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INDUSTRIAL
RELATIONS

ARBITRATION AWARD

May 18, 1984

UNITED STATES POSTAL SERVICE

-and-

Case No. H1C-NA-C 28

AMERICAN POSTAL WORKERS UNION

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS
Intervenor

Subject: Establishment of New Position

Statement of the Issues:

Whether the Postal Service's action in establishing a Mail Distributor position at salary level 4 was "fair, reasonable and equitable" and "not inconsistent with this [National] Agreement?"

Whether, assuming the above question is answered in the Postal Service's favor, the Mail Distribution position was properly slotted in salary level 4 under the evaluation criteria set forth in the Employee & Labor Relations Manual?

Whether the Postal Service's failure to inform the APWU during the 1981 negotiations of its intention to create the Mail Distributor position and its later establishment of this position in June 1982 was a violation of its statutory duty to bargain and hence a violation of the National Agreement?

Contract Provisions Involved: Article 1, Section 5;
Article III; Article V; and Article XIX of the
July 21, 1981 National Agreement.

Appearances: For the Postal Service,
Edward F. Ward, Assistant General Counsel, and
David Cybulski, Attorney; for the APWU, Arthur
M. Luby and Darryl J. Anderson, Attorneys
(O'Donnell & Schwartz).

Statement of the Award: The grievance is granted.
Those persons who hold (or who have held) the Mail
Distributor position should be reimbursed for their
loss of earnings, the difference between salary
levels 4 and 5. They should also be placed in the
Distribution Clerk position. Other remedies may
also be appropriate but it would be premature, on
the present state of the record, to attempt to
identify and resolve such matters. Instead, this
phase of the remedy question is remanded to the
parties for consideration. Should they be unable
to reach agreement, they may return their differences
to the arbitrator for a final decision.

BACKGROUND

This grievance protests the Postal Service's action in establishing the Mail Distributor position, salary level 4. The APWU contends that this action (1) was inconsistent with the terms of the National Agreement, (2) was not "fair, reasonable and equitable", (3) was an improper application of the evaluation criteria in the Employee & Labor Relations Manual (ELM), and (4) was implemented in a manner contrary to the Postal Service's statutory duty to bargain. It asks that the Mail Distributor position be rescinded, that all incumbent Mail Distributors be reclassified as Distribution Clerks, salary level 5, and that all employees adversely affected by the alleged violation be made whole for their loss of earnings or other benefits. The Postal Service insists that the creation of the Mail Distributor position was not a violation of the National Agreement or its statutory duty to bargain. It believes the grievance is without merit.

- Some history is necessary to a full understanding of this dispute. For many years, the separation of mail in postal facilities was based almost entirely on scheme knowledge.* Those responsible for sorting letters and flats had to memorize a scheme, i.e., the proper destinations for a large number of addresses. There were incoming and outgoing schemes; there were primary and secondary schemes.

Consider, for instance, an incoming state scheme. This involved mail received from out of state. The employee read the city address and knew from his scheme the processing center to which the letter was to be directed. The next step may have been an incoming city primary scheme. This involved mail received in a city with numerous branches or stations. The employee read the street address and knew from his scheme the branch or station to which the letter was to be directed. The final step was an incoming city secondary scheme. This involved mail received in a given city branch or station. The employee read the street address and knew from his scheme the carrier or zone to which the letter was to be directed. Much of the outgoing mail was also separated through the use of scheme knowledge.

* There was some non-scheme distribution, usually alphabetically or by city and state.

Distribution Clerks were responsible for this mail separation work. They were and still are in salary level 5. Their job description states:

"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 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) Record and bills mail (for example, c.o.d., registered...) requiring special service.
- (viii) Renders service at public windows
..."

One of the shortcomings of this mail distribution system was its heavy reliance on scheme knowledge. This meant repeated address readings which slowed the movement of mail

* This job description is dated August 1, 1974.

and increased the chance of human error. In an effort to solve the problem, the Postal Service introduced ZIP codes in 1963. The public accepted this change. The amount of mail with the ZIP code of addresses increased from year to year. Some 90 to 95 percent of the mail was ZIP coded by 1977. As a result of this development, there was a very large reduction in scheme distribution work.

Outgoing mail, i.e., mail destined for an area outside the city in which it is mailed, is separated by reading three or five digits of the ZIP code. Unzipped mail is sorted by reading the state and/or the city. Incoming primary mail is separated by reading the five-digit ZIP code. Additional reading is necessary for zones having holdouts (firm, building, address) on the case. Unzipped mail is sorted by further reading and scheme knowledge. Incoming secondary mail, however, is not distributed by ZIP code. It continues to demand reading portions of the next-to-last line of the address and scheme knowledge. When there is a possibility of a firm holdout, the first line (the addressee) is read as well. Thus, ZIP codes have taken the place of schemes in separating all but incoming secondary mail and incoming unzipped mail.

The ZIP code was not the only change in these years. The Postal Service made other improvements also. It began a mechanization program (e.g., introduction of letter sorting machines) in the early 1960s. This allowed the consolidation of more mail in fewer but larger postal facilities. It centralized these facilities and simplified the mail distribution network through such programs as Area Mail Processing, Managed Mail, Contiguous State Distribution, and Area Distribution Centers. All of this enhanced its ability to distribute mail through ZIP codes rather than schemes.

Distribution Clerks remained responsible for mail separation work. Before the ZIP code, they sorted largely through scheme knowledge. They were required to learn their scheme and were tested annually on their scheme proficiency. A few of them had bid assignments which called for mail distribution without schemes. After the ZIP code, a large number of Distribution Clerks began to sort through ZIPs rather than schemes. Their number grew continually through the 1960s and 1970s as public acceptance of the ZIP code grew. Indeed, by the early 1970s, whole sections were separating outgoing mail without any schemes. Those who sorted mail through ZIP codes were expected to be proficient. Their performance, the accuracy of their work, was subject to daily spot checks by supervision.

Initially, ZIP usage did not alter Management's requirement that all Distribution Clerks learn schemes. That was true even though some of these employees did not use schemes. As time passed and ZIP usage expanded, however, the need for schemes dramatically declined. Management reacted by no longer insisting that every Distribution Clerk learn a scheme. It also ceased requiring Clerks to submit to examinations on schemes they did not use. By the mid-1970s, there were many Clerks who had never been asked to learn schemes. They were still a minority except in certain facilities, such as Bulk Mail Centers, where they appear to have been the majority.

This matter was also affected by several rulings under the Fair Labor Standards Act. Those rulings held, among other things, that learning schemes outside of one's tour hours was compensable work under the Act. The Postal Service had not previously paid employees for such learning time. Its response was Interim Publication 118 (1st edition, June 1978) which instructed Management not to assign schemes to Distribution Clerks who were not required to use them.* This instruction resulted in a large increase in the number of Clerks without scheme assignments and without scheme knowledge. This instruction also meant the elimination of scheme knowledge requirements from many Clerks' duty assignments. The Postal Service stated that this elimination should not ordinarily be considered a significant enough change to warrant reposting duty assignments.**

Sometime in 1977, the Postal Service set up its own study committee to propose jurisdictional guidelines for work assignments involving the APWU and Mail Handlers bargaining units. The committee focused its attention on, among other things, the change in the nature of mail distribution work and the absence of any scheme requirements in a great many Distribution Clerk jobs. It recommended the creation of a new non-scheme clerk position in salary level 4.

The Postal Service spoke to the APWU in late 1977 about the need for such a new level 4 position. The APWU representatives, the then National President and then Director of

* Similarly, IP-118 also instructed Management not to assign schemes to new hires unless they were expected to use them.

** Specifically, IP-118 stated: "Generally, there is no need to repost a duty assignment unless the local agreement [provides otherwise]...when scheme knowledge requirements are removed or changed."

Industrial Relations, did not agree although one member of Management present at these meetings insisted "there were not strenuous objections" from the APWU. No proposal regarding a level 4 clerk was made by the Postal Service in the 1978 contract negotiations. But, during these negotiations, the Mail Handlers referred to the possibility of a level 4 clerk position and expressed their objection to the establishment of any such position. The Postal Service did not pursue this matter during the life of the 1978 Agreement. Nor was this level 4 position mentioned in the 1981 contract negotiations.

The Postal Service had formalized a job description for a non-scheme Mail Distributor position in 1979. Its Office of Compensation, after studying this position in light of the evaluation principles in the ELM, decided that the Mail Distributor belonged in salary level 4. The APWU was notified on June 14, 1982, that this "new bargaining unit position" had been created and that this position had been "assigned to the Clerk Craft of the American Postal Workers Union."

The Mail Distributor job description states:

"Basic Function. Distributes mail manually, not requiring scheme knowledge, in accordance with established procedures.

"Organizational Relationship. Reports to a supervisor, mails or other designated supervisor.

"Duties and Responsibilities.

1. Manually distributes mail of all classes using only ZIP Code knowledge, alphabetical and/or geographical groupings in accordance with established procedures.

2. Manually distributes mail to lock box sections.

3. Performs miscellaneous duties incidental to mail processing in accordance with mail processing work assignment guidelines.

4. Performs other job related tasks in support of primary duties."

There were approximately 37,000 non-scheme level 5 Distribution Clerks. The Postal Service did not reclassify all of them to level 4 Mail Distributor in June 1982. Rather, it chose to make this transition as gradual and as painless as possible. Its intention is that whenever a Distribution Clerk vacates his position through death, retirement or bidding into another position, Management will revert the vacancy and post in its place a Mail Distributor vacancy. Several thousand Distribution Clerk jobs have, in this fashion, been converted to Mail Distributor jobs between June 1982 and early 1984.

The Postal Service sought to explain the reasons for the delay between the origin of the concept of a non-scheme level 4 clerk in 1977, the draft of a level 4 Mail Distributor position in 1979, and the actual establishment of this new position in June 1982. It pointed to the issuance of Regional Instruction 399 in February 1979, a document which set jurisdictional guidelines for mail processing work assignments. The APWU and Mail Handlers were the unions concerned with these guidelines. The APWU disagreed with portions of RI-399 and filed a grievance. That led to a lengthy arbitration proceeding. Because the Postal Service was anxious to have the Mail Handlers support its view of RI-399 and because the Postal Service was aware of the Mail Handlers objection to a level 4 clerk position, it chose to postpone the implementation of the Mail Distributor position. The arbitration award in the RI-399 case was not issued until October 1981. The Postal Service announced the creation of the Mail Distributor position in June 1982, eight months later.

The APWU here protests the level 4 Mail Distributor position. It also filed an unfair labor practice charge with the National Labor Relations Board. It alleged that the Postal Service's unilateral establishment of this position was, under the circumstances of this case, a violation of Section 8(a)(5) and 8(d) of the National Labor Relations Act. It also asked the Postal Service to postpone implementation of the Mail Distributor position pending the outcome of this arbitration. The Postal Service refused. And the NLRB deferred any decision on the unfair labor practice charge pending the results of this arbitration. The APWU then requested the arbitrator to order the Postal Service to postpone implementation pending the arbitrator's decision. This request was made to Howard Gamser who was the initial arbitrator in this matter. He died before he was able to rule on the APWU motion. I was later substituted as arbitrator in this proceeding. My ruling on the merits of the APWU grievance makes further discussion of its motion unnecessary.

The relevant portions of the National Agreement read as follows:

Article I - Union Recognition

"Section 5. New Positions.

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

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:

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

Article V - Prohibition of Unilateral Action

"The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law."

Article XIX - Handbooks and Manuals

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

"Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration..."

DISCUSSION AND FINDINGS

A great many issues are raised by the parties' arguments in this case. They include contractual, factual and statutory matters. There is no need, however, to provide answers to all of these questions. For the grievance can be resolved on fairly narrow grounds.

The pertinent contract principles should be noted. Article I, Section 5A states that "each newly created position shall be assigned...to the national craft unit most appropriate for such position..." These words plainly imply that Management has the right to establish a "new" position. That is an expression of Management's right under Article III "to determine the methods [and] means...by which...operations are to be conducted." When this right is properly exercised, the resulting "new" position represents a change in the P-1 Handbook which contains all existing key positions and standard positions. Such a change must comply with certain Article XIX requirements. Chairman Garrett described those requirements in Case No. AC-NAT-11991 (September 1979):

"This critically important Article first appeared in the National Agreement in 1973. Its language seems clearly to reflect recognition by all parties that they are unable in national negotiations to deal in detail with all of the myriad significant subjects of collective bargaining which expectably are presented in such a vast enterprise, with many separate craft organizations representing the bargaining unit employees. Article XIX represents, therefore, an effort to achieve reasonable stability in the various bargaining relationships, while at the same time recognizing the need for Management to have reasonable flexibility for the proper exercise of its essential functions as spelled out in Article III.

"Article XIX thus clearly contemplates the continuing vitality of all USPS 'handbooks, manuals and published regulations...that directly relate to wages, hours or working conditions.' These must be 'continued in effect.' The only exception is that the USPS has the right to make changes that (1) are not inconsistent with the Agreement and (2) are 'fair, reasonable and equitable'."

That decision, AC-NAT-11991, dealt with the Automated Markup Clerk. The parties treated this Clerk as a "new standard position" and argued, among other things, the question of whether the evaluation of this "new" position was "fair, reasonable and equitable." Nowhere in that award or in any other cited award was the claim made that the position under consideration was not a "new" position. But that is one of the principal APWU claims in the present case. The arbitrator must address this initial question, namely, whether the Mail Distributor is truly a "new" position.

Merely because Management designates some collection of duties and responsibilities as a "new" position does not necessarily make it so. Suppose, for instance, these duties and responsibilities are no different than the duties and responsibilities of an existing position. In such circumstances, it could hardly be argued that a "new" position had been created. The reality of what Management has done, not the label placed on its action, should be controlling.

The difficulty here is that the parties have quite different views as to what constitutes "newness." The Postal Service stresses the language of the Distribution Clerk description which encompasses the separation of mail through the use of schemes. It insists that because the Mail Distributor is responsible for separating mail by ZIP codes instead of schemes, the Mail Distributor is outside the scope of the Distribution Clerk position. Hence, in its opinion, the Mail Distributor is a "new standard position" within the meaning of the Agreement. It concludes that an evaluation of the Mail Distributor, through the principles found in ELM Section 233, warrants placing this position in salary level 4.

The APWU emphasizes the history of the Distribution Clerk position. It relies on the fact that this position has been applied over the years to any separation of mail, scheme or non-scheme. It maintains that this practice, rather than the language of the Distribution Clerk description,

should be the decisive consideration in this case. Its view, accordingly, is that the Mail Distributor is not a "new" position. It states further that even if the Mail Distributor were a "new" position, it should be slotted in salary level 5 under the evaluation principles set forth in ELM Section 233.

Several factors support the APWU's argument. To begin with, a collective bargaining contract is a "living document." Those responsible for a contract are free to change it at any time. They may add an entirely new provision, rewrite an existing clause, or reinterpret some section to give it a meaning other than that which was originally intended. Indeed, how the parties act under a contract may be just as important as what they say in it. Their grievance settlements often result in understandings just as durable as the actual terms of the contract. Their practices may be used to clarify what is ambiguous, to give substance to what is general, and even to modify or amend what is seemingly unambiguous. For the established way of doing things is usually the contractually correct way of doing things.*

The point is that a contract is "alive" in the sense that it may be refined and altered by side agreements, grievance settlements, and practices. The Postal Service and the APWU must surely recognize the large role past practice has played in interpreting the National Agreement. If, as seems evident, the provisions of this Agreement may properly be construed in light of practice, certainly the position descriptions and evaluations should also be read in light of practice. To rule otherwise, that is, to view the descriptions from the standpoint of their words alone, would be to give the descriptions a higher standing than contract language. Such a result could hardly have been contemplated by the parties.

The written Distribution Clerk description concerns the separation of mail through scheme knowledge only. If the language of this description was the only factor, then the Mail Distributor would have to be viewed as a "new" position. But that language, for the reasons already stated, cannot be

* See Mittenenthal, "Past Practice and the Administration of Collective Bargaining Agreements", 59 Michigan Law Review 1017, 1022-1030 (1961).

examined in a vacuum. The long-standing practices with respect to the scope of the Distribution Clerk position are crucial to the disposition of this grievance. The Postal Service had, prior to June 1982, consistently applied the Distribution Clerk position to the non-scheme separation of mail. For at least fifteen years, probably longer, there were thousands of employees who sorted mail through ZIP codes. They were treated as Distribution Clerks even though none of them made use of schemes and even though many of them were never asked to learn schemes. The Postal Service ignored the fact that they were non-scheme workers. It considered them Distribution Clerks apparently because of the fact that they were, like scheme workers, responsible for separating the mail. The essential job function, rather than the work details, must have prompted the placement of non-scheme workers in the Distribution Clerk position at salary level 5. The content of this position has been revealed through many years of daily applications.

In evaluation disputes in American industry, a "new" job has customarily been defined as "a set of duties and responsibilities which has not heretofore been required of an employee and to which a classification [here, evaluation] has not already been applied."* The duties and responsibilities involved in non-scheme separation of mail were not "new" in June 1982. They had been required of employees for a good many years. They had at all times been considered part of the Distribution Clerk position. Given these circumstances and the observations made in the previous paragraph, the conclusion is inescapable that the Mail Distributor is not a "new" position. The Distribution Clerk had, as a matter of practice, been enlarged to include scheme and non-scheme separation of mail.** It follows that the creation

* See Bethlehem Steel, 25 LA 849, 850 (Seward).

** Note the following statement by Chairman Garrett in AC-NAT-11991 (July 1978): "...Once top Management has embodied a bundle of duties, skills, responsibilities and other requirements in a Standard Position description..., an Arbitrator cannot rewrite the description (or develop a new one) except in an extreme case where clear evidence shows that as the work is actually performed in the bulk of the locations where the position is utilized (and under express or implied direction of operating Management) the position description is incomplete or inaccurate in some material respect, from the viewpoint of proper pay classification" (Emphasis in original). The exception language appears to apply to the facts of this case.

of the Mail Distributor position was not justified under the Agreement.

These findings are reinforced by certain ELM provisions. For instance, Section 232.1 speaks of a "review" by an "installation head" whenever the "duties and responsibilities" of an existing position "change." The "installation head" must then determine whether this position's "ranking or identification is affected" by the "change." If so, he "re-evaluates the position" provided it can be matched to a key or standard position in salary level 5 or below.* If not, the position in question keeps its ranking and identification. Here, the Distribution Clerk position was changed when employees ceased separating the mail through schemes and began separating it through ZIP codes. Thousands of people were affected in installations throughout the country: Presumably the many installation heads complied with Section 232.1 (or its predecessor provision) and made the required reevaluation. They apparently found time and again that the "ranking and identification" of these Distribution Clerks was unaffected by the "change." They continued to apply the Distribution Clerk position, salary level 5, to the changed job. That decision by so many installation heads cannot be ignored.

Equally important, ELM Section 234 states that "post audits of positions may be made to determine whether the duties and responsibilities are properly ranked and whether the position is properly identified." This audit can be made by the Postal Service's regional or national offices "by correspondence or by interview and site examination." Should either office find a position "incorrectly ranked or identified", it may take appropriate remedial action. There is no evidence that audits were actually made of Distribution Clerks who were separating mail by ZIP codes rather than schemes. But, given the huge number of employees affected and the dramatic change represented by the move from schemes to ZIP codes, it is difficult to believe that audits were not made or that regional and national offices were not aware of this change. Yet no action was taken for more than fifteen years. Management personnel treated those who were separating mail by ZIP codes as being "properly identified" as Distribution Clerks and as being "properly ranked" at salary level 5.

* If this position cannot be matched to a key or standard position in salary level 5 or lower, the installation head must request a ranking of the position by higher authority.

Thus, from the standpoint of these ELM provisions, Management had through its actions and omissions clearly embraced the notion of a Distribution Clerk for non-scheme mail separation. This ELM analysis provides further support for the APWU's claim in this case.

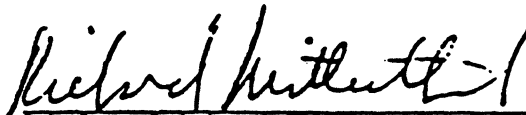
In reaching these conclusions, I have considered the Postal Service's explanation for the delay in establishing the Mail Distributor position. It refers to: (1) a brief conversation with APWU representatives in 1977 about a need for a non-scheme clerk position in salary level 4, (2) IP-118 issued in June 1978 as a consequence of FLSA litigation, (3) RI-399 issued in early 1979, (4) a need for Mail Handlers' support in the RI-399 arbitration, and (5) the lengthy hearings in that case with the arbitration award being delayed until October 1981.

None of this, however, can alter my findings in this case. The brief conversations with APWU representatives in 1977 were no more than an observation as to what Management might do. There is no suggestion in the evidence that the APWU agreed to the concept of a non-scheme level 4 clerk or that the APWU led the Postal Service to believe it would not protest the creation of such a position. IP-118 dealt with Management's intent, among other things, to limit or eliminate many scheme assignments; RI-399 dealt with jurisdictional guidelines between the APWU and the Mail Handlers for mail processing work assignments. Neither of these documents provide any rational basis for postponing the introduction of a Mail Distributor position. Even if the controversy over RI-399 offered some reason for postponing the introduction, that would only explain away the period between mid-1979 and October 1981. It would not cover the far larger period from 1963 to mid-1979 and from October 1981 to June 1982.

To summarize, the Distribution Clerk position had over the years been applied consistently to non-scheme separation of mail. This position had been enlarged through long-established practice. The Postal Service could not, in these circumstances, treat the Mail Distributor as a "new" position in June 1982. The duties and responsibilities of the Mail Distributor had long since been "properly identified" as part of the Distribution Clerk position and "properly ranked" at salary level 5. Hence, the creation of the Mail Distributor position was a violation of the Agreement. There is, accordingly, no need to discuss the many other issues raised by the parties.

AWARD

The grievance is granted. Those persons who hold (or who have held) the Mail Distributor position should be reimbursed for their loss of earnings, the difference between salary levels 4 and 5. They should also be placed in the Distribution Clerk position. Other remedies may also be appropriate but it would be premature, on the present state of the record, to attempt to identify and resolve such matters. Instead, this phase of the remedy question is remanded to the parties for consideration. Should they be unable to reach agreement, they may return their differences to the arbitrator for a final decision.



Richard Mittenthal, Arbitrator