assignment comprised of "all Mail Handler duties." In light of the definition of "all Mail Handler duties" in Paragraph C, says the Postal Service, Paragraph B requires only that an assignment shall be performed by a Mail Handler when duties described in the position descriptions (cited in Paragraph C) are performed "on a full or part-time regularly scheduled basis"--and such duty assignment must be composed exclusively of Mail Handler duties.

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Insofar as Article XLIII, Section 12 requires that employees performing Mail Handler duties on a regular basis be represented by the Mail Handlers Union, this is simply a "restatement of an existing Postal Service obligation,"

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according to the Postal Service, and does not affect the rights of employees in other bargaining units. The July 3, 1973 Stipulation with the Mail Handlers, it says, only permits the Mail Handlers to advance a claim to more work notwithstanding the existence of Article XLIII, Section 12. It does not in any way define existing jurisdictional lines nor establish new ones.

The Postal Service concedes that the "right" of members of a bargaining unit to perform work entirely within the scope of that unit has not been afforded to the Mail Handlers in all instances. Recognition of this is said to have underlain the negotiation of Article XLIII, Section 12, so that the Postal Service would review local practices to identify situations in which this "right" of the Mail Handlers was not being satisfied. When the instructions to this effect were sent to the Regions, however, a misunderstanding is said to have occurred. In the Western Region, at least, there was confusion as to the status of the original Mail Handler proposal (MH-5) and a belief by some that this document actually represented an agreement.

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Turning to the May 31, 1974 rulings of Labor Relations Consultant Sullivan in each of these cases, the Postal Service urges that these simply undertook to explain and place in capsule form craft assignment concepts which had developed over many years. Given the history of the Mail Handler and Clerk jobs, and the background of the 1955 Act of Congress, it says that the dividing line between Clerk and Mail Handler duties has been found in the distinction between "the processing of mail as a Clerk function and the loading, unloading and movement of mail as Mail Handler functions." Thus the Postal Service brief concludes: "As none of the work

44

in the three cases is conclusively within the Mail Handler craft pursuant to Article XLIII, Section 12, the Postal Service exercised its prerogative to make assignments consistent with its operational needs and the broad criteria long applied by the Postal Service and its predecessor, the Post Office Department."

As for the Oakland case specifically, the Postal Service emphasizes that when the job was performed by Clerks the Keyman was required to have scheme knowledge. Such a requirement is said to be within Management discretion and reasonably related to performance of the work. In the San Francisco AMF case, the Postal Service stresses that most of the mail which passes over the Sack Sorter Machine is preferential, and in pouches. The processing of preferential mail, it says, never has been shared by the Clerks with Mail Handlers. In the Seattle case the Postal Service urges that assignment of the disputed functions to Clerks is based on the fact "that the full-time regular distribution of parcel post has always been a function of 'the Clerk craft.'" It emphasizes that KP-8 refers only to "occasional" distribution of parcel post, and deems this clearly to constitute a word of limitation.

FINDINGS

At the outset it should be emphasized that these three cases do not arise under Article I, Section 5 of the National Agreement, which applies when new positions are created and assigned by the Postal Service to the "national craft" unit deemed most appropriate. In none of these cases was there any change in basic conditions affecting the scope of duties required in any of the disputed work assignments as a result of Management action under Article III. The bald fact here is that these work assignments simply were transferred from one craft unit to another in an effort to comply with a commitment to the Mail Handlers under Article XLIII, Section 12, and that these initial decisions then were reversed on May 31, 1974. These Mail Handler appeals followed.

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Three major interpretive problems are presented by the appeals: (1) whether Article XLIII, Section 12 and its forerunners should control; (2) whether there is other substantive support in the record for the Mail Handlers' alternate jurisdictional claims, recognizing its entitlement to advance such claims under the July 3, 1973 Stipulation and its 1972 predecessor; and (3) whether the Civil Rights Act-- and Article II of the National Agreement--require awarding the disputed work assignments to Mail Handlers.

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1. Application of Article XLIII, Section 12

For present purposes there is no significant difference between Article XLIII, Section 12, and the December 8, 1971 Memorandum of Understanding plus the various subsequent

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agreements elaborating that Understanding. For convenience, therefore, the present discussion primarily is couched in terms of Article XLIII, Section 12 as it appears in the 1973 National Agreement.

The Postal Service and Mail Handlers now appear to have widely different impressions as to what was intended by this provision. It is unnecessary to resolve this difference with precision, for reasons appearing below. To avoid misunderstanding, however, the Impartial Chairman should note that he is unable to embrace the present claim of the Postal Service that Article XLIII, Section 12 simply constitutes a restatement of "an existing Postal Service obligation" to the Mail Handlers which does not purport to "affect or interfere with the rights of employees in other bargaining units." The actions of responsible Postal Service officials in 1972 and 1973, including its Fourth Step representative (initially) in the Oakland and Seattle cases, doubtless represented good faith efforts to apply Article XLIII, Section 12 in accordance with the reasonable meaning of the language in that provision.

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Nonetheless the critical issue here is whether the provisions of Article XLIII, Section 12--assuming its meaning is as broad as the Mail Handlers claim--can be effectuated at the expense of the jurisdiction of another recognized national craft unit. The APWU was not a party to negotiation of Article XLIII, Section 12 and cannot be bound thereunder to the extent that this provision might be inconsistent with contractual obligations of the Postal Service to the APWU under the National Agreement. The APWU asserts that such a contractual obligation exists under Article I, Section 1, and is binding upon all parties to the National Agreement. The Mail Handlers reply, with numerous citations, that Article I,

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Section 1, merely states a fact--that is, that the APWU and each other recognized Union represents the employees in its certified unit for purposes of collective bargaining.

The meaning of Article I, Section 1 must be ascertained from an objective reading of its language, in the context in which it was negotiated, and not by application of dicta extracted from judicial and arbitral opinions dealing with other contracts and other parties. The bargaining context in which Article I, Section 1 was negotiated includes two particularly significant elements: (1) the history of collective bargaining on a craft basis in the Post Office Department and (2) the inclusion in the National Agreement of other provisions illuminating the obligations arising under Article I, Section 1.

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For many years prior to 1970 the Post Office Department had negotiated with the exclusive national unions. The Postal Reorganization Act of 1970 recognized this situation when it directed the Postmaster General and the labor organizations holding "national exclusive recognition rights" to negotiate agreements covering wages, hours, and conditions of employment "of the employees represented by such labor organizations." Against this background it is highly significant that Article I, Section 5, which deals with newly created "positions," requires that any such new position be assigned to the most appropriate existing national "craft" unit. It is a plain implication from this carefully drawn provision that all parties to the National Agreement contemplated that existing positions, then included in existing national craft units, should remain in those units.

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Article VII, Section 2 also is highly significant since it permits the combination of work in different crafts "into one job" only under limited circumstances (arising from an exercise of Management initiative under Article III) and states that normally "work" in different crafts "will not be combined into one job." Article VII, Section 2-A goes on to declare that "full time scheduled assignments" including work within different crafts may be created only after: (1) all available work within each craft by tour has been combined, and (2) work of different crafts in the same wage level by tour has been combined. Moreover, this provision concludes with a requirement that no such combination full-time assignment may be made except after notice to the "affected Unions" of the reasons for establishing the "combination full-time assignments within different crafts." 53

Since these detailed provisions reflect a clear intent by all parties to protect the basic integrity of the existing separate craft units as of the time the 1971 National Agreement was negotiated, the Impartial Chairman must find that Article I, Section 1 bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular work assignments), except in conformity with Article VII. 54

2. The Claim for Jurisdiction under the July 3, 1973 Stipulation and its Predecessor

In seeking an award of jurisdiction over the disputed work assignments under the July 3, 1973 Stipulation and its November 16, 1972 predecessor, the Mail Handlers urge 55

that provisions in the Postal Reorganization Act and other Acts of Congress establish controlling policy considerations. The Mail Handlers' brief particularly emphasizes Congressionally imposed mandates that the Postal Service seek to (1) maintain and advance the economy and efficiency of postal operations, (2) implement the policy of equal pay for equal work, (3) provide employment opportunities for the disadvantaged and cleanse Postal Service employment and pay practices of racial inequalities and discrimination, (4) insure and advance safety and health, and (5) improve employee morale and provide Postal Service employees with "satisfying careers." Each of these policy considerations warrants some comment, if only to avoid future misunderstanding.

A. Economy and Efficiency

In each case here Mail Handlers presently are available to perform the disputed regular work assignments at a lower pay level than that received by Clerks performing identical duties. There is no serious claim that the Mail Handlers cannot handle such assignments satisfactorily. Superficially, therefore, it would seem that economy of operation plainly would justify sustaining the Mail Handler jurisdictional claims. The fact is, however, that the determination of "methods, means, and personnel" by which Postal operations are to be conducted is expressly a Management function under Article III of the National Agreement, and not a function of the Impartial Chairman. The Postal Service exercise of Management discretion under Article III, moreover, is limited by the proviso that any action taken is "subject to the provisions" of the National Agreement. And Article I, Section 1, as already found, precludes granting the Mail Handler requests under the facts in these cases.

There are other significant factors which the Mail Handlers' argument concerning efficiency overlooks. The Mail Handlers appear to assume that jurisdictional work claims are relatively easy to deal with by applying general language appearing in established Key and Standard Position descriptions. This view is unrealistic. Job descriptions normally are intended only to reflect the significant requirements, duties, responsibilities, and working conditions of various jobs in such manner as to provide adequate factual bases to determine appropriate rates of pay for the jobs in question. Position (or job) descriptions in large enterprises, moreover, inevitably include general statements describing functions and responsibilities which either overlap or are closely similar to functions included in other position or job descriptions. The evidence here confirms that Postal Service operations in no way provide an exception to this generalization. Indeed, the Position Descriptions of both Key Position 8 and Key Position 12 actually include some identical duties, as: (1) operating cancelling machines, (2) facing mail, and (3) opening and dumping sacks. It also is clear that separate Standard Positions for Sack Sorting Machine Operator exist at Levels 4, 5, and 6, with some having Mail Handler incumbents and others Clerk incumbents. Finally, there are no incumbents at all of the Mail Handler Position in a great number of Post Offices, so that typical Mail Handler duties in such locations long have been performed by employees working under other Position Descriptions, and specifically by Clerks.

Thus the only possible conclusion on this record is that Mail Handlers and Clerks often perform the same or similar work functions, throughout the far-flung operations of the Postal Service, and that such functions long have been

deemed to fall within the broad language used in the descriptions of both Key Position 8 and Key Position 12. While the Mail Handlers place great weight upon a single item in Key Position 8 which refers to occasional distribution of parcel post (without use of a scheme), there thus can be no doubt that this kind of distribution of parcel post long has been performed by Clerks as well as Mail Handlers.

In these circumstances it comes as no surprise that the Postal Field Service Compensation Act was not utilized in 1955 or thereafter to undertake a wholesale reshuffling of work assignments among the various crafts, by applying the Key Position Descriptions. The 1971 decision of Arbitrator Powers, so greatly stressed by the Mail Handlers, serves to emphasize this point since his Opinion notes that Key Position Descriptions do not necessarily determine the craft to which new Standard positions should be assigned. As Powers stated it: "In such cases, the key position to which a standard position is referenced has little significance in determining the appropriate craft unit designations."

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On this record, therefore, the Impartial Chairman has no doubt that the particular duties which now may be assigned to incumbents of given positions in a particular Post Office simply may reflect long established practice in that location. Given this state of affairs it would be an invitation to chaos for the Postal Service, or the Impartial Chairman, to undertake to transfer existing work assignments from the jurisdiction of one craft to another throughout the Postal Service, in reliance upon the general language appearing in Key and Standard Position Descriptions. If Position Descriptions ever were to have been utilized for such a purpose (at least since 1970), it could have been only by agreement of the Postal Service with all affected Unions representing the separate national crafts.

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B. Equal Pay for Equal Work

Under Section 5 (f) of the Postal Reorganization Act a portion of the Compensation Act of 1955 was carried over as a "rule or regulation" of the Postal Service, to the following effect:

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"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."

According to the Mail Handlers, this provision is implemented by Section 451 of the Postal Manual, as follows:

62

"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."

Here the Mail Handlers argue that the Postal Service has done violence to "its own congressionally imposed equal pay regulations" in awarding parcel sorting work to Clerks. It emphasizes that in the various Post Offices throughout the country Distribution Clerks and Mail Handlers may perform some identical duties, occasionally side by side. Since most Mail Handlers are paid at Level 4 and most Clerks at Level 5, the Mail Handlers characterize this situation as a clear violation of the "equal pay for equal work" principle. The proper remedy, say the Mail Handlers, is to award all "simple, non-scheme separation of parcels" to the Mail Handlers.

This argument rests upon an erroneous assumption as to the intent of the above-quoted excerpts from the Postal Service Compensation Act of 1955 and Section 451 of the Postal Manual. These provisions both, on their face, deal with the ranking (or classifying) of positions. In no way do they purport to indicate that individual employees working at different pay levels, under different position descriptions, should receive the same rate of pay for performing those individual aspects of their respective positions which are identical or otherwise overlap. Determination of an appropriate level of compensation for a given Position (as a whole) normally involves considering those of its elements which require the highest levels of responsibility, skill, training, and the like. All duties performed under a given position description normally do not call for the highest level of all of those factors which are considered in slotting a position in the pay scale. Thus, in practice, it is by no means unusual in large enterprises, with inter-related work functions, to find incumbents of two or more different positions at times performing similar or even identical individual work assignments or duties at different rates of pay. In the Postal Service, as matters now stand, each employee is paid for the position which such employee fills, and not for each separate duty which he or she may perform within the scope of that position, at one time or another.

64

C. Racial Equity

Although precise statistics are unavailable, the Mail Handlers infer from limited available data that nearly half of the Mail Handlers are minority employees while only about a fourth of the Clerks are minority employees. It is

65

unnecessary to decide whether these estimates--challenged by the APWU--are accurate. For present purposes it may be assumed, without purporting so to decide, that there is a significantly higher proportion of minority employees in the Mail Handler membership. Mail Handler evidence indicates, moreover, that in Seattle about 40% of the Mail Handlers are minority employees compared with 20% in the Clerk group. At the San Francisco Air Mail Facility about 80% of the Mail Handlers are minority employees, compared with about 20% among the Clerks.

The Mail Handlers reason that if the May 31, 1974 rulings of Labor Relations Consultant Sullivan are permitted to stand, then the APWU and the Postal Service will be encouraged to "cannibalize" the Mail Handler bargaining unit, to the detriment of the employment of minorities. It notes that the APWU, in its separate 1973 craft negotiations, had pressed a proposal which--if it had been granted--might have resulted in transferring major portions of established Mail Handler work to the Clerks.

66

This argument warrants no extended discussion here, since the protection of Article I, Section 1 applies equally to all national craft units. It should be clear under this Opinion, moreover, that the rationales set forth in the Sullivan ruling letters do not embody proper bases for dealing with jurisdictional claims which conflict with the intent of Article I, Section 1 and other key provisions of the National Agreement. Finally, this particular Mail Handler argument does not add anything to its arguments under Title 7 of the Civil Rights Act and Article II of the National Agreement, dealt with hereinafter.

67

D. Safety and Health

If Clerks are permitted to lift parcels and sacks, the Mail Handlers assume that a substantial portion of them will be injured because they have not been tested to screen out individuals unqualified for lifting. Since the APWU represents the Clerks, any issues of safety and health involving the Clerks should be handled through the APWU and not the Mail Handlers.

68

E. Employee Morale

Section 101(c) of the Postal Reorganization Act obligates the Postal Service to "place particular emphasis upon opportunities for career advancement ... and the achievement of worthwhile and satisfying careers in the service of the United States." Mail Handler evidence indicates that some Clerks may be displeased at times with being required to perform heavy work in non-scheme processing of mail. The fact that Mail Handlers in some locations may work side by side with Clerks, at a lower rate of pay, also is characterized as demoralizing.

69

The suggestion that the Impartial Chairman could alleviate these problems, by sustaining the Mail Handler claims here, apparently rests on an assumption that the Chairman somehow is authorized to perform basic managerial functions. The cited Congressional mandate necessarily is stated in general terms and contemplates the exercise of discretion and sound judgment in determining how best to effectuate the broadly stated policy in specific instances. This obviously

70

entails an exercise of basic Management functions under Article III of the National Agreement. The Impartial Chairman is neither authorized nor equipped to perform such functions.

3. Claimed Violation of Article II and Title VII of the Civil Rights Act

Article II of the National Agreement prohibits discrimination against employees because of "race, color, creed, religion, national origin, sex, age or marital status." Title VII of the Civil Rights Act, as amended in 1972, requires that Postal Service employees "shall be made free from any discrimination based on race, color, religion, sex or national origin."

71

Against this background the Mail Handlers contend-- citing Griggs vs. Duke Power, 401 U.S. 424 (1971)--that Mail Handlers performing non-scheme distribution of parcels improperly are required to pass a test of strength and stamina, while Clerks who may be assigned to the same kind of work are not required to pass such a test. The argument runs: "... while predominantly non-white mail handlers take and pass the job related tests, the whites who do not, get the jobs ..." (Underscoring added.)

72

Here the Mail Handlers fail to distinguish between pre-employment requirements for filling a Position, as such, and the requirements of isolated or separate work assignments which later may be performed by some incumbents of the Position from time to time. The Mail Handler Key Position is classified on the basis of all of its elements, as described

73

in Key Position 8. Key Position 8, as a whole, manifestly recognizes the need for considerably more physical strength and stamina than does the Clerk Key Position 12, as a whole. Thus there is no clear impropriety in providing different types of pre-employment tests for employees seeking assignment to such substantially different Positions.

In effect, therefore, the Mail Handlers now argue that some functions within Key Position 8 should be treated as separate "jobs" which would not require passing a strength and stamina test. Such an argument would appear to assume that each separate duty or work assignment may be treated as a separate "job." The fact is, however, that the various Key and Standard Positions in the Postal Service normally have been treated as "jobs" (as the term commonly is used), with only some duty assignments (within such "positions") being posted and filled in accordance with applicable seniority provisions.

74

If the present position classification program, seniority arrangements, and related pay practices, arguably may leave something to be desired in terms of equality of treatment for all involved employees over the long run, the solution for such problems hardly is to be found in sustaining the Mail Handlers' jurisdictional claims in the present cases. Indeed, Article II, Section 2 of the National Agreement states:

75

"There are established at the national and regional levels Joint Committees on Human Rights. The committees will be composed of a representative of each Union and responsible management officials. The committees may

develop affirmative action proposals on all matters affecting minority groups. The committees will also be advised of the plan for site selection for facilities planned for national postal mail networks and major metropolitan areas, and review availability of adequate housing and public transportation. The committees shall meet as required at mutually agreeable times.

"Non-discrimination and civil rights matters shall also be discussed as often as necessary by the National Blue Ribbon Committee."

(Underscoring added.)

There is no suggestion in the present record that any of the broad claims of possible discrimination advanced by the Mail Handlers in the present cases has been presented for Joint Committee consideration under Article II, Section 2. Nor does it appear that problems of alleged racial discrimination suggested by the Mail Handlers have been carried before the Civil Service Commission (under Section 717(b) of Title VII of the Civil Rights Act, as amended) or raised in a civil action as authorized under Section 717(c) of the Civil Rights Act. These would seem to be appropriate forums for dealing with such broad issues of claimed discrimination, as distinct from individual claims of discrimination. The authority of the Impartial Chairman necessarily must be exercised within the limitations set forth in the National

Agreement. Neither the Civil Service Commission nor a Federal Court would be so limited in prescribing appropriate remedial action, should any violation of the Civil Rights Act actually be established in a proper case.

4. Scope of the Present Decision

In each case here the Mail Handlers have appealed from a May 31, 1974 Fourth Step ruling by Labor Relations Consultant Sullivan. In each case, with a possible qualification as to the Seattle PCC case, the appeal must be denied. As the present Opinion makes clear, however, the May 31, 1974 rulings by Labor Relations Consultant Sullivan were based upon applications of guidelines and criteria which really are not relevant in a case where one Union, representing a given national craft, seeks to have added to its jurisdiction work assignments which long had been included in a national craft unit represented by another Union when the National Agreement was executed. Such a jurisdictional claim is inconsistent with relevant provisions of the National Agreement and conflicts with Article I, Section 1, to which all four Postal Unions are parties.

77

It should be understood, however, that the present rulings in no sense restrict Postal Service discretion to realign job duties, to make temporary assignments, to create new positions, or to establish additional full-time scheduled assignments which include work within different crafts, as long as such actions are in conformity with all relevant provisions of the National Agreement, including Article I, Section 5; Article III; and Article VII.

78

A few additional words seem in order as to the Seattle PCC case, since the evidence is not clear as to whether implementation of the May 31, 1974 ruling at Seattle may have resulted in reducing the number of work assignments given to Mail Handlers below the proportion of total assignments held by Mail Handlers in the PCC operation prior to the abortive effort to transfer all of the Clerk work to Mail Handlers. Part of the uncertainty in the record may arise from the fact that PCC operations had tailed off markedly in 1973 and 1974. To avoid possible error, however, it should be stated clearly here that the Mail Handlers also are entitled to full protection of Article I, Section 1. Thus, if through inadvertence the May 31, 1974 ruling has been applied in such manner as to remove from the Mail Handlers any regular work assignments which they filled prior to January 11, 1973, the present Mail Handler appeal has merit, and its jurisdiction should be restored to this extent. Neither the Mail Handlers nor the Clerks, however, are protected against elimination of work assignments which are required to meet changed conditions, including a reduction in level of PCC operations.

79

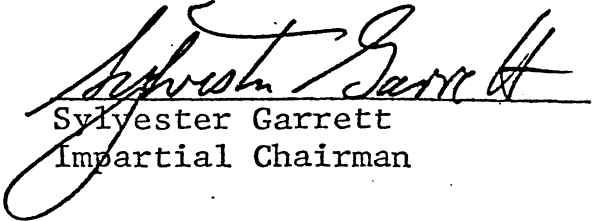
AWARD

The Mail Handler appeals in Cases AW-NAT-5753 (Oakland) and A-NAT-2964 (San Francisco - AMF) are denied.

80

The Mail Handler appeal in Case A-NAT-5750 (Seattle-PCC) is denied, subject to the limitation set forth in Paragraph 79 of the Opinion herein.

81


Sylvester Garrett
Impartial Chairman