



American Postal Workers Union, AFL-CIO

817 14TH STREET, N. W., WASHINGTON, D. C. 20005

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MPLS. DIV. A.P.W.U.

October 10, 1979

MEMORANDUM TO: NATIONAL EXECUTIVE BOARD
AMERICAN POSTAL WORKERS UNION, AFL-CIO

At the April meeting of the National Executive Board a motion was passed mandating me to file a complaint pursuant to Article XX of the AFL-CIO Constitution charging the Mail Handlers Union with "raiding". As you know such a complaint was formally filed and a hearing was held at AFL-CIO headquarters before an Impartial Umpire.

For your information I am enclosing a copy of the Impartial Umpire's decision which denies the charges of the APWU.

Arbitration hearings on our jurisdictional dispute with the Mail Handlers will be held on October 25 and 26 before Arbitrator Howard Gamser.

Sincerely and fraternally,

Emmet Andrews
General President

EA/ac
enclosure

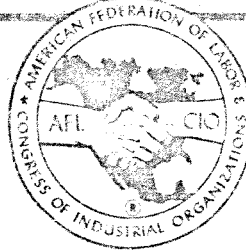
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

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October 2, 1979

Mr. Emmet Andrews, President
American Postal Workers Union
817 14th Street, N. W.
Washington, D. C. 20005

Re: Case No. 79-31
United States Postal Service

Dear Sir and Brother:

In accordance with Section 10 of Article XX of the
AFL-CIO Constitution, I am transmitting herewith a copy
of the determination of the Impartial Umpire in the above
captioned case.

Sincerely and fraternally,

President

Enclosure

Case No. 79-31
Hearing held: Aug. 17, 1979
Washington, D. C.
Dated: Sept. 29, 1979

BEFORE THE IMPARTIAL UMPIRE UNDER THE AFL-CIO INTERNAL DISPUTES PLAN

In the Matter

between

American Postal Workers Union

and

Laborers' International Union
of North America

DETERMINATION

re:

United States Postal Service

APPEARANCES

FOR American Postal Workers Union
[Herein called APWU]

Daniel B. Jordan, General Counsel
James Wolff, Staff

FOR Laborers' International Union of North America
[Herein called LIU]

James S. Ray, Legal Counsel
James Bratcher, Financial Officer, Mail Handlers-LIU
Houston Ford, Jr., Administrative Technical Assistant, Mail Handlers-LIU
Marcellus Wilson, Administrative Technical Assistant, Mail Handlers-LIU

Under date of May 9, 1979, APWU filed the following complaint with President Meany:

"Pursuant to a resolution adopted by the National Executive Board of the American Postal Workers Union on April 26, 1979, our organization hereby charges that the Laborers' International Union of North America is in violation of Article XX, Section 3 of the AFL-CIO Constitution.

Specifically, the American Postal Workers Union charges that the National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America has, by agreement and collusion with the United States Postal Service, sought to obtain work

for its members as to which a long established work relationship has existed with the American Postal Workers Union. On July 26, 1978, the National Director of the Mail Handlers Division of Laborers' International Union of North America entered into an agreement with the USPS (a copy of which is annexed, together with a memorandum from the National Director to various union officials), in which it was agreed that certain work, which postal clerks, as members of APWU, had customarily performed at numerous postal installations throughout the United States, would henceforth be assigned to Mail Handlers. Acting on such agreement, the USPS, on February 16, 1979, issued Regional Instruction 1085-PO-204, "Mail Processing Work Assignment Guidelines", (a copy of which is enclosed).

This document implements the Agreement with the Mail Handlers Division referred to above and was issued over the strenuous objections of APWU.

The money-grabbing attempt by the Mail Handlers to steal jobs performed by our higher paid craft and turn them over to lower earning employees, with the shameful connivance of the Postal Service, violates work traditions harking all the way back through history to George Washington's time.

The Mail Handlers by their cynical efforts are committing labor fratricide. And they endanger the public interest by disrupting the mails while turning a blind eye and a deaf ear to procedures for handling and resolving jurisdictional dispute proceedings.

We call upon you to exercise your authority under Article XX to compel LIUNA to give up its illegal agreement with the Postal Service and to restore APWU work taken from us as the fruit of this dishonorable agreement."

APWU, National Association of Letter Carriers (NALC), and (National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of LIU-MH) are parties to the same collective bargaining agreement with the United States Postal Service (USPS). This Agreement was reached through coalition bargaining with the three affiliates. The Agreement covers six bargaining units as follows:

UNION

NALC
APWU
APWU
APWU
ACWU
MH-LIU

BARGAINING UNIT

City Letter Carriers
Maintenance Employees
Special Delivery Messengers
Motor Vehicle Employees
Postal Clerks
Mail Handlers

APWU stated at the Article XX hearing that the three affiliates and the Rural Letter Carriers (RLC) a non-AFL-CIO affiliate, engaged in coalition bargaining following the passage of the Postal Reorganization Act in 1971 and this resulted in a Master Agreement covering the six (6) "crafts" for AFL-CIO affiliates and the one (1) "craft" for RLC. [RLC dropped out of coalition bargaining in 1973].

In 1973 MH-LIU filed three grievances in Oakland, Cal., San Francisco, Cal., and Seattle, Washington, respectively, that resulted in an arbitration before Arbitrator Sylvester Garrett. In these grievances MH-LIU sought certain work functions that were being performed by members of APWU units. On April 2, 1975, Arbitrator Garrett issued his Opinion and Award denying MH-LIU claims, with one modification.

APWU contends that MH-LIU continued to press to expand its jurisdiction. In the 1975 negotiations following Arbitrator Garrett's Award, the three affiliates and the Employer reached agreement on jurisdiction. Under the 1975-1978 Agreement no arbitrations arose over jurisdiction.

During the 1978 negotiations for a new Agreement, APWU and MH-LIU attempted to obtain new jurisdictional provisions but the parties continued the 1975-78 jurisdictional agreement in the current Agreement. This Agreement reads as follows:

MEMORANDUM OF UNDERSTANDING

BETWEEN THE U. S. POSTAL SERVICE

AND THE

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 AMERICA, AFL-CIO

"The American Postal Workers Union, AFL-CIO, the National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of Laborers' International Union of North America, AFL-CIO, the National Association of Letter Carriers, AFL-CIO, and the United States Postal Service, recognize that disputes exist among the parties relating to the crafts to which various duties performed by employees represented by the Unions have been assigned. In order to resolve such disputes the parties agree that a standing national level Committee on Jurisdiction, comprised of representatives of each party, shall be established to identify and resolve such current and any future jurisdictional disputes. (Current disputes include, but are not limited to, cases subject to the December 14, 1973 Agreement between the American Postal Workers Union, AFL-CIO, the National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of Laborers' International Union of North America, AFL-CIO, and the United States Postal Service.) Each Union

may submit to the Committee a written description of the scope of the duties it believes are properly assignable to employees it represents. The Committee shall meet to identify those duties over which no dispute as to jurisdiction exists, and to resolve conflicting claims of jurisdiction over duties made by any of the parties.

Any member of the Committee may identify a disputed assignment and request consideration of such assignment by the Committee. Those members of the Committee representing the Postal Service and those Unions which claim jurisdiction over a disputed work assignment shall participate in the Committee's discussions involving the dispute. Representatives of those Unions not making claims of jurisdiction shall not participate in the deliberations of the Committee. In resolving disputed assignments, the Committee shall consider, among other relevant factors, the following:

1. existing work assignment practices;
2. manpower costs;
3. avoidance of duplication of effort and "make work" assignments;
4. effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis;
5. the integral nature of all duties which comprise a normal duty assignment;
6. the contractual and legal obligations and requirements of the parties.

Modifications of craft jurisdiction on the national level, including revisions of existing position descriptions and existing local craft assignments of work will be changed by the Employer upon agreement of those members of the Committee participating in the resolution of the dispute. Determinations made by the Committee where all parties participating agree shall be binding on all parties to this Memorandum.

In the event that a dispute is not resolved by the Committee within 180 days after the date it is first considered by the Committee, any of the Unions claiming jurisdiction over the duties may, within 15 days thereafter, request that the dispute be arbitrated under the provisions of Article XV of the National Agreement. Failure to make such a timely request shall constitute a waiver of the claim. All parties to this Memorandum may participate in the arbitration and all parties shall be bound by the arbitrator's award whether or not they participated in the arbitration proceeding. The arbitrator's award shall be final and binding.

This Memorandum of Understanding does not apply to craft assignment of new positions subject to the provisions of Article 1, Section 5.

Date: September 15, 1978

The 1978-1981 National Agreement was signed by the Union and the Employer on July 21 and July 27, 1978, respectively.

APWU states that on July 20, 1978, Lonnie Johnson, National Director for Mail handlers-LIU, entered into the following bi-lateral agreement with the Employer:

MEMORANDUM OF UNDERSTANDING BETWEEN
THE UNITED STATES POSTAL SERVICE AND
THE NATIONAL POST OFFICE MAIL HANDLERS,
WATCHMEN, MESSENGERS, & GROUP LEADERS
DIVISION OF LABORER'S INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO

"The parties hereto agree that within sixty (60) days of July 21, 1978, the Employer shall issue for prompt national implementation a detailed statement setting forth those work assignments which are within the exclusive jurisdiction of the Mail Handlers Craft. Disputes arising out of the issuance of such statement shall be subject to the dispute resolution provisions contained in the Memorandum of Understanding on jurisdiction agreed to by the unions party to the National Agreement.

Disputes between the parties hereto with respect to the implementation of the aforementioned statement shall be subject to the provisions of Article XV, of the National Agreement.

James I. Conway(s) 7-20-78
James Conway
Deputy Postmaster General
United States Postal Service

Lonnie L. Johnson (s) 7/20/78
Lonnie L. Johnson
National Director
National Post Office Mail Handlers,
Watchmen, Messengers, & Group
Leaders, Division of Laborers
International Union of North
America, AFL-CIO

APWU states that in August of 1978 the Employer proposed certain jurisdictional changes, and under date of November 15, 1978, the Employer unilaterally issued a "Mail Processing Work Assignment Guidelines" document, identified as Filing No. 399, consisting of some eighteen (18) pages which contained job assignments which caused work being performed by APWU unit members to be reassigned to Mail Handler Clerks-LIU unit members.

The combination of the Mail Handlers-LIU bi-lateral Employer Agreement of July 20, 1978 and the Employer's subsequent actions brought about a violation of Section 3 of Article XX, according to APWU.

Under date of Jan. 9, 1979, APWU General President Andrews, in a letter to Assistant Postmaster Gildea, alleged that the Employer was violating the "Memorandum of Understanding" regarding jurisdiction. Andrews letter spells out seven specific objections which include the assignment of specified work to the Mail Handlers-LIU. APWU requested a meeting of the "Committee on Jurisdiction" established in the Memorandum of Understanding between the affiliates and the Employer.

Under date of April 10, 1979, APWU General President Andrews invoked arbitration pursuant to the Memorandum of Understanding "covering jurisdictional issues" between APWU and Mail Handlers-LIU.

At the Article XX hearing LIU raised a threshold issue. LIU contends that APWU's Article XX, Section 3 allegation is improper and that under Section 19 of Article XX, APWU's complaint should be dismissed, because the Memorandum of Understanding between the affiliates and the Employer constitutes a "written agreement" under Section 19. Section 19 reads as follows:

"Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between all of the affiliates involved in or affected by the dispute, the provisions of such agreement shall be complied with prior to the invocation of the procedures provided in this Article. If such agreement provides for final and binding arbitration, and an affiliate party to such agreement claims that another such affiliate has not complied with a decision under that agreement, it may file a complaint under the provisions of Section 14 of this Article and the procedures provided in this Article in the case of non-compliance shall be applicable. Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between affiliates but involves or affects an affiliate not a party to such an agreement, the affiliate not a party to such agreement may invoke the procedures provided in this Article for the settlement and determination of such dispute."

APWU contended that Section 19 was not applicable.

After discussion of the applicability of Section 19, I ruled that I would adjourn the hearing and requested both affiliates to submit a memorandum or brief as to the applicability of Section 19. In the event I determined that Section 19 was applicable, I would deny APWU's complaint and if I found Section 19 not applicable I would reconvene the hearing.

APWU made the following contentions in its post-hearing brief on Section 19:

"It is true that APWU has referred to arbitration its grievance that USPS is violating the Memorandum of Understanding and other contractual provisions by entering into and effectuating the June 26, 1978 memorandum with the Mail Handlers. However, in accordance with the Memorandum of Understanding, such arbitration is conducted under the provisions of Article XV of the collective bargaining agreement and hence the issue to be decided in arbitration is not one of jurisdiction, but whether USPS violated the collective bargaining agreement in certain respects.

An arbitrator deciding that case will not be concerned with whether Mail Handlers violated Article XX of the AFL-CIO Constitution by improperly seeking APWU work. Rather, he will be concerned with questions such as the unilateral issuance of new work guidelines by USPS, whether USPS properly followed the guidelines in resolving disputed work assignments specified in the Memorandum of Understanding and whether certain other provisions of the collective bargaining agreement have been violated.

It is clear that Section 19 contemplates that the Impartial Umpire is required to defer to the procedures of another agreement only when "a dispute subject to resolution" under Article XX is also "covered" by a written agreement "between all of the affiliates involved ... the dispute,"

The language has traditionally been interpreted to apply to inter-union jurisdictional agreements and not to collective bargaining agreements. APWU is not aware of any situations where the Impartial Umpire has applied Sec. 19 to a situation where the other agreement was other than a purely intra-union arrangement. And there is good reason for this. As previously pointed out, arbitration under such contracts as collective bargaining agreements do not deal with the same issues as are presented under Article XX, the remedy afforded is therefore not necessarily congruent with the remedies to be applied by the Impartial Umpire, and there is no reason to assume that the remedy afforded in such an arbitration adequately protects the aggrieved party as would an award by the Impartial Umpire.

In the present case, for example, APWU wants the Impartial Umpire to order Mail Handlers to immediately cease its efforts to effectuate work assignments issued by USPS, to order its members not to bid on any openings for clerk assignments improperly posted by USPS, to renounce its improper memorandum with USPS, to give up any work assignments it obtained under the improper memorandum, and the like. None of this will normally be ordered by an arbitrator in a contract grievance against USPS.

In addition, APWU wants such relief rapidly. In our experience contract arbitration with USPS drags on interminably and APWU is not likely to get a resolution for many long months. Article XX contemplates speedy relief and has, in fact, afforded such relief over the years.

For the foregoing reasons, APWU urges the Impartial Umpire to deny the motion to dismiss this complaint."

Mail Handlers-LIU makes the following contentions in its post-hearing brief:

"THE APWU HAS NOT YET EXHAUSTED ITS PRIVATE REMEDIES AND THEREFORE IS BARRED UNDER SECTION 19 OF ARTICLE XX FROM INVOKING THE INTERNAL DISPUTES PLAN OF ARTICLE XX."

Section 19 of Article XX provides as follows:

"Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between all of the affiliates involved in or affected by the dispute, the provisions of such agreement shall be complied with prior to the invocation of the procedures provided in this Article. If such agreement provides for final and binding arbitration, and an affiliate party to such agreement claims that another such affiliate has not complied with a decision under that agreement, it may file a complaint under the provisions of Section 14 of this Article and the procedures provided in this Article in the case of non-compliance shall be applicable. Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between affiliates but involves or affects an affiliate not a party to such an agreement, the affiliate not a party to such agreement may invoke the procedures provided in this Article for the settlement and determination of such dispute." (Underscoring added).

The Memorandum of Understanding on Jurisdiction to which both the APWU and the Mail Handlers are signatory and by which both are bound is a written agreement within the contemplation of Section 19. It is an agreement similar in nature and effect to the building trades' National Joint Board for Settlement of Jurisdictional Disputes and the Jurisdictional Policy of the Metal Trades Department which have been held to be the types of agreements to which section 19 refers. See, Tile, Marble, Terrazzo, Finishers & Shopmen International Union and Bricklayers and Allied Craftsmen, Case No. 77-45 (Kleeb, Ump.; 1977); United Association of Journey-men and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and Laborers International Union of North America, Case No. 68-102 (Kleeb, Ump., 1968); International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and International Association of Machinists and Aerospace Workers, Case No. 71-42 (Cole, Ump., 1971); International Brotherhood of Firemen and Oilers and International Association of Machinists and Aerospace Workers, Case No. 71-129 (Kleeb, Ump., 1972).

The Memorandum provides for arbitral resolution of disputes which is final and binding on all signatories.

The APWU has admitted that the dispute regarding which it invoked the Article XX procedures is covered by the Memorandum of Under-

standing on Jurisdiction. At the hearing APWU introduced into evidence as its Exhibit No. 3 a document identified on the cover page as "Mail Processing Work Assignment Guidelines." The cover page bears the date of November 15, 1978. The second page of APWU Exhibit No. 3 is captioned "regional instructions". The subject is identified as "Mail Processing Work Assignment Guidelines". It bears the date of February 16, 1979, and is further identified as "1085-PO-204" and as "Filing No. 399." APWU Exhibit No. 3 was cited in General President Andrews' May 9, 1979 letter of charges to President Meany as the basis for the APWU's Article XX, Section 3 charges against the Mail Handlers. The APWU confirmed at the hearing that APWU Exhibit No. 3 is the crux of its Article XX charges. In particular, both in its letter of charges and during the hearing, the APWU alleged that the implementation of APWU Exhibit No. 3 by the Postal Service has resulted or will result in the reassignment of work customarily performed by APWU members to Mail Handlers members.

Similarly, in his April 10, 1979 letter to Acting Assistant Postmaster General Mitchell (MH Ex. 1), APWU General President Andrews requested arbitration under the Memorandum of Understanding on Jurisdiction of "all unresolved issues of jurisdiction between the Clerk Craft and the Mail Handler Craft, arising from Regional Instructions No. 399 dated February 16, 1979." In his letter of January 9, 1979 first invoking the procedures of the Memorandum of Understanding (MH Ex. No. 4), General President Andrews set forth several specific objections to APWU Exhibit No. 3 that he wished to be considered by the Jurisdiction Committee.

Clearly, the dispute which the APWU seeks to have resolved by the Impartial Umpire is a dispute which the APWU also views as covered by the Memorandum of Understanding on Jurisdiction. Indeed, in his May 9 letter of charges to President Meany, General President Andrews complained that the Mail Handlers were "turning a blind eye and a deaf ear to procedures for handling and resolving jurisdictional dispute proceedings."

The APWU is seeking two bites at the proverbial apple. It seeks the same result under the Article XX procedures and under the procedures of the Memorandum of Understanding: it seeks to have restored to APWU members work which it alleges has been or will be reassigned to Mail Handlers members pursuant to APWU Exhibit No. 3. See, General President Andrews' May 9, 1979 letter to President Meany, p.2. See also, Mail Handlers Exhibits Nos. 4 and 1. Significantly, at the hearing the APWU emphatically stated that it is seeking relief from the Impartial Chairman barring the Mail Handlers from taking work from APWU

members until the APWU can obtain an arbitration award to the same effect under the Memorandum of Understanding.

It is irrelevant for purposes of section 19 that the APWU would have to prove certain facts, such as Mail Handlers-Postal Service collusion, to establish an Article XX, Section 3 violation that it would not have to prove in proceedings under the Memorandum of Understanding. Such is also the case with proceedings under the National Joint Board and the Jurisdictional Policy of the Metal Trades Department as compared to Article XX proceedings. The decisive point is that the APWU is seeking essentially the same remedy in both forums; restoration of APWU work allegedly taken by the Mail Handlers.

Nor is it relevant under section 19 that the procedures of the Memorandum of Understanding will not produce a resolution of the dispute as quickly as the Article XX procedures. See, Case No. 68-102, supra.

Section 19 is mandatory: where the dispute between affiliates is covered by a written agreement between them, neither affiliate may invoke the procedures of Article XX unless and until the provisions of the affiliates' agreement have been exhausted. Unless the provisions of the affiliates' agreement have been exhausted, the Impartial Umpire has no jurisdiction over the dispute and can find no violation of Article XX. Laborers International Union of North America and United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Case No. 68-93 (Kleeb, Ump., 1968); United Steelworkers of America and International Union of Operating Engineers, Case No. 62-115 (Cole, Ump., 1963); International Association of Bridge, Structural and Ornamental Iron Workers and United Brotherhood of Carpenters and Joiners of America, Case No. 67-109 (Cole, Ump. 1968); Building Service Employees International Union and Hotel and Restaurant Employees and Bartenders International Union, Case No. 63-15 (Cole, Ump., 1963); Case No. 77-45, supra; Case No. 68-102, supra; Case No. 71-42, supra; Case No. 71-129, supra.

Here, the APWU has admittedly failed to exhaust the procedures of the Memorandum of Understanding on Jurisdiction inasmuch as the dispute has not yet been arbitrated. Therefore, section 19 precludes the APWU from invoking the procedures of Article XX and bars the Impartial Umpire from exercising jurisdiction over the APWU's charges and finding any violation of Article XX. 5/

5/ The Mail Handlers believes that in any event the APWU's charges are not appropriate for resolution under the Article XX procedures because resolution of those charges would require a determination as to the general work or trade jurisdiction of the Mail Handlers and the APWU. Section 6 of Article XX prohibits the Impartial Umpire from making such jurisdictional determinations. Case No. 68-93, supra; Case

Footnote 5/ continued-

No. 77-45, supra; Case No. 67-109, supra; Laborers International Union of North America and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Case No. 68-97 (Kleeb, Ump., 1968). It is the Mail Handlers position that even if it is assumed that the dispute would otherwise be subject to resolution under Article XX, section 19 precludes the Impartial Umpire from exercising jurisdiction over the merits of the dispute.

CONCLUSION

For the foregoing reasons the Mail Handlers pray that the Impartial Chairman issue a determination that he has no jurisdiction over this dispute and that he therefore finds no violation of Article XX on the part of the Mail Handlers. See e.g., Case No. 68-93, supra; Case No. 68-97, supra (no jurisdiction under section 19 and therefore no violation of Article XX)."

Subsequent to mailing its post-hearing brief LIU Counsel James Ray, in a letter to the Umpire, and a copy to APWU Counsel Daniel Jordan, among other things, enclosed a copy of a "Complaint for Preliminary Injunction Relief in aid of Arbitration" filed in the U.S. District Court for the District of Columbia naming the Employer and Mail Handlers-LIU as Defendants. This complaint seeks to restrain the Employer from enforcing Regional Instruction 399, referred to above, which was distributed under date of Nov. 15, 1979.

The letter from Attorney Ray points out that Mail Handlers received this complaint on Aug. 28, 1979, although it was filed on Aug. 17, 1979, the date of the Article XX hearing. No mention was made of this law suit in the Article XX hearing and Attorney Ray states he was not aware of the complaint until after he had mailed his post-hearing brief.

DISCUSSION AND CONCLUSIONS

I have reviewed the post-hearing contentions of the parties and I conclude that Section 19 is applicable and that APWU's Article XX complaint should be denied. Under the Memorandum of Understanding, "Modifications of.....existing local craft assignments of work will be changed by the Employer upon agreement of those members of the Committee participating in the resolution of the dispute. Determinations made by the Committee where all parties participating agree shall be binding on all parties to this Memorandum."

The Memorandum goes on to state that if the Committee doesn't resolve the issue the Union claiming jurisdiction over the duties may request arbitration under Article XV. APWU has requested arbitration and arbitration has been scheduled for Oct. 25, 1979.

I simply cannot agree with the contentions made in APWU's post-hearing brief. I find the "dispute" under Article XX, Section 3 is the kind of dispute the Executive Board must have contemplated when they wrote Section 19. If the arbitration

under Article XV of the National Agreement results in the arbitrator awarding the disputed work to either affiliate then this settles the same dispute APWU claims exists between APWU and LIU in Article XX complaint. The arbitrator's award will supercede the requirements of Section 3 as I understand the intent of this section. The affiliates who have entered into the Memorandum of Understanding have, from a practical point of view, agreed to use the arbitration forum rather than the Article XX forum to resolve the kind of issue posed in the Article XX complaint. I so find.

DETERMINATION

The acts of Laborers' International Union of North America complained of by American Postal Workers Union, with respect to certain employees of the United States Postal Service are not in violation of Article XX, Section 3, because the affiliates have a written agreement under Article XX, Section 19, which preempts Section 3.

Dated: Sept. 29, 1979

Howard W. KleeB

HOWARD W. KLEEB

IMPARTIAL UMPIRE