

American Postal Workers Union, AFL-CIO

Memorandum

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*From the Office of MARGARET A. LEAF
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TO: Cliff Guffey, Assistant Director, Clerk Craft

November 15, 1990

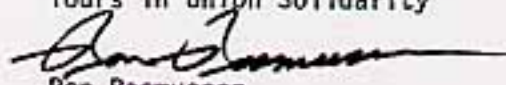
SUBJECT: MAXIMIZATION - HISTORICAL BACKGROUND

Dear Cliff:

Please replace the rough draft paper on the subject of 'historical background of maximization' I gave you last week with the enclosed.

Due to the fact that the 'rough draft' was 'lifted' straight out of my recent brief, this finalized version will correct some clerical inaccuracies.

Yours in Union Solidarity


Ron Rasmussen
National Business Agent
APWU, AFL-CIO

RR/gr

Enclosure

c.c.: File

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HISTORICAL BACKGROUND

MAXIMIZATION

ARTICLE 7

Prepared

By

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(11/15/90)

I. HISTORICAL BACKGROUND

Since the Postal Reorganization Act of 1970, postal unions have negotiated six (6) national agreements.

Each of these agreements contained language changes which not only indicated specific items of concern, but intent of the parties.

The writer feels it is imperative to include in this brief the history of the negotiated language changes (specifically Article 7, Section 3 (Employee Complements) to show the various ongoing efforts to maximize the number of full-time employees.

In 1971, Article 7, Section 3 of the National Agreement stated:

"SECTION 3. Employee Complements. The Employer shall man all post offices and facilities with 200 or more man years of employment with 90% full-time employees within six (6) months from July 1, 1971, with the exception of seventy-eight (78) largest post offices that include all post offices larger than Grand Rapids, Michigan as to which such manning shall be completed by June 30, 1972. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all Post Offices."

In 1973, the language stated:

"Section 3. Employee Complements. The Employer shall man all post offices and facilities with 200 or more man years of employment with 90% full-time employees. The employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all post offices. A part-time flexible employee working 8 hours within 10, on the same 5 days each week and the same assignment over a six-month period will demonstrate the need for converting the

assignment to a full-time position. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made." ^{1/}

In 1975, this language read:

"Section 3. Employee Complements. The employer shall man all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement, with 90% full-time employees. The employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six (6) month period will demonstrate the need for converting the assignment to a full-time position. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made.

In 1978, the first three (3) year agreement was negotiated, which stated:

"Section 3, Employee Complements. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees. The employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six-month period will demonstrate the need for converting the assignment to a full-time position. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made.

^{1/} Bold type denotes changed language from one contract to the next.

See Memorandum of Understanding, Page 141."

"MEMORANDUM OF UNDERSTANDING
Between
United States Postal Service

American Postal Workers Union, AFL-CIO
National Association of Letter Carriers, AFL-CIO
National Post Office Mail Handlers, Watchmen,
Messengers and Group Leaders Division of the
Laborers' International Union of North American,
AFL-CIO

The parties hereby commit themselves to the maximization of full-time employees in all installations. Therefore, they agree to establish a National Joint Committee on Maximization. That Committee shall during the first year of the 1978 National Agreement, develop criteria applicable by craft for the establishment of additional full-time duty assignments with either regular or flexible schedules. To this end, the Committee shall develop both an approach to combining part-time flexible work hours into full-time duty assignments and a method for determining scheduling needs compatible with the creation of the maximum possible number of such assignments.

Dated: September 15, 1978"

In 1981, the language stated:

"Section 3. Employee Complements

- A. The employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees.
- B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations.
- C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

- D. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made.

See Memo Page 166 and 169"

"MEMORANDUM OF UNDERSTANDING

It is understood by the parties that in applying the provisions of Articles VII, XII and XIII of this agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement."

"MEMORANDUM OF UNDERSTANDING

It is also agreed that where this agreement makes reference to offices/facilities/installations with a certain number of employees or man years, that number shall include all categories of bargaining unit employees in the office/facility/installation who were covered by the provisions of the 1978 National Agreement."

"ARTICLE VII
MEMORANDUM OF UNDERSTANDING

Where a part-time flexible has performed duties within his craft and occupational group within an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time status.

This criteria shall be applied to postal installations with 150 or more man years of employment.

It is further understood that part-time flexibles converted to full-time under this criteria will have flexible reporting times, flexible non-scheduled days and flexible

reporting locations with the installation depending upon operational requirements as established on the preceding Wednesday."

"LETTER OF INTENT

This letter memorandum sets forth our mutual intent regarding the attached Memorandum of Understanding relating to maximization.

1. The initial 6 month measuring period will begin on January 1, 1982 and end on June 30, 1982. Conversions based upon this initial period shall be completed within sixty (60) days. This conversion process shall not interfere with or delay conversions which would otherwise be implemented pursuant to the existing National Agreement. Henceforth, the 6 month measuring periods will be monitored on a continuing basis, and conversions required shall be implemented promptly.
2. Conversions required pursuant to this Memorandum of Understanding shall be in addition to (but not duplicative of) conversions that may be required pursuant to existing provisions of the National Agreement. The criteria established by this Memorandum of Understanding are supplementary to, not in limitation or diminishment of, existing criteria in the National Agreement.
3. Subject to operational requirements, the intent of the parties is to avoid unnecessary disruption in existing patterns of reporting times, non-scheduled days and reporting locations for those PTF's converted pursuant to these criteria, to the extent the duties of the position converted on consistent with those performed by the PTF during the measuring period.
4. Employees converted to full-time positions pursuant to this Memorandum of Understanding may bid on assignments posted for bids by employees in their craft, and shall be full-time regular employees under the National Agreement.

5. In those installations where conversions have been made under this Memorandum of Understanding, and there are subsequent reversions or excessing, any reductions in full-time employees' positions shall be from among those position(s) converted pursuant to this Memorandum of Understanding until they are exhausted.
6. The parties will establish a national level committee to review and resolve any problems relating to the initial period of implementation, in accordance with their mutually expressed intentions. Accordingly, grievances filed at the local level relating to the initial period of implementation shall be stayed without prejudice to either party, and the time limits deemed extended by mutual consent, in order to permit review by the national committee. Upon such review, questions of fact may be referred to the normal grievance machinery."

The language in the 1984 National Agreement stated:

"Section 3. Employee Complements

- A. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees.
- B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations.
- C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.
- D. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to full-time position is in order, conversion will be made.

[See Memos, pages 179 and 180]"

"ARTICLE 7
MEMORANDUM OF UNDERSTANDING

Where a part-time flexible has performed duties within his craft and occupational group within an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time status.

This criteria shall be applied to postal installations with 125 or more man years of employment.

It is further understood that part-time flexibles converted to full-time under this criteria will have flexible reporting times, flexible nonscheduled days, and flexible reporting locations within the installation depending upon operational requirements as established on the preceding Wednesday.

The initial measurement period for offices of 125 through 149 man years of employment shall begin on January 19, 1985. The parties will implement this in accordance with their past practice. Current administration of the existing Memorandum of Understanding and Letter of Intent will continue as is for offices of 150 or more man years of employment.

Date: Incorporated into December 24, 1984 Award"

In the 1987 National Agreement, it stated:

"Section 3. Employee Complements

- A. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees.
- B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations.
- C. A part-time flexible employee working eight

(8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

- D. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made.

[see Memos, page 186 and 187]

"ARTICLE 7
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Maximization/Full-time Flexible--APWU

Where a part-time flexible has performed duties within his craft and occupational group within an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable, 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time status.

This criteria shall be applied to postal installations with 125 or more man years of employment.

It is further understood that part-time flexibles converted to full-time under this criteria will have flexible reporting times, flexible nonscheduled days, and flexible reporting locations within the installation depending upon operational requirements as established on the preceding Wednesday.

The parties will implement this in accordance with their past practice.

Date: July 21, 1987"

II. ARBITRAL HISTORY

In the 1971 National Agreement, Section 3 contained one (1) paragraph consisting of two (2) sentences. (See bottom of Page 1 and continuing on to Page 2.)

In the 1973 National Agreement, language was added. It then contained one (1) paragraph consisting of four sentences. (See Page 2.) 2/

Based upon the 1973 National Agreement, on June 10, 1974, the first of seven (7) grievances were filed in Taunton, Massachusetts asserting that the schedules worked by part-time flexible clerks over the prior six (6) months indicate that conversion to full-time positions was required under Article VII, Section 3.

All seven (7) grievances were subsequently appealed and heard in national arbitration before Arbitrator Sylvester Garrett. 3/ He stated the following with regard to the appropriate application and administration of the section under review:

"The words 'maximize' and 'minimize' necessarily imply that a standard of practicability should govern in evaluating the relevant circumstances in any given postal installation to determine the extent to which maximization should be achieved. This in no way suggests, moreover, that the Postal Service is not ultimately

2/ References hereafter will refer to first, second, third and/or fourth sentence(s), or to Sections 7.3.A., 7.3.B., 7.3.C. and/or 7.3.D to which these were subsequently changed to.

3/ See attached Case #AB-N-3744 et al by Arbitrator Garrett dated January 26, 1976 which is attached hereto and made part hereof.

responsible for maintaining the efficiency of its operations. The right and duty of the Service to maintain efficiency is delineated clearly in Article III of the National Agreement 'subject to the provisions of this Agreement.' Nothing in the second sentence of Article VII, Section 3 suggests that the Postal Service thereby is required to maximize the number of full-time employees in any given postal installation if the consequence is a significant increase in labor cost. It follows that the Postal Service is not required by this provision to convert part-time flexible employees to full-time regular status where this would produce demonstrable increased costs, such as in unavoidable increased idle time during scheduled tours of regular employees or in overtime pay." (See Page 13.)

In 1975, the language of Article 7, Section 3 basically remained the same except for some cosmetic changes.

In 1977 NALC National President J. Joseph Vacca wrote to USPS Senior Assistant Postmaster General James V.P. Conway instituting a grievance at the national level and requesting an immediate Step 4 meeting. ^{4/}

The dispute, as defined in that letter was apparently the Postal Service's position that its only obligation to maximize is when evidence shows compliance with the third sentence of Article 7, Section 3. (See Page 2.)

The NALC disagreed with that interpretation and contended that the Employer had an obligation to maximize "whenever there exists available work to be performed eight hours within ten hours on five of six days in a service week over a six-month period, notwithstanding how many different part-time flexible employees may

^{4/} See letter dated August 4, 1977 which is attached hereto and made part hereof.

have been performing such work over a six-month period." (Emphasis added.)

Based upon the NALC's request, a Step 4 meeting was held on September 14, 1977 and a decision rendered. ^{5/} This Step 4 decision states in part:

"..... The need to establish a full-time assignment is not determined exclusively by the third sentence of Article VII, Section 3. This provision merely sets forth a particular factual situation, the occurrence of which is considered to indicate that a full-time position is feasible.

This is not to say that there can not be other circumstances which might support the conclusion that a full-time position is warranted.

..... Under the circumstances, we consider that the National Level grievance referenced above is resolved."

Based upon the 1975 National Agreement, a grievance was filed at Toms River, New Jersey, which ultimately was heard at the national level before Arbitrator Howard Gamser who rendered his award in October, 1978. ^{6/}

Arbitrator Gamser relied upon the language in the decision rendered by Arbitrator Garrett (entered under Footnote #6) and also his "standard of practicability" and added possible adverse impact upon management's flexibility in meeting its responsibilities.

Considering all these factors, Arbitrator Gamser's award

^{5/} See Step 4 decision Case #NC-NAT-8871 dated February 10, 1978 which is attached hereto and made part hereof.

^{6/} See Case #NC-E-9358 by Arbitrator Gamser dated October 12, 1978 which is attached hereto and made part hereof.

provided for:

"..... the scheduling of four additional part-time flexible positions on the basis of eight hours within ten per day on the same five days each week."

These assignments were on a six (6) month trial period and was dependent upon an adverse impact upon efficiency of the operation or result in undue increased costs. He went on to, not only establish these positions if no adverse impact or increased costs resulted, but continue to schedule additional part-time flexibles in the same manner.

In 1978, the language remained the same. However, it also included a Memorandum of Understanding. This memo states the parties commitment to maximize in all installations, agreement to establish a National Joint Committee, to establish criteria and an approach to combining PTF work hours and a method for determining scheduling needs.

Based upon the 1978 National Agreement, Arbitrator Syd Rose denied a case filed on May 9, 1979 based upon the language of the 1978 National Agreement. ^{1/} The grievance was denied based upon the language of the 3rd sentence in Section 3 which starts with the word "A". As "A", meaning one (1), PTF had not met the requirements of the third sentence, he denied the grievance. However, in that award he stated:

"..... The Arbitrator is not authorized to modify the present terms of the Agreement.

^{1/} See Case #W8C-5D-C-3530 by Arbitrator Syd Rose dated February 6, 1981 which is attached hereto and made part hereof.

However, if the working hours of a part-time flexible employee at the Medical Lake Facility is changed for the purpose of evading the goals of Section 3 and frustrating the appointment of a full-time regular employee, the Arbitrator would be happy to look into the matter."

In the 1981 National Agreement, the wording remained the same. However, it was then divided into subsections "A", "B", "C" and "D" and refers to "Memos".

The first Memo referred to is "cross craft assignments. The second Memo referred to is in regard to numbers and categories of bargaining unit employees. The third Memo created full-time flexible regular positions in installations with 150 or more man years if a PTF had worked at least forty (40) hours, eight (8) within nine (9) or ten (10), five (5) days a week, over a six (6) month period.

The Letter of Intent was established to outline the criteria with which to accomplish the provisions of the Memo and to establish a national level committee to review and resolve any problems relating to the initial period of implementation.

Based upon the 1981 National Agreement, in Arbitrator Lennart Larson's 1987 award, he eliminated Sections 7.3.A. and 7.3.C. as being not applicable to an Article 7.3.B. grievance and gave specific reasons for each. 8/ (See Pages 5 and 6.) He also relied upon Sylvester Garrett's national level award (entered under Footnote #6) while excluding Arbitrator LeWinter's decision in Case #E1C-2B-C-15866 and Arbitrator Feldman's decision in Case

8/ See Case #S1C-3W-C-38156 by Arbitrator Larson dated August 5, 1987 which is attached hereto and made part hereof.

#C8C-4M-C-216 as being distinguishable from his present case. (See Pages 7 and 8.)

Arbitrator Larson sustained the grievance and directed management to establish two (2) full-time regular clerk positions, and that after a reasonable period of time, management should consider in good faith whether an additional full-time regular clerk position should be created.

In the 1984 National Agreement, the wording remained the same. However, it also referred to Memos. The Memo was the same as in 1981 except that it not only continued the full-time flexible 150 or more man years hours, but also established a 125 man year or more agreement.

Based upon the 1984 National Agreement in conjunction with the previously cited facts, the Union successfully arbitrated numerous cases (approximately twenty (20)). I will not refer to and/or submit all these cases. However, I will submit one (1) case from each of four (4) of the five (5) regions which arbitrated the issue.

- 1) Case #W4C-5G-C-31740 (Western Region): 9/ Arbitrator Eaton ruled that management violated Article 7.3.B of the 1984-1987 National Agreement by scheduling of and hiring of additional part-time flexible clerks. The matter was remanded to the parties to formulate a remedy. The arbitrator referred to Arbitrator Syd Rose (refer to Footnote #10) and Arbitrator

9/ See Case W4C-5G-C-31740 by Arbitrator William Eaton dated April 5, 1988 which is attached hereto and made part hereof.

Larson (refer to Footnote #11). (See Pages 15 and 16.) Based upon the facts stated, Arbitrator Eaton states "There is strong indication that several full-time positions must be created." (See Page 17.)

- 2) Case #E4C-2D-C-40134 (Eastern Region): 10/ Arbitrator Howard ruled that the USPS violated Article 7.3.B. of the National Agreement by not establishing more full-time regular employees in the Clerk Craft in the Salisbury, Maryland Post Office. Management was directed to convert ten (10) part-time flexible employees in the Clerk Craft to full-time employees. Arbitrator Howard separated Articles 7.3.A. and 7.3.C. from the issue and stated:

"..... Section B, however, does not speak of large installations, as does Section A, but 'all postal installations.' While it does not establish a definite indicator suggesting conversion, it does contain an unequivocal promise to 'maximize the number of full-time employees . . . in all postal installations.' In the opinion of the undersigned arbitrator, the language of Article 7, Section 3B constitutes an independent obligation."

- ³ This conclusion is consistent with the decisions of Arbitrators Eaton and Larson, cited supra."

(Emphasis added.) (See Page 4.)

10/ Case #E4C-2D-C-40134 by Arbitrator Wayne Howard dated October 6, 1988 which is attached hereto and made part hereof.

3) Case #S1C-3Q-C-29121 / S4C-3N-C-42574 (Southern Region): 11/

Arbitrator Schedler ruled that:

"..... the schedule was manipulated almost every work day except Saturdays. The schedule was manipulated so as to avoid application of Article 7 Section 3B of the National Agreement." (See Page 10.)

Arbitrator Schedler spoke to:

"..... The fruit of the National Agreement primarily inures to the benefit of the FTR employee. (See Page 6.)

He then went on to give examples. He stated:

"Section 3 B is a broad statement of policy. In that statement of policy, the Employer has agreed that management 'shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations.' That statement carries the implication that management will not adopt procedures or take actions to frustrate maximizing the number of full-time employees." (See Page 7.)

In this case, the Union offered Arbitrator Mittenthal's award on Case #H4C-NA-C-77 / H4N-NA-C-93 into evidence. 12/

Arbitrator Mittenthal granted the grievances on Article 7.3.A and the remedy include:

"Those part-time employees who have been injured by such violations may, depending on the circumstances, be entitled to conversion to full-time status and back pay for any loss of earnings attributable to the violation."

11/ See Case #W1C-3Q-C-29121 / S4C-3N-C-42574 by Arbitrator Edmund Schedler, Jr. dated April 3, 1989 which is attached hereto and made part hereof.

12/ See Case #H4C-NA-C-77 / 93 by National Arbitrator Richard Mittenthal dated September 20, 1988 which is attached hereto and made part hereof.

- 4) Case #C4C-4J-C-28015 (Central Region): 13/ Arbitrator Martin granted the remedy; made the employee whole, converted her to full-time and granted seniority. He also stated that management should have followed Arbitrator Garrett's advice and created a position for the senior PTF corresponding to the specifications of Article 7.3C. (See Page 8.) In addition, Arbitrator Martin stated that he considered the following awards as controlling and/or persuasive:

"Arbitrator Garrett, #AB-N-3744;
Arbitrator Gamser, #NC-E-9358;
Arbitrator Mittenthal, #H4C-NA-C-77 & 93;
Arbitrator Larson, #S1C-3W-C-38156;
Arbitrator Howard, #E4C-2D-C-40134."

In the 1987 National Agreement, the language remained the same. However, it also referred to "Memos".

The "Memos" language remained the same as in 1984 concerning criteria for 125 or more man years of employment to establish full-time flexibles, except it omitted the last paragraph dealing with the initial measurement period.

Based upon the 1987 National Agreement also in conjunction with the previously cited facts, the Union again successfully arbitrated numerous cases (approximately ten (10)).

- 1) Case #N7C-1N-C-18413: 14/ Arbitrator Zausner Tener sustained the grievance by converting one (1) part-time clerk position to full-time regular in addition to providing for how many

13/ See Case #C4C-4J-C-28015 by Arbitrator James P. Martin dated October 24, 1989 which is attached hereto and made part hereof.

14/ See Case #N7C-1N-C-18413 by Arbitrator Barbara Zausner Tener dated July 11, 1989 which is attached hereto and made part hereof.

more positions to be converted.

Arbitrator Zausner Tener relied upon both Arbitrators Eaton and Larson when she stated:

"..... It is not necessary to prove the need for conversion on the basis of criteria in 7.3.C.

..... the 7.3.C. scheduling situation presents 'only one possible alternative to compliance with Section 3.B.' (Eaton at p. 17)." (See Page 4.)

- 2) Case #S7C-3E-C-18642: 15/ Arbitrator Marlatt sustained the grievance by converting three (3) senior eligible PTFs to full-time regular status. He did not award benefits because none were requested by the union. The significance of this award is that Arbitrator Marlatt overruled his own previous award based upon the:

"..... indisputable logic of the Larson award, I hereby overrule my decision in the Angleton grievance and declare the same to be no longer precedental (sic)." (See Page 11.)

- 3) Case #C7C-4K-C-3576: 16/ Arbitrator Asher Penn sustained the grievance and converted two (2) PTFs in addition to all wages lost. The significant of this award is that Arbitrator Asher Penn stated"

15/ See Case #S7C-3E-C-18642 by Arbitrator Ernest E. Marlatt dated May 23, 1990 which is attached hereto and made part hereof.

16/ See Case #C7C-4K-C-3576 by Arbitrator Frances Asher Penn dated March 28, 1990 which is attached hereto and made part hereof.

"..... The language of Section 3.B is clear. It states 'The Employer shall maximize the number of full-time employees...in all postal installations.' It includes no exception or qualifications that are applicable to the circumstances here; it does not provide an exemption for an anticipated reduction in the work force or an exclusion if an installation is reverting full-time positions." (See Page 5.)

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DATED: November 15, 1990