American Postal Workers Union, AFL-CIO

Memorandum

Telephone
(202) 842-4246

1300 L Street, NW
Washington, DC 20005

From the Office of WILLIAM BURRUS
President

May 26, 2010

TO: Regional Coordinators & NBAs

SUBJECT: Excessing

I have initiated the attached interpretive grievances relative to the excessing of APWU represented employees. The subjects are as follows:

#150 when full time employees are identified as excess and convert to part-time regular, their hours as PTRs must include the available hours assigned to casual employees

#176 if agreement is not reached in Step 4 discussions, the party that fails to provide the 15 day statement waives defense in arbitration

#0002 The union is entitled to notice of not less than 90 days in advance when it is intended to excess employees from craft or installation

#063 When it is intended to excess employees from craft or installation such employees must receive notice of not less than 60 days informing of the office or craft to which assigned

Step 4 inquiry - May 25, Article 12 requires that when excessing from craft or installation occurs, casuals must be eliminated consistent with the arbitration decision (NAC -12). The same requirement applies to the reduction of PTF hours (If such reduction will eliminate the impact on employees in the Regular Workforce).

Step 4 inquiry - May 25, Article 12 requires that the reductions of PTF hours and the elimination of casuals to "minimize the impact" continues until the excessed employees become PTRs or exhaust their retreat rights

In general, the obligation to minimize the impact on excessed employees is superior to the staffing requirements of Article 7.

cc: Greg Bell
Craft Officers

WB:RB:hjp//opeiu#2/afl-cio

150

APWU SUMMARY OF INTERPRETIVE ISSUE

Re: APWU No HQTG20100150

Statement of the issue: The union contends that the contractual obligation at Article 12.4D. requires that "the Employer agrees to separate, to the extent possible, all casual employees working in the affected craft and installation prior to excessing any regular employee in that craft out of the installation". Part Time Regular employees are determined in Article 7.A.2. to be part of the Regular Work Force and are governed by this provision.

Article 12.5.C.5.b.(4) provides that Full time employees identified as excess have the option of changing to part-time regular in lieu of involuntary reassignment. Such employees who in lieu of being reassigned change to part-time regular are protected by the obligation to separate all casuals employees working in the affected craft and installation to the extent possible.

In Case No HQC-NA-C 12 the national parties stipulated that:

> "All casuals must be removed if it will eliminate the impact on regular workforce employees. The Employer must eliminate all casuals to the extent it will minimize the impact on the regular workforce"

Contractual Interpretation: The obligation and agreement to minimize the impact on the regular workforce includes maximizing the available hours to excessed full time employees who elect to change to Part Time Regular status.

Facts and Contentions: Postal management has excessed full time employees who have elected to change to part time regular in lieu of involuntary reassignment and the remaining hours available have been divided between casuals and the excessed employees in violation of the contractual requirement to eliminate all casuals to the extent possible. This continued use of casuals violates Article 12.4.D of the national agreement and its interpretation.

Remedy: The union asks that all affected employees be made whole from the date 14 days prior to the initiation of this dispute

176

May 21, 2010

APWU SUMMARY OF INTERPRETIVE ISSUE

Re: APWU No HQTG20100176

Contract Article in Dispute: Article 15.2.Step 4(a) and Article 15.4.D of the 2006 national Agreement

Statement of the issue: The union contends that in the processing of Step 4 grievances, if agreement is not reached "within fifteen (15) days of such meeting, each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to such issues."

Failure to provide the 15 day statement, timely voids the opportunity of the failing party to present facts and contentions relative to the disputed issue.

The union submits this dispute as an interpretive issue of Article 15.2.Step 4 and 15.4.D.

The obligation to provide the 15 day statement is interpreted to mean "in their possession."

It is recognized and agreed that the parties may mutually agree to extend the time constraints of these provisions.

Contractual Interpretation: By terms of the national agreement, if agreement is not reached on a properly filed Step 4 interpretive grievance the parties are required to within fifteen (15) days of such meeting, provide the other party with a statement in writing of its understanding of the issues involved, and the facts giving rise to such issues. Failure to provide the 15 day statement timely voids the opportunity of the failing party to present facts and contentions in arbitration relative to the disputed issue. To provide is interpreted as "in their possession".

Facts and Contentions: Postal management at the national level has routinely violated the time constraints of Article 15.2.Step 4 and 15.4.D reserving the right to present facts and contentions in arbitration. Based on binding national interpretations of the national agreement, when facts and contentions are presented

for the first time in arbitration they are considered to be "new issues" and are banned from presentation.

Arbitrator Linda Byers ruled in CASE NO HQC-NA-C 38 that:

> Not only does strict compliance with Article 15, Section 3.D of the National Agreement eliminate surprise evidence, enforcement of the provision ensures that the arbitration decision is made on the same facts and arguments the parties consider. The Parties' right to know and discuss in detail the evidence and argument before the same evidence and argument is presented to an arbitrator for decision is crucial to the process and to the Labor-management relationship.

Remedy: The union requests the concurrence of postal management in this contract interpretation and retroactive application to circumstances that have arisen 14 days prior to the initiation of the dispute and forward.

William Burrus
APWU

0002

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
President
(202) 842-4246

January 22, 2010

Doug Tulino
United States Postal Service
475 L'Enfant Plaza, S.W.
Room 9014
Washington, DC 20260-4100

Re: APWU No. HQTG20100002

Dear Mr. Tulino:

By notice dated January 4, 2010, the union has initiated a Step 4 grievance interpreting the agreements between the parties as requiring advance notice to the union at the Regional level.

I first raised this issue by letter dated **August 11, 2009** contesting the employer's interpretation. In subsequent exchange of letters, the employer has formalized its position on this issue.

The May 18, 2005 agreement signed by myself and Mr. Vegliante was an integral part of the 2005 contract extension negotiated for the purpose of providing joint interpretations of Article 12. It was anticipated that the conversion to automation would result in massive excessing of employees and we wished to eliminate the anticipated disagreements over the application and interpretation of Article 12. This exchange regarding advance notice is an example of the intent of our agreement where one of the parties focuses on the placement and context of a contractual commitment to achieve a desired objective. In many instances, the employer did not want to delay excessing because of required notice and attempted to marginalize contractual commitments. Our agreement uniformly resolved these disputes.

The May 18, 2005 agreement is unequivocal in our commitment that employees and the union will be provided notice. The agreement requires:

1. When excessing out of the installation, the impacted employees will receive a minimum notice of 60 days if possible;

2. The union will receive 6 months notice when possible when excessing is non automation based, and
3. When excessing is automation based, the union will receive a minimum of 90 days advance notice.

We demand that the required notices be afforded to the union and affected employees.

The union further request that all employees excessed improperly from the date of this dispute be made whole. If the union had been provided the advance time as agreed to, we would have had the opportunity to fully explore alternatives to excessing, including the right of employees to convert to PTR remaining in the installation, solicit senior volunteers to be excessed in lieu of junior employees and the opportunity for junior employees to arrange their personal lives in preparation for the job transfer.

The affected employees and the union have been provided less than the agreed to notice and have suffered the consequences.

I am available to discuss this grievance within the time limitations of the national agreement. In the absence of timely discussions and the presentation of contrary information, I intend to appeal to arbitration.

Sincerely,

William Burrus

William Burrus
President

cc: Greg Bell
Regional Coordinators

WB:RB:hjp//opeiu#2/afl-cio

D63

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

April 16, 2010

William Burrus
President
(202) 842-4246

Doug Tulino
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, DC 20260-4100

Re: Q06C-4Q-C10104432
APWU # HQTG20100063

Dear Mr. Tulino:

The parties' representatives met on April 5, 2010 to discuss the above referenced dispute and failed to reach agreement therefore pursuant to the provisions of the national agreement following is the unions **15 day statement of the understanding of the issues including the facts and contentions of the dispute:**

When employees are identified as reassigned from their craft or installation the national agreement requires that such employees be "given not less than 60 days advance notice, if possible." The Employer has applied this provision as requiring 60 days notice that such employees **"will be"** reassigned without identification of **"where"** they will be reassigned and the exact date of reassignment. The Employer has not advanced the defense that it was not possible to provide the required notice.

The contractual provisions applicable to the reassignment of employees, Article 12.5.B.5 and C.5 requires the reassignment of excess employees "to vacancies ... in the APWU crafts in installations" and further requires that "the Postal Service will designate such installations for the reassignment of excess full-time employees."

The national parties further recorded their intent to provide 60 day notice in Article 12.5.B.5 in their agreement that "full-time and part-time flexible employees involuntarily detailed or reassigned from one installation to another shall be given not less than 60 days advance notice." The emphasis of this provision is the agreement that the 60 day notice applies when reassigned **to another installation.** Notice that such employees will be reassigned **from** an installation does not satisfy the notice requirement.

During the discussions, the Employer referenced the employee selection process of available vacancies as limiting the obligation to provide 60 day notice of the office to which reassigned. This process is not referred to in Article 12 but is an application of the craft seniority provisions. Nothing precludes the parties from negotiating an expedited bidding process that the Employer can expedite the notice to employees and satisfy the 60 day notice provision without undue delay. The absurdity of the

Employer's interpretation is if the reassignment bidding process (which has no contractual time limitations) consumes 59 days of the 60 day notice period, the employee will be left with one (1) day's notice that he/she will be required to work in an office up to 1000 miles or further from their place of employment. This would violate the required 60 day advance notice period.

Under the USPS interpretation, the notice period is influenced by the number of employees identified for excessing during a specific period of time. If few employees are provided selections for placement to a specific office the notice period is not reduced by the selection process as would be required if hundreds of employees are selecting from dozens of available vacancies. Employees in the former circumstance can select within a matter of hours while in the latter example reassignment to a specific office may take weeks or months and reduce proportionally the 60 day notice period.

It is not unusual in the parties' agreement that placement of employees be required within a specified time period that is not altered by intervening events. In this case, the Employer reduces the 60 day notice period by events not contemplated in the negotiation of the Article 12 reassignment provisions.

The reassignment of employees has accelerated over recent years with some employees reassigned 500 miles or greater from their place of employment. The Employer's practice of ignoring the universal 60 day notice requirement places the employee who is reassigned one mile from their office of employment and where there are no other excessed employees longer notice than would be provided to those who are competing with many for vacancies over an extended radius. The negotiated 60 day notice is intended as a minimum period of universal notification that the employee can make the necessary personal adjustments.

This issue has been brought to the attention of postal management timely but in their determination to apply a flawed interpretation, hundreds of employees have been reassigned without being granted the required 60 day notice. The union asks that these employees who were not provided proper notice be given the option of returning to their former installation and if their excessing is still intended, be provided the required 60 day notice and be made whole for commuting expenses and work outside of schedule from the date of improper reassignment.

Sincerely,

William Burrus

William Burrus
President

cc: Greg Bell

WB:RB:hjp//opeiu#2/afl-cio

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 25, 2010

William Burrus
President
(202) 842-4246

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Dear Mr. Tulino:

I have received information that in offices with fewer than 200 man years of employment local management is excessing full time employees and replacing them with part-time flexible employees. Through this inquiry I am not initiating a challenge in any specific office but inquiring to determine if we have an interpretive dispute at the national level.

The national parties agreed in case No HQC-NA-C 12 that:

> "All casuals must be removed, if it will eliminate the impact on regular workforce employees. The Employer must eliminate all casuals to the extent it will minimize the impact on the regular workforce."

In that two conditions are imposed prior to excessing pursuant to 12.5.C.5.a.(2) and (3), when excessing full time employees the application of these provisions is as follows:

> All casuals must be removed ***and*** part-time flexible hours reduced, if it will eliminate the impact on the regular workforce.

When excessing full time employees pursuant to the above referenced sections these restrictions must be complied with.

If the employer has a contrary interpretation of these provisions please inform my office.

Sincerely,

William Burrus

William Burrus
President

WB:RB/lbb
opeiu#2, afl-cio

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 25, 2010

William Burrus
President
(202) 842-4246

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Dear Mr. Tulino:

The national parties in Case No HQC-NA-C 12 stipulated as follows:

> "All casuals must be removed if it will eliminate the impact on regular workforce employees. The Employer must eliminate all casuals to the extent it will minimize the impact on the regular workforce."

The union interprets Article 12.5.C.5 as including the same obligation to reduce part time flexible hours resulting in the obligation to eliminate casuals **and** reduce part-time flexible hours

The union interprets these obligations as applying at the time of excessing and continuing until the employees have exhausted their retreat rights. Information received indicates that local managers are excessing full time employees and after the excessing has been completed, the managers are adding casual and part-time flexible hours that if combined would afford retreat rights to excessed employees. This obligation to minimize the impact on the regular workforce does not end until the excessed employees have been afforded retreat rights.

Please inform of the USPS' interpretation and application of the above cited sections of Article 12.

Sincerely,

William Burrus

William Burrus
President

WB:RB/lbb
opeiu#2, afl-cio