American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

M E M O

C. J. "Cliff" Guffey
Director, Clerk Division
(202) 842-4234

DATE: December 20, 2000

TO: Regional Coordinators
National Business Agents
State and Local Presidents

FROM: Cliff Guffey, Director
Clerk Division

SUBJECT: 7.2.B Position Paper and Grievance Guide
Crossing Wage Levels

Attached is the Clerk Division's Position Paper on 7.2.B for your information.

CG:mac
opeiu # 2
afl-cio

7.2.B. Position Paper and Grievance Guide

7.2.B. In the event of **insufficient work on any particular day or days** in a full-time or part-time employee's **own scheduled assignment**, management may assign the employee to any available work in the **same wage level** for which the employee is **qualified**, consistent with the employee's knowledge and experience, in order to **maintain the number of work hours** of the employee's basic work schedule.

234.31 ELM When a full-time employee is **regularly scheduled every workdays** to perform the work of **two separately defined positions in two different grades**, the **employee is placed in the position of the higher grade**. The duties of the lower grade position, while included in the work assignment, represent extra duties in relation to the official position and do not affect the pay grade of the employee.

234.32 ELM When a full-time employee is **regularly scheduled** on **intermittent workdays** to perform the work of **two separate positions in different grades**, the employee is placed in the position in which more than **50 percent of the time is spent.** If the time is equally divided, the employee is placed in the higher grade position.

It has been management's position that cross wage level assignments within the clerk craft are permitted without restrictions. Any time management deemed it necessary; clerks could be assigned to any other clerical job. The union's position, however, is that the **contract does not permit unrestricted assignments across wage levels, and assignments within the same wage level can only be made under the criteria set forth in the National Agreement.** Specifically, under Article 7.2.B, there must be insufficient work in the employee's own assignment, the work must be in the same wage level, the employee is qualified, and the work is necessary to maintain the hours of the basic schedule. (The assignment is defined as the regularly scheduled duties and responsibilities of the employee's duty assignment). Management is required to meet these four standards when making assignments within the **same** wage level.

In almost every instance, management assigns employees across wage level only because there is a shortage of employees in a section, rather than to maintain work hours or because of insufficient work in the section that the employee regularly works.[1]

There are two primary goals for the union in pursuing this issue:

- The conversion of level 4 automation jobs to level 5. The language of the agreement and of ELM permits mixed wage level assignments for regularly scheduled work. Regularly scheduled for our purposes would be defined as one or more hours each day.

[1] It should be understood that if the level 5 or 6 employees have regular scheduled assignments that incorporated automation duties, then no grievance would be appropriate Some clerical job assignments, will have lower level duties listed as part of the job description, so a careful review of job description will be necessary

The union has also supported the creation of *negotiated* mixed wage level assignment to secure higher level jobs.

- Stop management's unilateral application of 7.2.B. There is a difference between **cross wage level** assignment and **same wage level** reassignments. Same wage level reassignments are permitted under limited circumstances under Article 7.2.B, whereas cross wage level assignments are covered by Article 25 (temporary higher level assignment) or Article 37 (when the lower level work is included as part of the duty assignment). Specifically, Article 25 applies to temporary higher level assignments in the immediate work area and not to the regular assignment of employees across wage levels. The USPS would rather pay higher level for some of the work hours, rather than create a higher level job to cover all the hours of work.

Implementation

The following grievances should be filed:

(1) Level 5/6 assigned to level 4 work on routine basis	File Article 7.2.B. violation. Remedy: cease and desist, level 4 OTDL paid. Have level 5 job posted with the automation duties.	**Objective:** Have level 4 positions posted as level 5/6 positions with automation duties as regular part of daily assignment.
(2) Level 4 assigned to level 5/6 work on regular basis.	File under Article 19 (234.31 ELM) that the employee be placed in the higher grade because of mixed level duties.	**Objective:** Have existing level 4 job changed to level 5/6
(3) Employees assigned to different assignments in the **same** wage level.	Determine if criteria of 7.2.B have been met. If not, file for OTDL in the section where they are reassigned.	**Objective:** Employee normally works bid assignment and protects integrity of section defined by local LMOU.

(1) For the instances where higher level clerks are assigned to lower level duties, the overtime remedy is the penalty management will pay for working higher level clerks who do not have lower level (automation) duties as part of their assignment. This penalty is hoped to be the incentive for posting the higher level position with the lower level (automation) duties.

(2) The regular assignment of clerks to higher level assignments should provide no problem as far as documentation and argument of the case. These cases should be relatively straightforward with the remedy being ranking of the assignment at the higher level. One of the remedies discussed earlier is that management will post level 5 positions with lower level duties. This can be accomplished in a couple of ways. Level 4 positions can be simply be reposted as level 5, or as lower level positions become vacant the positions are posted at the higher level. The goal is the creation of higher level bid assignments so creative solution and bargaining would be appropriate.

(3) The key to winning the grievances filed on employees assigned to the work with the same wage level, but to different assignment is establishing that there is not an instance of insufficient work that triggered the reassignment of a clerk. Mail or volume counts, overtime records, and work hour analysis can best show insufficient work. Another tactic may be to shift the burden to management by making the assertion that clerks were reassigned although there was sufficient work in their scheduled assignment. Remember, however that it is still the union's primary responsibility to provide proof of a contractual violation.

Arbitration Cites

There are several arbitration awards that could be used to support the union's core argument in a 7.2.B. case. This argument is that the agreement does not permit the assignment of work, within the craft, across **different wage levels**, unless the work is part of the employee's own assignment (bid or regularly scheduled duties). Additionally, the National Agreement does not permit unrestricted reassignments in the **same wage level**.

Arbitrator Bernard Cushman, E7C-2E-C 41567, Harrisburg Pa.

In this case, level 5 and 6 clerks were assigned to work in the automation unit. The arbitrator concluded that:

> *Even where the heavy/light workload criteria of B and C are met as a factual matter there is another express requirement that the work assigned must be in the same wage level. This express limitation is a mandatory requirement and is not satisfied by the payment of the same wage level rate. This requirement mandates work in the same wage level, not pay in the same wage level. The words used are the objective manifestation of the parties' intent. If the parties had intended to refer only to rate of pay they could have said so.*

He goes on to state in the same decision that,

It is therefore unnecessary to determine whether there factually existed a light/heavy workload situation. Even if that were true the exceptions in B and C do not apply in the absence of an assignment to work in the same wage level.[2]

He went on to award the OTDL mail processor employee who would have been called in to work, for the equivalent hours that the level 5 and 6 employees worked.

This arbitrator deliberation is set along side the language of the ELM. Section 243.41, which states,

Regularly Scheduled to Two Positions on a Daily Basis
When a full-time employee is scheduled every workday to perform the work of two separately defined positions in two different grades, the employee is placed in the position of the higher grade.

It is important to note that the language of 243.41 does not distinguish the amount of time that is spent on the lower level assignment. The only requirement is that the work is done on a daily basis.

Other arbitration awards that will be helpful in presentation of your case are:

Arbitrator Richard I. Bloch, Esq., A8-W-0656, 4/7/82
Arbitrator Richard Mittenthal, H8C-2F-C 7406, 8/23/82
Arbitrator Andree Y. McKissick, E7C-2D-C 16376, 11/21/92
Arbitrator James J. Odom, G94C-1G-C 99018632, 5/28/99
Arbitrator Robert B. Hoffman, H94C-1H-C 97117557, 2/17/99

[2] Under 7.2.C, during an exceptional workload period, employees experiencing a light workload in one occupational group may be assigned to the work, in another occupational group if it is in the same wage level. Since the clerk craft only has one occupational group (clerk), this language will not apply and should not be cited in any clerk grievance.

234.22 The following factors do not affect the position evaluation:

a. The incumbent's knowledge, skills, abilities or previous position title.

b. Designation of the roster from which the employee will be selected.

234.3 Criteria for Evaluating Mixed Assignments

234.31 Regularly Scheduled to Two Positions on a Daily Basis

When a full-time employee is scheduled every workday to perform the work of two separately defined positions in two different grades, the employee is placed in the position of the higher grade. The duties of the lower grade position, while included in the work assignment, represent extra duties in relation to the official position and do not affect the pay grade of the employee.

234.32 Regularly Scheduled on Intermittent Days in Two Positions

When a full-time employee is regularly scheduled on intermittent workdays to perform the work of two separate positions in different grades, the employee is placed in the position in which more than 50 percent of the time is spent. If the time is equally divided, the employee is placed in the higher grade position.

234.33 Regularly Scheduled on Intermittent Days to More Than Two Positions

When a full-time employee is scheduled on intermittent days to perform the work of more than two positions in different grades, and less than 50 percent of the time is spent in a single position, the total work assignment of the employee is separately defined as a position and ranked in an appropriate grade.

234.34 Regularly Scheduled to Perform Work in Two or More Positions in the Same Grade

When a full-time employee is regularly scheduled to perform the work of two or more positions in the same salary grade, the employee is assigned to the position in which more than 50 percent of the time is spent. If the work is evenly divided between two positions, or if less than 50 percent of the time is spent in a single position, the work assignment of the employee is separately defined and an appropriate title is assigned.

235 Appeals

Employees with positions covered by a collective bargaining agreement may grieve the salary level, title, or identification of their positions through the Agreement's grievance-arbitration procedures.

REGULAR ARBITRATION PANEL

In the Matter of Arbitration between UNITED STATES POSTAL SERVICE and AMERICAN POSTAL WORKERS UNION AFL-CIO	GRIEVANT: Class Action POST OFFICE: Harrisburg, PA CASE NO.: E7C-2E-C 41567

BEFORE: Bernard Cushman, Esq., Arbitrator

APPEARANCES:

For the Postal Service:
Luke Shoridan, Labor Relations Representative

For the Union:
Mike Gallagher, National Business Agent

Place of Hearing: Harrisburg, Pennsylvania

Date of Hearing: March 5, 1992

AWARD

The Postal Service violated Articles 7 Section 2 of the Agreement on November 10, 1990 and November 15, 1990 when they assigned Level 6 Distribution Clerks-Machine MPLSM Operators and Level 5 Distribution Clerks to the OCR/BCS areas to perform the duties of Level 4 Mail Processor. The Postal Service and the Union shall review the Overtime Desired list for November 10, 1990 for Mail Processors Level 4 and determine which employees would have been called in to perform the 16 hours of work

performed by Level 5 Distribution Clerks on that date. These employees shall be compensated at the applicable overtime rate for the 16 hours of work. The parties shall review the Overtime Desired List for November 16, 1990 and the Non-scheduled List of Mail Processors Level 4 and determine which employees would have been called in to perform the 56 hours of work performed by Level 6 Distribution Clerk-Machine on that date. These employees shall be compensated at the applicable overtime rate for the 56 hours of work.

Bernard Cushman

Bernard Cushman, Arbitrator

Dated: May 16, 1992

In the Matter of Arbitration:
Between

UNITED STATES POSTAL SERVICE	)	GRIEVANT: Class Action
	)	
and	)	POST OFFICE: Harrisburg, PA
	)	
AMERICAN POSTAL WORKERS UNION AFL-CIO	)	CASE NO.: E7C-2E-C 41567
	)	

OPINION AND AWARD

ARBITRATOR: Bernard Cushman, Esq.

APPEARANCES:

For the Postal Service:
Luke Sheridan, Labor Relations Representative

For the Union:
Mike Gallagher, National Business Agent

STATEMENT OF THE CASE

This case arose under the 1987 National Agreement. A hearing was held at Harrisburg, Pennsylvania on March 5, 1992. Both parties were afforded full opportunity to present evidence and to examine and cross-examine witnesses. Leave was granted to file briefs postmarked April 17, 1992. Briefs timely postmarked were received on April 20, 1992. The entire record has been carefully considered by the Arbitrator.

THE ISSUE

The parties stipulated the issue to be:

> Did Management violate the express provisions of Article 7, Section 2 of the Collective Bargaining Agreement on November 10, 1990 and November 15, 1990 when they assigned Level 6 Distribution Clerk-Machine, MPLSM Operators and Level 5 Distribution Clerks to the OCR/BCS area to perform the duties of Level 4 Mail Processor? If so, what shall the remedy be?

RELEVANT CONTRACTUAL PROVISIONS

Article 3, Management Rights

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

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

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

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

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

E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Article 7. Employee Classification

Section 1. Definition and Use.

A. Regular Work Force.

The regular work force shall be comprised of two categories of employees which are as follows:

1. Full-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week.

2. Part-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week.

B. Supplemental Work Force.

1. The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees.

2. During the course of a service week, the Employer will make every effort to insure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to casuals.

3. The number of casuals who may be employed in any period, other than December, shall not exceed 5% of the total number of employees covered by this Agreement.

4. Casuals are limited to two (2) ninety (90) day terms of casual employment in a calendar year. In addition to such employment, casuals may be reemployed during the Christmas period for not more than twenty-one (21) days.

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken.

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Article 15. Grievance-Arbitration Procedure

Section 2. Grievance Procedures - Steps

Step 2:

(e) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form, but shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems.

Section 4. Arbitration

A. General Provisions

6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees and expense charged by an arbitrator will be shared equally by the parties.

Article 37. Clerk Craft

Section 1. Definitions

B. Duty Assignment. A set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty.

CONTENTIONS OF THE PARTIES

The Union contends that the assignment of the Level 6 MPLSM Operators and Level 5 Distribution Clerks to perform the duties of Level 4 Mail Processor in the OCR/BCS area violated the provisions of Article 7, Sections 2 B and C because the work assigned was not within the same wage level. The Union asserts

that the 9 employees assigned by the Postal Service to the OCR/BCS work had not received the training required for such work and therefore were not qualified for such work. Therefore according to the Union the assignments did not meet the requirements of Article 7, Sections 2 B and C that the employees be qualified. The Union further contends that the employees assigned to the OCR/BCS work were in different occupational groups and levels from Level 4 Mail Processors who normally perform the tasks connected with the feeding and operation of the OCR/BCS equipment. The Union asserts that the key requirement for intra-craft assignments is that the work must be in the same wage level. The limitations of 2 B and C of Article 7 apply to intra-craft occupational groups and/or wage levels. The Unions says that its position is supported by several arbitrators including decisions of arbitrators Martin, McAllister, Klein, and others.

The Union asserts that the use of the prefix 2315 by management to designate certain Position Descriptions is not meaningful. These are entirely different wage levels and position descriptions. Each prefix is not a definition of an occupational group. Indeed the prefix attaches to different crafts as well as different wage levels. The Union further states that there were many alternative positions available to which the Postal Service could assign employees in the same wage level, a resource which the Postal Service failed to avail itself

of in order to furnish work for MPLSM employees and Distribution Clerks who might not otherwise be needed.

The Union denies that any practice existed to support the assignment of employees on a temporary basis to work in a lower wage level in violation of Article 7. The Union contests the testimony of Patricia Oller as to an oral agreement to permit such assignments as not worthy of belief and says that any attempt by management to make such assignments has always been the subject of a grievance including one filed by Oller herself.

The Union states that in any event Article 7 is clear and unambiguous and may not be modified by a murky and undocumented claim of prior practice.

The Union further states that the management failed to make an evidentiary showing that there was insufficient work or an extra heavy work load on the dates in question. The Union also contends that this claim by the Postal Service was not raised in the grievance procedure.

The Union asserts that other contractual provisions were available to the Postal Service if in fact it found that it had employed too many LSM Operators and cites provisions for excessing under Article 12. The Union seeks as a remedy the payment of overtime for the hours worked by the LSM employees to all persons who should have been given the work performed by those Level 6 and 5 Clerks.

The Postal Service contends that Article 7 does not apply to intra-craft assignments. The Service asserts that there are no occupational groups in the Clerk Craft and cites several arbitration decisions in support of its contention. The Postal Service contends further that there has been a practice to make such assignments and that such assignments have been commonplace. The Postal Service also points to the testimony of Patricia Oiler that the Union orally agreed some two years ago that such assignments where the LSM employees continued to receive the higher level of pay while performing the lower level assignments were satisfactory. The Postal Service states further that even if the arbitrator finds that Article 7 applies, the record shows that there was a light workload for the LSM employees and the workload in the OCR/BCS area was heavy. The Postal Service contends that as long as those permanently assigned to a higher level position do not get paid less when working on a lower level job, there is no violation of Article 7. The wage level is mentioned only to prevent payment of a lower wage level to higher level employees.

The Postal Service contends that the LSM employees were qualified to perform the OCR/BCS work they did perform. The testing provision of the qualification standards for Mail Processors apply only to full-time assignments to that position. Finally, the Postal Service objects to any consideration by the Arbitrator of Union Exhibits 1 through 10 on the grounds that

Article 15, Section 2 Step 2e prohibits the use of settlements or withdrawal of a grievance in Step 2 as a precedent for any purpose.

DISCUSSION, FINDINGS AND CONCLUSIONS

1. Background

This case involves two grievances filed by the Union alleging that on November 10, 1990 the Postal Service violated Article 7 by assigning two part-time flexible Level 5 Distribution Clerks to work in the OCR/BCS work area for eight (8) hours when three Level 4 Mail Processors on the Overtime Desired list were available. The second grievance alleged a violation of Article 7 when the Postal Service assigned seven Level 6 Distribution Clerks to work eight (8) hours or a full day in the OCR/BCS work area when Mail Processors employees were available who could have been assigned to perform those duties.

The parties stipulated certain background facts. It was stipulated that on November 10, 1990, on Tour 3 at the Harrisburg Post Office, management assigned part-time flexible Level 5 Distribution Clerks, Dan Paris and Dawn Lantzy, to work 8 hours or a full day in the OCR/BCS work area which is the job of a Level 4 Mail Processor. There were three (3) Level 4 Mail Processors on the overtime desired list available to be called in for overtime to work these duties. (S. Carl, G. Fake, S. Schicchitano). On November 15, 1990, on Tour 3 at the Harrisburg

Post Office, Management assigned seven (7) Level 6 Distribution Clerk Machine, MPLSM Clerks; Sherry Wade, Robin Smith, Craig Moyer, Tom Reidinger, Sharon Miller, Kim Weir and Dale Werntz to work 8 hours or a full day in the OCR/BCS work area which is the job of a Level 4 Mail Processor. Again there were five (5) Level 5 Mail Processors on the overtime desired list; T. McCullough, J.R. Kelly, B. Losh, R. Meyers, C. Williams and/or additional Mail Processors not on the overtime desired list who were non-scheduled and could have been assigned to perform these duties.

It was further stipulated that at the Harrisburg Post Office the weekly part-time flexible clerk scheduled assignments are posted the preceding Wednesday prior to the service week, which runs from Saturday through Friday. Management is not precluded from changing schedules as posted as desired. Normally full-time regular clerks scheduled assignments are dictated by the bidding procedures contained in Article 37, which assigns the employee to a "Duty Assignment" (see Article 37, Section, 1, B).

Finally, it was stipulated that of the nine clerical employees utilized in Level 4 mail processor positions on the dates of November 10 and November 15, 1990 only five (5) had taken the ON 450 examination.

Roger Lemnah became the President of the Local Union on November 4, 1990. Previously he had been a Local Union steward or officer since 1978. Lemnah testified that Postal Service violations of the prohibition against crossing Craft lines or

wage levels began shortly after the previous local Union President, Gene Deaven, died on May 31, 1990. The Union through Lemnah introduced a series of exhibits, Union 1 through 10, over the objection of the Postal Service. These exhibits were labeled as Step 2 answers. The Postal Service objected to the exhibits on the ground that they were settlements within the meaning of Article 15, Step 2(e). The Postal Service also objected to Union Exhibits 2 through 10 on the further ground that the Step 2 answers were dated after November 10 and 15, the dates of the alleged violations.

The Arbitrator received the exhibits subject to a determination as to the weight, if any, to be given after receipt of the briefs to be filed on April 17, 1992. It further appeared that some of the grievance dispositions contained in Union Exhibits 1 through 10 had been appealed to arbitration by the Union as to those elements of the Step 2 dispositions adverse to the Union.

The Arbitrator sustains the objection of the Postal Service to Union Exhibits 1 through 10 and has afforded them no weight. Article 16, Step 2(e) provide that a settlement of a grievance in Step 2 shall not be "a precedent for any purpose". While it is arguable that a Step 2 decision may be distinguishable from a settlement, a question which I leave open, the resolutions here appear to fall within the area of "settlements" as the term is used in Article 15, Step 2(e).

Lemnah testified further that Management had not assigned Level 5 or Level 6 clerks to the OCR/BCS Operation prior to the time these grievances arose. Lemnah stated that clerks could be assigned outside their wage level when such tasks were expressly stated as part of their duties in their job or position description. The only time, according to Lemnah, there could be any variance would be for an act of God, such as a flood, which occurred in 1972, or an emergency such as the United Parcel Service strike in 1976. Flexibility is allowed to Management as to the assignment of part-time flexibles to hours and unscheduled days or tours but no such flexibility, claimed Lemnah, is permitted for crossing Craft lines or wage levels. According to Lemnah, mail processing is a form of distribution only in that the OCR/BCS machines distribute mail. Such machine distribution, stated Lemnah, is not within the job description of manual distribution. He further stated that the trend in mail processing has been to move from mechanization on the LSM machines to automation on the OCR/BCS machines.

Dennis Mumma, General Supervisor on Tour 2, testified that the trend in mail processing is to move from mechanization to automation. The automation involved in this case involves the Optional Character Reader (OCR) and the Bar Code Sorter (BCS). There is a two-pass system. The first step sorts the mail to carrier by sequence and eliminates clerks who formerly did that work. The second step sorts the mail to carrier in walk sequence

and eliminates the casing duties previously performed by carriers. Mumma testified that he regarded these processes as form of distribution. The letter sorting machine sorts 36,000 pieces per hour with a crew of 17. The OCR/BCS operation processes 36,000 pieces of mail in one hour with a crew of 2.

Mumma testified further that he had been informed by Management that there was an agreement with the Union whereby LSM clerks could be used on the OCR/BCS Operation to fill any needs. With regard to the instant grievances, Mumma stated that he had canvassed all of the LSM clerks on Tour 3 and asked if they were willing to work on the OCR/BCS Operation. Those who responded affirmatively would be used as needed. They were trained and became qualified. According to Mumma, if this type of assignment could not have been made, the OCR would have remained idle.

With regard to the November 10 and November 15, 1990 assignments, the workload on the LSM was light and the workload for the OCR was heavy. Mumma testified further that consistently with the objective of using automation to the extent possible, the LSM and Distribution Clerks who had agreed to work on the OCR Operation were assigned to meet the heavy workload and paid the rate of their Level 6 or 5 position wage level. Mumma stated that these assignments were made at the time of a significant decrease in mail volume for the LSM.

Mumma testified further that LSM clerks had been assigned all along to work on the pouch rack, the letter case and the belt

without objection by the Union. All that was done in the instant case was to assign volunteers to follow the mail.

Mumma also stated that there is no occupational group in the Clerk Craft.

Patricia Oller, a witness called by the Postal Service, is currently an LSM Clerk. She had been a Union Officer for some twelve (12) years. Oller was Vice President for about eight (8) years, and from May to November of 1990 was Acting President. According to Oller, the then President of the Local, Gene Deaven and she attended a meeting about two years ago with Supervisors Pat Donahue and Harkins concerning the small amount of work being given to the part-time flexibles and the LSM crews on Tour 3. The part-time flexibles were receiving only 15 to 20 hours of work per week. The problem was discussed, and according to Oller, it was agreed that in order to equalize hours for all the employees, the LSM people would help out on the OCR/BCS Operation on a volunteer basis, and in turn the Level 4 OCR people would be allowed to work at Level 5. Level 6 and Level 5 Clerks would do Level 4 work, but be paid their normal position rate of pay. Oller stated that Supervisor Mumma and she went to each LSM crew and obtained volunteers. None of the volunteers used would replace any OCR employees.

Oller testified further that in November 1990, at the times involved in the instant grievance, there was a light workload on the LSM and a heavy workload on the OCR. She stated that in the

past, when an OCR employee was injured, a Level 5 would substitute and there never had been a problem. She further stated that there were no occupational groups within the Clerk Craft.

Oller stated further that if an employee did not accept the assignment he could grieve, and in order to avoid an Unfair Labor Practice charge, she would file a grievance even though she did not believe that the grievance had merit.

On cross examination, Oller denied any bias. She stated that she was a political adversary of the incumbent Union President. She conceded that she had no documentation to support her testimony of an agreement with management or the history of the crossing of wage levels over a two year period. She stated further that in her experience a clerk can work anywhere he or she is needed, and that was a past practice. She conceded that she filed grievances which she believed did not have merit, but did so to clear up the dockets and to avoid an Unfair Labor Practice charge of failure to represent.

Jim Frantz is the Union Representative who filed the instant grievance. He testified that the training records do not support Mumma's testimony, that the Level 6 and 5 employees who were assigned on November 10 and November 15 to OCR Operations were previously trained to do that work. The parties stipulated that these employees in fact received either informal or on-the-job training. Formal training involves some three hours of watching

videos concerning the operation of the machine along with safety instruction.

2. Conclusions

The Postal Service contends that the limitations upon assignments of across crafts contained in Article 7 do not apply to intra-craft assignments. The Postal Service cited several arbitration decisions which it views as holding that intra-craft assignments are not within the purview of Article 7. These decisions are by arbitrators Moberly, Marlatt, Gold and Zumas. The Union introduced decisions by Martin, McAllister, Klein, LeWinter, McGury, Dean, and McConnell which in the view of the Union hold that Article 7 is applicable to intra-craft assignments.

We begin of course with the text of the Agreement. Article 3 of the Agreement, the management rights clause, does afford the Postal Service the right to assign employees but that right is subject to the provisions of the Agreement. The question to be decided is whether Article 7, Sections 2.B and C do restrict the management right to assign so as to preclude the assignments here in dispute. At the outset it is important to note that Section 2 of Article 7 deals, as stated in the caption, with "employment and work assignments" (supplied).

Paragraph A deals with the combination of work from different crafts. This provision applies in effect to the

establishment of a regular full time and permanent assignment. On the other hand Paragraphs B and C apply to temporary assignments for one or more days. Paragraph A as demonstrated by the teaching of Case No. A8-W-0656 decided by Arbitrator Bloch and Case No. H8C-2F-C 7406 decided by Arbitrator Mittenthal enables the Postal Service to do something it could not otherwise do, namely
cross craft lines or occupational groups or levels lines to create a job. According to Arbitrator Bloch, there is an "inherent prescription" against crossing craft lines, and Sections B and C provide "the employer with certain limited flexibility in the face of pressing circumstances". In the view of the Arbitrator the purposes of such limited flexibility is to help the Postal Service to meet the guarantees of 8 hours a day and to maximize full time employment. The proscription against crossing craft lines is abundantly clear. It seems equally clear from the text of Article 7 that assignments crossing occupational group lines are prohibited except under the criteria contained in B and C. The text of Article 7A also expressly includes "wage levels". Thus Section A lists wage levels as a third category coordinate with crafts and occupational groups. Under B and C it is provided that temporary assignments must be in the same wage level. The "inherent presumption" would appear to apply to wage levels as well as to crafts or occupational group levels. Otherwise the terms wage level would be superfluous. This view

is confirmed by a review of the arbitration cases cited by the parties. Arbitrator Martin held in Case No. C1T-4-C 25924 et al that cross assignments under B and C apply to occupational groups and levels in the maintenance craft. Arbitrator McAllister in Case No. C4T-4K-C 9083 held where the Postal Service assigned a Level 9 Electronics Technician to perform Level 1 cleaning duties every Friday, such assignment was precluded by Article 7, Section 2 because that provision applied to work in different occupational groups or levels. In Case No. C4T-4KC Arbitrator McAllister found that work assignments in the maintenance craft across occupational group lines are prohibited if not in the same wage level despite the provision for higher level pay in Article 25. In Case No. C4T-4J-C 38251 Arbitrator Klein followed the decisions of Arbitrator Martin and McAllister and held that the assignment of MPE mechanics to perform BEM work was prohibited as a crossing of occupational groups in the absence of a showing of insufficient work in the MPE classification. In Case No. E7T-2F-C 8857 and 11267 Arbitrator Dean stated that "in a number of subsequent awards (citing cases) reviewing arbitrators have concluded that the principles enunciated in the Bloch and Mittenthal awards apply with equal force to instances in which the Service would cross occupational group or job level boundaries". Arbitrator Dean went on to say "In this case, the Service has advanced a number of arguments by which it seeks to avoid the application of Article 7. The Service asserts, for

example, that Article 7 applies only to full-time assignments and not to temporary assignments of the type at issue here. Additionally, the Service contends that Article 7 applies only to cross-craft assignments and not to assignments within a craft even though they may transcend occupational group boundaries. Finally, the Service alludes to its central mission of providing efficient, cost effective service through the most productive utilization of available personnel. Each of these arguments has been addressed in one or more of the above-cited arbitration awards and, in each case, they have, both singly and in combination, been rejected as sound justifications for avoidance of the Service's obligations under Article 7."

In Case No. E41-2B-C 528, Arbitrator LeWinter, the Postal Service assigned a volunteer Electronic Technician Level 8 to perform work normally performed by an MPE Level 7. Arbitrator LeWinter found the assignment improper and in conflict with Article 7. In Case No. C4V-4K-C 18077 Arbitrator McGury stated at page 5 "We find a clear intent that the parties, in 7.2, intended to prohibit combinations of jobs across certain intra-craft lines as well as inter-craft lines."

In Case No. N7C-1W-C 3484 Arbitrator McConnell held that the assignment of a Postal Service Data Site Technician to the workroom floor to perform manual distribution duties was improper and violated Article 37, Section 3F.11. He further stated that "It is necessary to remove from consideration at the outset the

Postal Service reliance on Article 7 Section 2.C. This part of the National Agreement permits management to assign employees experiencing a light workload to an area which is experiencing a heavy workload. The assignment, however, must be within the same wage level. Mr. Heath, and others similarly situated, were Level 6, but were assigned to work at Level 5. This section of the National Agreement also uses the words "exceptionally heavy work load." Neither the documents nor the argument of the Postal Service indicate that the workload in manual sorting of flat mail was "exceptionally heavy." Overtime apparently was needed on a fairly regular basis in mail processing. The assignment of Heath and others to mail processing was not contractually proper under the terms of Article 7 Section 2.C."

In Case No. E4C-2B-C 7845 Arbitrator Ables held that the assignment on a one shot basis of two employees to perform the backup timekeeper job violated the Agreement. Neither of these employees was a timekeeper.

The Postal Service seeks to distinguish the above-referenced cases because in most of them the dispute involved the maintenance craft and Article 38 contains a definition of occupational group in the maintenance craft. However the decisions by Arbitrators McConnell and Ables did not involve maintenance employees. Furthermore, as stated above, the language of Article 7 includes wage levels as well as occupational groups. We turn then to the cases cited by the

Postal Service. The decision by Arbitrator Gold deals with the establishment of a new position and is not applicable to this case. The decision by Arbitrator Moberly involved the payment of higher level pay to a lower level Markup Clerk for performing Distribution Clerk Level 5 duties. However, the case was litigated with regard to a claim by the Union that Article 7.2.B prohibited the assignment because of a difference in the wage levels. Arbitrator Moberly rejected the Union's claim on the rationale stated at page 6 of his opinion "To combine the work of each craft, it seems to the Arbitrator, would require that the work of different occupation groups and levels within the craft be combined, regardless of whether the work is in different wage levels. This would seem to indicate an intent to allow work in different wage levels within each craft, when necessary to preserve full-time employment." According to Arbitrator Moberly "If Article 7.2.A is to make sense, then Article 7.2.B must be construed to require that work be in the same wage level when the assignment is between different crafts, but not when the assignment is within the same craft." (Page 7). That rationale proves too much. If that position were correct there would be no need for 7.2.B. and 7.2.C. Moreover, 2.A. applies to a full time job while B and C apply to temporary assignments.

The Postal Service also cites the decision of Arbitrator Marlatt, Case No. S4C-3A-C 28982. That decision holds that the Union must demonstrate in order to support a claim of violation

of Article 7 that the employees involved belong to separate occupational groups. Arbitrator Marlatt stated that "The Union had the burden of proofing that a Ramp Clerk and a Transfer Clerk at the Airport Mail Facility belong to separate "occupational groups." The fact that these employees have differing duties and qualifications does not establish the fact that they are in separate occupational groups. For all the National Agreement indicates, all Clerk Craft employees (unlike Maintenance Craft employees covered by Article 38) are part of a single occupational group)." The Arbitrator further held that since the Union had failed to prove that a Ramp Clerk is a member of a different occupational group then the Transfer Clerk, the assignment of Ramp Clerk duties to a Transfer Clerk did not violate Article 7.2. The doctrine inclusio unius exclusio alterius is a recognized canon of contractual construction. However, in the view of the Arbitrator that canon does not control here. There is another canon of construction to the effect that in the interpretation of the Agreement the contract must be read as a whole. The Marlatt decision overlooks the term "wage levels" in Article 7. That term constitutes a separate category in Article 7 and may not be read out of the contract.

The Postal Service also cites a decision by Arbitrator Zumas Case No. E4C-2E-C 3635 which held that Administrative Clerks could be used to perform mail processing duties on a temporary

10-week assignment. In that case the Union did not allege a violation of Article 7.

Thus the majority of the arbitration decisions reviewed herein support the conclusion that intra-craft assignments are within the purview of Article 7. I so hold.

The Postal Service contends that even if the Arbitrator finds that Article 7 applies, a heavy workload/light workload situation existed during the period in which the challenged assignments were made and therefore the Service met the criteria contained in 7.2.B and C. That contention is without merit. Even where the heavy/light workload criteria of B and C are met as a factual matter there is another express requirement in that the work assigned must be in the same wage level. This express limitation is a mandatory requirement and is not satisfied by the payment of the same wage level rate. This requirement mandates work in the same wage level, not pay in the same wage level. The words used are the objective manifestation of the parties' intent. If the parties had intended to refer only to rate of pay they could have said so. This conclusion is supported by the decision of Arbitrator Mittenthal in Case No. H8C-2F-C 7406. In that case, which involved the crossing of crafts, a Mail Handler Level 4 was assigned to Level 5 Clerk Distribution duties and paid at Level 5 for the time during which he performed such duties. Arbitrator Mittenthal stated "This disagreement suggests that the parties have conflicting ideas as to the meaning of the

term "in the same wage level." A careful review of the post-hearing briefs, however, shows no such conflict. The Postal Service's brief (page 7) states that "Article VII, Section 2B... is concerned with lateral, day to day work assignments..." Its brief recognizes that a "lateral" move involves going from one job to another "in the same wage level." That is the Union's reading of VII-2-B as well." Arbitrator Mittenthal then went on to say that "it follows that the protested Mail Handler did not make a "lateral" move on July 27, 1980, that he hence was not assigned to a job "in the same wage level", and that Management has not been able to justify its cross-craft assignment under VII-2-B." It is therefore unnecessary to determine whether there factually existed a light/heavy workload situation. Even if that were true the exceptions in B and C do not apply in the absence of an assignment to work in the same wage level.

The Postal Service also points to an alleged oral agreement with the late president of the Union, Gene Deavon, to the effect that utilization of higher level clerks in the OCR/BCS operation was satisfactory so long as the higher level clerks were paid at the higher level rate and took the assignment voluntarily. The testimony as to the alleged oral agreement came from Patricia Oller who at the time was Vice President of the Union. As set forth above, she claimed that the oral agreement was reached between Deavon, the President of the Union, and herself and Donohue and Hawkins of Management. Deavon is deceased and

neither Donohue or Hawkins testified. Oller moreover conceded that when Acting President after Deavon's death, she had filed a grievance which disputed the assignment of LSM Operators to perform OCR/BCS duties. I find on the basis of this patent inconsistency and my observation of Oller as a witness that she was not credible on this point. Her explanation that she filed such a grievance for the purpose of clearing the dockets and to avoid a claim of failure to represent is not persuasive. The evidence in this record as to practice is inconclusive and while there may have been other assignments of a similar nature of those involved in the instant case which were not challenged by the Union there also appears to have been some grievances filed by the Union. I do not find any waiver by the Union of its contractual rights. The arbitrator finds that on the basis of the entire record, the Postal Service violated the provisions of Article 7.2 B and C. The arbitrator is aware of and sensitive to the Postal Service's need for efficiency and economy. However, the Arbitrator does not sit, as so often been said, to dispense his own concept of industrial justice. Fidelity to the contract is the Arbitrator's obligation. Here the contract compels the result reached.

There remains the question of the remedy. The Union seeks the payment of overtime to Mail Processors who were not called in for overtime. It appears from the stipulation of the parties that on November 10, 1990, Level 5 Distribution Clerks worked a

total of 16 hours. The Postal Service and the Union shall review the Overtime Desired List and determine which Level 4 Mail Processor employees would have been called in to perform such work. These employees should be compensated at the applicable overtime rate for the 16 hours of work performed by the Level 5 Distribution Clerks on November 10, 1990. The stipulated facts regarding the work performed by seven Level 6 Distribution Clerks-Machine on November 15, 1990 indicates a total of 56 hours work. The parties shall review the Overtime Desired List and the non-scheduled list of Mail Processors Level 4 and determine which employees would have been called in to perform such work. These employees shall be compensated at the applicable overtime rate for the 56 hours of work performed by the Level 6 Distribution Clerk-Machine on November 15, 1990.

Award

The Postal Service violated Articles 7 Section 2 of the Agreement on November 10, 1990 and November 15, 1990 when they assigned Level 6 Distribution Clerks-Machine MPLSM Operators and Level 5 Distribution Clerks to the OCR/BCS areas to perform the duties of Level 4 Mail Processor. The Postal Service and the Union shall review the Overtime Desired list for November 10, 1990 for Mail Processors Level 4 and determine which employees would have been called in to perform the 16 hours of work performed by Level 5 Distribution Clerks on that date. These

employees shall be compensated at the applicable overtime rate for the 16 hours of work. The parties shall review the Overtime Desired List for November 15, 1990 and the Non-scheduled List of Mail Processors and determine which employees would have been called in to perform the 56 hours of work performed by Level 6 Distribution Clerk-Machine on that date. These employees shall be compensated at the applicable overtime rate for the 56 hours of work.

Bernard Cushman

Bernard Cushman, Arbitrator

Dated: May 15, 1992

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

Case No. A8-W-0656

AMERICAN POSTAL WORKERS
UNION, AFL-CIO

Hearings Held October 23, 1981 and January 8, 1982

Before Richard I. Bloch, Esq.

APPEARANCES:

For the Union

James Adams

For the Postal Service

Donald Freebairn

OPINION

Facts

Grievant G. Robertson, a member of the Special Delivery Craft, here contests Management's failure to call him in for overtime work on November 23, 1979. He was not scheduled for work that day and, it is undisputed, Management made no effort to call him in. Instead, a part-time flexible City Carrier was assigned to perform Special Delivery functions for a total of 6.35 hours at straight time.[1]

[1]The parties stipulate to the following facts:

1. On November 23, 1979, PTR Special Delivery Carrier Robertson

The contention here is that Management violated the Labor Agreement in two respects. First, the Union says Management improperly allowed a member of the Carrier Craft, (James Groce), to cross over into the Special Delivery Craft. This, it claims, was a violation of Article VII of the Labor Agreement. Additionally, it is claimed that Management erred in failing to offer the overtime work in the Special Delivery Craft to the Grievant, who was on the overtime desired list and was available for the work.

(continuation of Footnote #1 from p. 1)

was non-scheduled.

2. No attempt was made by management to call in the grievant on his nonscheduled day.

3. On November 23, 1979, PTF City Carrier Groce was utilized for 6.35 hours on straight time delivering special delivery mail.

4. G. Robertson was considered eligible for overtime during the fourth quarter, 1979.

5. There were 46.6 hours of overtime utilized in the City Carrier Craft in the General Mail Facility on November 23, 1979.

6. There were 7.16 hours of overtime utilized in the Special Delivery Craft by Special Delivery Messengers only at the GMF on November 23, 1979.

7. No nonscheduled letter carrier was brought in on his day off to perform overtime work in the Letter Carrier Craft on November 23, 1979.

Issue

Did Management's actions constitute a violation of either Articles VII or VIII of the National Agreement?

Union Position

The Union maintains that Management may cross Craft lines only in accordance with certain provisions of the Labor Agreement. However, there were no provisions applicable to the circumstances of this case, it is claimed. Accordingly, it was improper to utilize the Carrier for Special Delivery tasks. As a result, Grievant was deprived of an overtime assignment which, according to Article VIII of the Labor Agreement, should have been offered him.

Relevant Contract Provisions

ARTICLE VII
EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for estab-

lishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

ARTICLE VIII
HOURS OF WORK

Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

B. Lists will be established by craft, section, or tour in accordance with Article XXX, Local Implementation.

Analysis

Special Delivery Carriers under this Labor Agreement are contractually distinct from City Letter Carriers.[2] Section 2

[2]The distinction among crafts is recognized, for example, in Section 2 -- Employment and Work Assignments. Paragraph A specifies that "Normally, work in different crafts, occupational groups or levels will not be combined into one job."

deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable.[3] Paragraph B states:

> In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

This mutually-agreed upon provision specifies that the eventuality of "insufficient work" on a given occasion will justify the crossing of craft lines for the purpose of providing an employee an eight-hour work day. Section C presents a variation:

> During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

This clause refers primarily to a situation where "exceptionally heavy work" occurs in another occupational work group, as opposed to the "insufficient work" discussed in Paragraph B. Section C provides that, when such heavy workload occurs, and when there is at the same time a light load

---

[3]Other sections, inapplicable to this case, also provide some flexibility in terms of crossing craft lines. See Article XIII.

in another group, craft lines may be crossed.

Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was "insufficient work" for the classification or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another.

Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its needs on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create "insufficient" work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines

at will merely by scheduling work so as to create the triggering provisions of Subsections B and C. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the face of pressing circumstances. There is no evidence that the provisions have been applied in a contrary manner in Colorado Springs.

Thus interpreted, the question becomes purely one of fact: Did the circumstances here at issue justify Management's invoking Section 2(B) or 2(C) in order to cross craft lines on the day in question?

From the testimony and by Management's candid acknowledgement, it is apparent that Section 2(C) is inapplicable to this situation. There was neither an "exceptionally heavy workload" in the Special Delivery Craft nor a "light workload" in the Letter Carrier group. The sole question, then, is whether one may reasonably find there was "insufficient work" for letter carriers on the day in question so as to warrant re-assigning employee Groce to the Special Delivery Group.

Under the circumstances, there having been a crossing of craft lines, it is appropriate that Management provide justification for the action. Its contention is as follows.

Scheduling for the week in question was completed, as is the normal case, on Wednesday of the preceding week (November 14). Included in the staffing calculations was the fact that the Thanksgiving holiday would fall on Thursday, November 22. The day in question was November 23, the next full work day. All available routes were covered that day by regularly scheduled personnel. In addition, however, the supervisor speculated that, the day after the holiday, there might be sick calls, emergency annual leave or other absences. Accordingly, he scheduled two additional letter carriers.

The supervisor arrived at 6:45 a.m. on the 23rd and found, contrary to his expectations, that there had been no sick calls in the Letter Carrier Craft and that, moreover, the volume in Special Delivery was higher than normal. The supervisor determined that bringing in two scheduled afternoon Special Delivery Messengers two hours early would adequately compensate for the increased load. Then, having assigned one of the two extra Letter Carriers to carrying bumps or assisting on other routes, he assigned the remaining Carrier, Mr. Groce, to Special Delivery work. As stipulated by the parties, Mr. Groce worked 6.35 hours in that capacity.

For the reasons that follow, the finding is that this assignment was improper. Particular care should be employed

in reading this Opinion, for the finding is closely confined to the particular facts of the day.

There is no reason to doubt either that the original scheduling of the two extra personnel was unreasonable or that the full turnout on the 23rd was foreseeable. Indeed, the contrary might generally have been expected. The problem here is with the supervisor's conclusion that there was inadequate work for Mr. Groce in the Letter Carrier Craft. In the overall, the finding is that the supervisor's decision was based not so much on the fact of "insufficient" work in the Letter Carrier Craft as on his conclusion that the "extra" Carrier could be generally utilized more effectively in the Special Delivery ranks. This approach was not consistent with the contractual requisites. To be sure, all routes had been covered in the Letter Carrier group and there were two additional employees available that day. However, it is also true that some forty-six hours of overtime were performed in the Letter Carrier group. There is some dispute as to whether this overtime arose later in the day as a result of difficulty in completing snow-covered routes. It is also apparent, however, that the storm had occurred some days earlier and that, in terms of foreseeability, one might have expected that help would be required. Moreover, while Management contends that assigning Groce to the Letter Carriers would

simply have been "make work," it would also appear that the supervisor believed, early on, that calling in two Special Delivery carriers two hours early for the afternoon shift would adequately account for those needs. Therefore, the assignment across craft lines to the Special Delivery Craft could also have been seen, at that point, as "make work."

In retrospect, one may conclude both that the assignment across craft lines in these particular circumstances was improper and that, assuming the need in that craft, the eligible employee should have been called in on overtime. Accordingly, the Union's request for overtime payment will be sustained to the extent of the violation.

A final comment is here in order. Nothing in this Opinion should be construed as requiring that supervisory judgments in these matters be anything more than reasonably rendered under the facts available at the time. Hindsight may often provide a better perspective but will not necessarily require the conclusion that the assignment was wrong. In each case, the particular facts and circumstances must be scrutinized. But one must proceed on the premise that crossing craft lines is prohibited and that the contractual exceptions are not to be invoked unless clearly met. In this case, the evidence relevant to this particular fact situation

fails to sustain Management's responsibility of showing "insufficient" work in the Letter Carrier unit.

AWARD

The grievance is granted. G. Robertson was improperly denied overtime pay on the day in question and shall be granted 6.35 hours' pay at overtime rates.

Richard I. Bloch, Umpire

April 7, 1982

ARBITRATION AWARD

August 23, 1982

UNITED STATES POSTAL SERVICE

-and-

Case No. H8C-2F-C-7406
AB-E-1157

AMERICAN POSTAL WORKERS UNION

APPEARANCES:

For the Union
John P. Richards, Director
Industrial Relations Department

For the Postal Service
James J. Stanton
Manager, Grievance Branch
Labor Relations Division

Subject: Propriety of Cross-Craft Assignment

Statement of the Issue: "Did Management have the right to make such a (cross-craft, Mail Handler to Clerk,) assignment under Article III of the National Agreement? Did Management violate Article VII, Section 2-B and/or C, Article VIII, Section 5 or Article XXV in making such assignment?"

Contract Provision Involved: Articles III, VII, VIII and XXV of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	August 18, 1980
Step 2 Answer:	October 6, 1980
Step 3 Answer:	November 18, 1980
Step 4 Answer:	February 25, 1981
Appeal to Arbitration:	March 3, 1981
Case Heard:	March 23, 1982
Transcript Received:	April 2, 1982
Briefs Submitted:	May 14, 1982

Statement of the Award: The grievance is granted. The Postal Service should pay a total of five hours at straight time rate to the Distribution Clerk (or Clerks) to be designated by the parties.

BACKGROUND

This grievance protests Management's action in assigning a Mail Handler to Distribution Clerk work, part of the Clerk craft, at the Pittsburgh Bulk Mail Center (BMC) on July 27, 1980. The Union insists this cross-craft assignment was a violation of Article VII, Section 2-B of the 1978 National Agreement. The Postal Service disagrees.

The essential facts are not in dispute. The Pittsburgh BMC handles non-preferential mail, i.e., second, third and fourth class mail. It has two basic tours, Tour 2 which operates seven days a week, 7:00 a.m. to 3:30 p.m., and Tour 3 which operates Monday through Friday, 6:30 p.m. to 3:00 a.m. Because non-preferential mail was backing up on weekends with a large backlog each Monday morning, Management decided in late 1979 to establish a mini-tour on Saturday and Sunday. It placed this mini-tour on Tour 3 hours, 6:30 p.m. to 3:00 a.m.

On Sunday, July 27, 1980, there were nineteen Distribution Clerks (Level 5) and one Mail Handler (Level 4) on this mini-tour. The Distribution Clerks were distributing mail (casing letters and flats, etc.) in the "paper room." The Mail Handler was dumping sacks of mail onto a belt outside the "paper room." There were no other mail processing employees on duty in the BMC at that time. Mail Handlers are represented by the Laborers International Union of North America; Distribution Clerks are represented by the American Postal Workers Union. They are different crafts.

The Mail Handler dumped sacks for the first three hours of this Sunday tour. He then ran out of work. Management reassigned him to work as a Distribution Clerk in the "paper room." He spent five hours on the latter job and he was paid the Distribution Clerk rate (Level 5) for those hours. His reassignment prompted the instant grievance.

Management anticipated this problem before it occurred. It advised the Union in mid-July 1980 that the Mail Handler on the mini-tour might not have sufficient work on Saturday or Sunday and that he would, in such circumstances, be reassigned to Distribution Clerk work. The Union voiced its objection. It suggested various ways in which the Mail Handler could be employed within his own craft for the full eight-hour tour. Its suggestions were not acceptable to Management. Hence, each time a Mail Handler was placed on Distribution Clerk work, a grievance was filed. There were several such grievances, only one of which is before the arbitrator in this case.

The parties agree that the movement of the Mail Handler to the Distribution Clerk job was a cross-craft assignment. The issue is whether this cross-craft assignment was a violation of Article VII, Section 2-B. This provision, along with Article VII, Section 2-A and -C, and Article XXV, read in part:

Article VII - Employee Classifications

"Section 2 - Employment & Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken...

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employees' knowledge and experience, in order to maintain the number of work hours of the employees' basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary." (Emphasis added)

Article XXV - Higher Level Assignments

"1. Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

"2. An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job...

"4. Detailing of employees to higher level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists..." (Emphasis added)

DISCUSSION AND FINDINGS

This is not the first time Article VII, Section 2-B and -C have been construed by an arbitrator from the national panel. Arbitrator Bloch considered these provisions in Case No. H8S-5F-C-8027. His ruling included the following observations:

"...[Article VII,] Section 2 deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable. Paragraph B...specifies that the eventuality of 'insufficient work' on a given occasion will justify the crossing of craft lines for the purpose of providing an employee an eight-hour day. [Paragraph] C...refers primarily to a situation where 'exceptionally heavy work' occurs in another occupational work group...[Paragraph] C... provides that, when such heavy workload occurs, and when there is at the same time a light load in another group, craft lines may be crossed.

"Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was 'insufficient work' for the classification or, alternatively, that work was 'exceptionally heavy' in one occupational group and light, as well, in another.

"...the reasonable intent of this language [Paragraphs B and C is] ...not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the face of pressing circumstances..." (Emphasis added)

The principle seems clear. Where Management makes a cross-craft assignment, it must justify that assignment under the terms of VII-2-B or VII-2-C. If no such justification is provided, the cross-craft assignment is improper under the "inherent proscription..." in VII-2. The Postal Service does not claim Arbitrator Bloch's interpretation is incorrect. It has not asked me to modify or overrule his award.

However, the statement of this principle does not resolve the present dispute. The Mail Handler who was dumping sacks on the evening mini-tour on July 27, 1980, ran out of work after three hours. There was "insufficient" work for him that day. That fact gave Management the right, under VII-2-B, to "assign the employee [here, the Mail Handler] to any available work in the same wage level for which the employee is qualified..." Plainly, more than one condition must be satisfied before a cross-craft assignment can be validated by VII-2-B. There must be not only (1) "insufficient work" for the employee but also (2) other "available work" (3) which he is "qualified to perform" and (4) which is "in the same wage level."

The first three conditions were met in this case. The fourth is the crux of the problem. The Union stresses that a Mail Handler, a Level 4 position,, was made a Distribution Clerk, a Level 5 position. It believes that this was not an assignment "in the same wage level", that VII-2-B is inapplicable in this situation, and that Management has hence failed to provide justification for this cross-craft assignment. The Postal Service has a quite different view of the evidence. It alleges that the Mail Handler's assignment to Distribution Clerk was "in the same wage level."

This disagreement suggests that the parties have conflicting ideas as to the meaning of the term, "in the same wage level." A careful review of the post-hearing briefs, however, shows no such conflict. The Postal Service's brief (page 7) states that "Article VII, Section 2B... is concerned with lateral, day to day work assignments..." Its brief recognizes that a "lateral" move involves going from one job to another "in the same wage level." That is the Union's reading of VII-2-B as well.

It seems the real disagreement is one of fact. The Postal Service's brief (page 8) states that the Mail Handler in question "was upgraded to Level 5 and was then assigned laterally to work with the [Distribution] Clerks." It maintains, in other words, that the movement here was Level 5 Mail Handler to Level 5 Distribution Clerk. This argument is not at all persuasive. The Mail Handler was in Level 4 before being made a Clerk for the remainder of his July 27, 1980 tour. He was performing what is regarded as Level 4 work, i.e., dumping sacks of mail on the "paper belt." He was not assigned to any Level 5 Mail Handler work. Nor does he appear to have been processed through any kind of procedure which would have made him a Level 5 Mail Handler. Hence, the Postal Service allegation that he was "upgraded to Level 5..." before being assigned to a Clerk job is not borne out by the evidence. This was a bare claim, nothing more. If the Postal Service could "upgrade" an employee within his craft in the manner it says it did in the present case, then the VII-2-B requirement that a cross-craft assignment be "in the same wage level" would be meaningless.

It follows that the protested Mail Handler did not make a "lateral" move on July 27, 1980, that he hence was not assigned to a job "in the same wage level", and that Management has not been able to justify its cross-craft assignment under VII-2-B.[1] That cross-craft assignment, Mail Handler to Distribution Clerk, was improper under the principle stated in Arbitrator Bloch's award.

The Postal Service resists this conclusion on several grounds. It urges that no VII-2-B violation can be found (1) because of the negotiating history behind this provision, (2) because of past practice with respect to cross-craft assignments in the Pittsburgh BMC, (3) because of alleged inconsistencies in the Union's position, and (4) because of the settlement terms of a Jacksonville, Florida grievance involving a similar issue. Each of these contentions is discussed below.

1 Management's rights under Article III are obviously limited by the restrictions imposed by VII-2-B. Management made no attempt to justify its cross-craft assignment under VII-2-C.

Negotiating History

The Postal Service contends the words "in the same wage level" were written into VII-2-B of the 1971 National Agreement because of the Union's concern that employees could otherwise be given a cross-craft assignment to a lower wage level job with a consequent loss of earnings. It notes these words were added before the wage protection provisions of Article XXV were agreed upon. Its argument appears to be that VII-2-B, read in light of this bargaining history, should not be interpreted to prohibit a cross-craft assignment to a higher wage level job, i.e., from Level 4 Mail Handler to Level 5 Distribution Clerk.

The difficulty with this argument is that the parties did not limit the application of VII-2-B to assignments to a lower wage level job. They adopted contract language which permitted only those cross-craft assignments which were "in the same wage level." That formula would, on its face, preclude assignments to lower or higher wage level jobs. The Postal Service acknowledged this reality in its post-hearing brief by describing VII-2-B as being "...concerned with lateral, day to day work assignments..." Given this concession, the Postal Service cannot be allowed to use the 1971 negotiations as a basis for further limitations on the applicability of VII-2-B.[2]

Past Practice

The Postal Service asserts that a practice of cross-craft assignments to higher and lower wage level jobs exists at the Pittsburgh BMC and elsewhere. It believes that VII-2-B, when construed in light of this practice, cannot prohibit the cross-craft assignment made in this case, Mail Handler to Distribution Clerk.

2 In subsequent negotiations, both sides proposed changes in the language of VII-2-B. The Postal Service sought in 1973 and again in 1978 to delete the words in question, "in the same wage level", from VII-2-B and -C. It did not prevail. The Union sought in 1975 to remove all of VII-2-B and -C from the National Agreement. It did not prevail. None of this history warrants any change in the interpretation I have already given VII-2-B.

This argument improperly lumps together a variety of different assignments. It is true that Management at the Pittsburgh BMC has assigned Clerks to Mail Handler jobs on numerous occasions over the years. Such cross-craft assignments may well have become a practice in this facility. Indeed, the 1978 Local Memorandum of Understanding stated that "all part-time flexible schedule clerks on duty will be reassigned to mailhandler assignments before regular clerks are reassigned to mailhandler duties."[3]

But the dispute here involves a move in the opposite direction, Mail Handler to Clerk. The evidence reveals that Mail Handlers have been assigned to Clerk jobs on only one occasion. That was in 1976 during a United Parcel Service (UPS) strike. A large increase in the Postal Service's business resulted in Clerks working a great deal of overtime and in a need for more Clerk manhours than were available. Management's response was to upgrade some Mail Handlers to Clerk. This single move, even though it concerned several Mail Handlers, can hardly constitute a practice. That is especially true given the fact that this cross-craft assignment was prompted by a truly unique situation.

I find that any cross-craft assignment practice involving Clerks moving to Mail Handler does not control Mail Handlers moving to Clerk. These are separate and distinct matters. Because there is no proven practice for Mail Handlers moving to Clerk, the Postal Service's practice argument must be rejected.

I am not unmindful of the July 1982 National Memorandum of Understanding on this subject. It provides that "in applying...Article...VII..., cross craft assignments of employees ...shall continue as they were made among the six crafts under the 1978 National Agreement." This understanding was executed roughly two years after the instant grievance was filed. It therefore is not relevant to this dispute. Its emphasis on past practice, however, does suggest that practice must always have been a consideration in the application of

3 This Memorandum of Understanding, involving as it does the Clerks' bargaining representative, cannot be binding on the Mail Handlers.

the cross-craft assignment principles in VII-2-B. And the practice should, in my opinion, deal with specific "employees", i.e., the specific craft and specific facility involved in the assignment. That is exactly what I have done in analyzing this dispute.

Union Inconsistency

The Postal Service stresses that the Union has no objection to Clerks moving to Mail Handler under VII-2-B even though that is not a cross-craft assignment "in the same wage level." It says that if the Union has no quarrel with movement to a lower wage level job, there should be no quarrel with movement to a higher wage level job (i.e., Mail Handler to Clerk).

This argument ignores the plain meaning of VII-2-B. As explained earlier, the only permissible assignments under this contract clause are those "in the same wage level." It is hardly surprising that the Union has no quarrel with Clerks moving to Mail Handler. For such an assignment enlarges the Clerks' work opportunity. It is the Mail Handlers who would have reason to protest such a move. Therefore, the Union's apparent inconsistency is nothing more than an expression of self-interest. Its failure to object to Clerks moving to Mail Handler cannot, under these circumstances, become the kind of precedent which would be binding with respect to Mail Handlers moving to Clerk.

Jacksonville Settlement

The Postal Service relies also on the parties' settlement of a Jacksonville, Florida grievance which was pending in national arbitration. It notes that the settlement provided that the movement of Mail Handlers to Clerk in Jacksonville on account of "unscheduled absences, ...unavailability of replacements and heavy parcel post volume...[was] not inconsistent with the National Agreement" requirements on cross-craft assignments. It urges that the Union thereby "accepted as contractually correct the practice of upgrading Mail Handlers to perform Clerk work..."

This argument is not convincing. To begin with, the parties' settlement is dated November 9, 1981. That is more than one year after the instant grievance was filed. There is no indication in the settlement that the parties meant to

apply its terms retroactively to other grievances then pending arbitration.[4] More important, the settlement was expressly "based on the fact circumstances of this particular [Jacksonville] case..." And Management agreed that it "will only utilize this procedure in an emergency situation in order to maintain the efficiency of operations..." There was certainly no "emergency situation" in the Pittsburgh BMC on July 27, 1980, when the Mail Handler was moved to Distribution Clerk for five hours. Thus, the Jacksonville settlement is clearly distinguishable from the facts of the present case.

* * * *

For these reasons, my ruling is that Management's action in assigning a Mail Handler to Distribution Clerk on July 27, 1980, in the Pittsburgh BMC was a violation of Article VII, Section 2. In view of this ruling, the parties' arguments regarding Article XXV need not be answered. The Postal Service, in any event, has not invoked XXV here to justify the Mail Handler's cross-craft assignment to Clerk.

As for the remedy, Management did not work any of the Distribution Clerks overtime on July 27, 1980. Even had the Mail Handler remained on his regular job for the full tour, Management would not have called in any Clerk for overtime in the "paper room." Overtime was simply not needed. Overtime pay would not be a proper remedy. However, the cross-craft assignment of this Mail Handler was a violation of the National Agreement and he did perform work which should have been performed by Distribution Clerks. The latter were injured by the violation and there is no way for them to get that work back. Accordingly, the appropriate remedy is to pay five hours at straight time rate to one or more Clerks to be designated by the parties.

AWARD

The grievance is granted. The Postal Service should pay a total of five hours at straight time rate to the Distribution Clerk (or Clerks) to be designated by the parties.

Richard Mittenthal

Richard Mittenthal, Arbitrator

4 The instant grievance was appealed to arbitration on March 3, 1981.

In the Matter of Arbitration Between	OPINION AND AWARD
UNITED STATES POSTAL SERVICE]	Andree Y. McKissick, Arbitrator
And]	Grievant: John C. Kusz
]	Number: E7C-2D-C 16376
AMERICAN POSTAL WORKERS UNION, AFL-CIO	

BACKGROUND:

This is an arbitration proceeding pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union"). The hearing was held at Wilmington, Delaware on September 16, 1992 at that time sworn testimony was taken, exhibits offered and made part of the record, and oral argument was heard. Post-hearings briefs were submitted by October 23, 1992.

APPEARANCES:

For the Company : M. Elaine Morgan

For the Union : Malcolm T. Smith

STATEMENT OF THE CASE:

Grievant, who is on the ODL, was not called-in for overtime on his non-scheduled day. Automated machine work, one of Grievant's duties at Level 4, was instead temporarily assigned to two Level 5 clerks during working hours. Analysis of this grievance centers upon cross-craft assignments and its exceptions.

The parties, failed to resolve the matter during the various Steps of the grievance procedure, referred the matter to the undersigned Arbitrator for resolution.

ISSUES:

The issues presented for arbitration are:

(1) Whether the Service violated the National Agreement by not calling-in Grievant, who is on the Overtime Desired List (ODL), for overtime on his non-scheduled day, September 11, 1988?

(2) Whether the Service violated Article 7, Section 2, the general prohibition against work in different crafts or wage levels, when the Service temporarily assigned Level 5, Distribution Clerks, to the Optical Character Reader (OCR) and Bar Code Sorter (BCS) area to perform the duties of the Level 4, Mail Processors during normal working hours on September 11, 1988? If so, what shall the remedy be?

STATEMENT OF FACTS

On September 11, 1988, Grievant, John C. Kusz, testified that he wanted to work overtime and had told this to his Supervisor, Shedred E. Williams. Although Grievant was on the ODL list, he was not called in to work overtime on his non-scheduled day, September 11, 1988.

Grievant is a Mail Handler, Level 4, who worked on Tour 3 from 3:30 to midnight as a Regular, Full-time employee. On September 11, 1988, two other employees, Terri Craft and Betty Moon, both Level 5, Distribution Clerks, were temporarily assigned to the OCR/BCS area to perform Level 4 automation work during their normal working hours.

Supervisor Williams testified that Terri Craft and Betty Moon worked simultaneously for 1 1/2 hours in automation because he felt that "there was not enough work for an 8 hour period." He made it clear that no-one worked overtime on September 11. He testified that it was customary Level 5 employees substitute for Level 4 employees for lunches and breaks and that all were trained and competent to do so. He added that many Level 5 employees were trained to perform Level 4 duties because there was a "critical shortage of staffing" in 1988.

Eileen M. Muzzi, the Acting Tour 3 Supervisor in 1988, repeated much of Supervisor Williams' testimony that no-one worked overtime on September 11 and that Level 5 employees frequently filled in for Level 4 employees for lunches and breaks. More importantly, she added that she could not recall whether or not there was a heavy volume workload on the day in question. However, she testified also that there was a manning problem during this time period which this grievance was filed.

Terri Craft testified to her ability to use the Optical Character Reader although she is presently a Letter Sorting Machine Clerk. Both Doris Hill, Ad Hoc EEO counsel, and Steven C. Collins, Automation Shop Steward, testified to the wide-spread usage of different crafts and wage levels employees performing temporary assignments, instead of management requesting the usage of the same wage levels employees on overtime.

POSITION OF THE SERVICE

The Service contends that Management has a right to assign and transfer any personnel to maintain efficiency of its operations. Relying on Article 3, Management Rights, the Service contends further that it is the employer who determines if and when overtime is needed and how this need should be met. The employer has also the right to decide how many employees should be used for a particular task. If the task requires only two clerks working simultaneously for 1 1/2 hours instead of one person working overtime for 8 hours, it is the Service's decision.

The Service argues that two clerks working 1 1/2 hours is "de minimis" and is considered within the "insufficient time" exception of Article 7, Section 2, the prohibition against combining different crafts and wage levels. Further, the Service points out that Article 8, Section, specifically states that an employee will be required to work overtime by the Service only "when needed." Moreover, the Service maintains that it is inefficient to pay for 8 hours of work when only 1 1/2 hours worth was required. Had Grievant been called in he would have been guaranteed 8 hours of pay ---whether he worked it or not as per Article 8, Section 8. For safety reasons, the Service continues, automation machine work requires at least 2 employees at all times.

Lastly, the Service points out that Level 5 employees were paid their current salaries, not Level 4 wages because they temporarily performed Level 4 automation work. In sum, the Service contends that it complied with Article 25 which requires temporary assigned employees to be paid the "higher level rate".

POSITION OF THE UNION

The Union contends that the remedy of 8 hours of overtime should be paid Grievant, a Level 4, Mail Handler, because he was willing and able to work overtime and on the ODL list but was not called in on September 11, 1988. Instead, the automation work was assigned to Terri Kraft and Betty Moon, Level 5 Clerks, who were in different craft and wage levels. This, the Union contends contradicts the National Agreement, Article 7, Section 2 A. which requires strict compliance.

The Union argues that "in the same wage level" means just that without exceptions. Moreover, the Union asserts that the partial exceptions of "insufficient work" and "exceptionally heavy workloads" of Article 7, Section 2 B. and C. still require usage of "same wage level" employees.

The Union disputes the qualifications of Terri Kraft as being capable of handling the job of a Mail Handler since she was never employed as one. The Union points out that she never took the Mail Handler Exam. The Union concedes that this grievance involves temporary assignment for a limited period of time but is against the Service's de minimis argument of "insufficient time" of Article 7, Section 2 B.

The Union recognizes that the Service paid Terri Kraft and Betty Moon, Level 5 Clerks, at their appropriate wage levels for doing Level 4 OSC work for 1 1/2 hours. However, the Union strongly argues that neither should have been assigned at different levels as it contradicts the "clear and unambiguous" language of Article 7, Section 2 A. Therefore, the Union request for a "fair, just and equitable" relief, overtime of 8 hours which would have been guaranteed Grievant had he been called in.

FINDINGS AND CONCLUSIONS

After review of this record, and after having had an opportunity to weigh and evaluate the testimony and credibility of the witnesses, it is this Arbitrator's finding that:

(1) The Service did not violate the National Agreement by not calling in Grievant, who is on the ODL, for overtime on his non-scheduled day, September 11, 1988.

(2) The Service did violate Article 7, Section 2. B. when it made a cross-craft assignment in spite of the fact that it was for "insufficient work" and the assigned work occurred during normal working hours.

Although the Service presented a very persuasive argument, but the inescapable language of the National Agreement in Article 7, Section 2. B.,one of the partial exceptions to the general prohibition against cross-craft assignments, uses the words "IN THE SAME WAGE LEVEL". Thus the assignment of two Level 5, Distribution Clerks, to perform Level 4, Mail Handler's duties constitutes a cross-craft assignment within the meaning of this provision as well as Article 7, Section 2. C., the other partial exception to the general prohibition against cross-craft assignments.

The Service maintains, and this Arbitrator agrees, that Article 3, the Management Rights Clause is broad and gives the Service the right to generally "assign" duties to employees. It gives the Service also the right "to maintain the efficiency of the operations" and "to determine the personnel" to conduct those operations. The Service argues that two clerks performing simultaneously 1 1/2 hours of work is de minimis. This Arbitrator agrees that de minimis work constitutes "insufficient work" within Article 7, Section 2. B. On the other hand, the evidence presented here does not support the "heavy workload" theory of the other partial exception.

The Service asserts also that the two Level 5, Distribution Clerks, were paid at higher wages, not Level 4 wages, as required by Article 25. This is also a valid point. Evidence was presented that the Level 5 clerks were familiar with the automated machine and had worked on it during breaks and during lunch time when Level 4 Mail Handler were unavailable. In sum, the Service almost made an air-tight case except for the plain, ordinary language of Article 7, Section 2. B., which factually applies here. It states:

"B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work IN THE SAME WAGE LEVEL for which the employees is qualified, consistent with

the employees knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule."

The problem is that these agreed-upon exceptions in the National Agreement , Article 7, Section 2. B. or C., to the general prohibition against cross-craft assignments are only "partial" exceptions. Each operates independently as partial ---as opposed to full exceptions because of the requirement that assignments must be within the SAME wage level. Thus the precise phrase alone,"in the same wage level", is clear and unambiguous as the Union effectively argues. It is also true Level 5 wages are not Level 4 wages. Although the Service made a strong showing, it assigned two Level 5 clerks to Level 4 duties on the automation machine. By making this cross-craft assignment, the Service violated the clear words, "in the same wage level", of the National Agreement.

It is important to note that evidence was presented here that NO-ONE worked overtime. That is, that both Level 5 clerks worked during their normal working hours. Since the Service did not work anyone overtime, it would seem that overtime is the improper remedy. In that the Service violated the cross-craft prohibition, the proper remedy is straight time, not overtime as the Union here requests. Hence, Level 4 Grievant should receive straight pay for 3.43 hours, the work of one person as stipulated to in the Service's Post-Hearing brief. This would be the equivalent to two persons working simultaneously for 1 1/2 hours as was the case here with the Level 5, Distribution Clerks.

The Union points to several Arbitrators citing their interpretation of these same provisions. This award concurs with both Arbitrator Bloch generally and Arbitrator Mittenthal, in particular. When Arbitrator Mittenthal analyzed this same provision, Article 7 , Section 2 B., he set forth this formula:

"There must be not only (1) "insufficient work" for the employee but also (2) other "available work" (3) which he is "qualified to perform" and (4) which is "in the SAME wage level."

All four conditions must be met before the Service can prevail. As with this award, the fourth condition was not met and the Union also prevailed. His case involved also Level 4 Mail Handlers and Level 5 Distribution Clerks as does this award.

Interestingly, Arbitrator Mittenthal mentions in a passing footnote that the Postal Service on several occasions attempted to delete the words, "in the same wage level" but it did not prevail. The Union has tried to delete the partial exemptions in their entirety but has also failed. In sum, this cross-craft prohibition and its would-be exceptions have proven to be anything but clear and unambiguous.

However based on the evidence presented before me, the Service violated Article 7, Section 2. B. because of the cross-craft assignment of two Level 5 Distribution Clerks instead of the Level 4, Grievant. Accordingly, the appropriate remedy is straight time for the above reasons.

AWARD

The Grievance is granted. The Postal Service should pay a total of 3.43 hours at straight time to Grievant.

Andrée Y. McKissick, Arbitrator

DATE: November 21, 1992

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	GRIEVANTS: Patricia Groom
between	)	POST OFFICE: Coppell, Texas
UNITED STATES POSTAL SERVICE	)	CASE NO: G94C-1G-C 99018632
and	)	UNION NO: 90597
AMERICAN POSTAL WORKERS UNION AFL-CIO	)	

BEFORE: James J. Odom, Jr., ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Mr. Greg McDonald, Labor Relations Specialist

For the Union: Mr. Paul R. Manley, Advocate

PLACE OF HEARING: Main Post Office - Coppell, Texas

DATE OF HEARING: March 4, 1999 - Briefs Received April 16, 1999

DATE OF AWARD: May 28, 1999

RELEVANT CONTRACT PROVISIONS: Articles 7, 8 and 25 - National Agreement

CONTRACT YEAR: 1994-1998

TYPE OF GRIEVANCE: Contract

AWARD SUMMARY: Utilization of Level 4 Mail Processors from automation to perform Level 5 work in outgoing primary section constituted a violation of Article 7.2, even though higher level wage paid. Article 25 authority limited to assignments in the same immediate area. Grievance is granted. Appropriate overtime awarded. Jurisdiction is retained to resolve disputes over remedy.

James J. Odom, Jr., Arbitrator

BACKGROUND AND POSITIONS OF THE PARTIES

By agreement, this decision and award shall also apply to the following cases: G94C-1G-C 99018662, 99019369, 99019378, 99019317, 99019346, 99018649, 99018642 and 99021346.

The parties stipulated that Management had utilized Level 4 Mail Processors to perform certain Level 5 duties on the outgoing primary at a time that the Level 5 Distribution Clerks on the 10, 12 and off-day overtime desired list were not allowed overtime. Stipulated also is that Level 5 Distribution Clerks whose regular duties included the outgoing primary were available for overtime assignments during the time that Level 4 Mail Processors were performing outgoing primary work.

The Union contends that Management's use of Level 4 Mail Processors to perform work included among the duties of the Level 5 Distribution Clerks violated Article 8, Section 5, by failing to meet its requirement that the scheduled work be in the same work location where the employees regularly work.

> Article 8, Section 5. Overtime Assignments. When needed overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work . . . .

The Union argues also that the use of the Level 4 Mail Processors violated Article 7, Section 2. B and C because the work to which they were assigned was a different wage level.

> **Section 2. Employment and Work Assignments**
>
> . . . .
>
> B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified,

consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Anticipating that Management will justify the assignments of the Level 4 Mail Processors to Level 5 duties in the outgoing primary on the ground that the Level 5 work was limited to the periods that the Rec Site was not reading mail, the Union contends that Article 7.2.C. requires more than just a light workload for Mail Processors. It asserts that an exceptionally heavy workload in the second (transferee) occupational group must also be present. Even then, it argues, Article 7.2 B and C require that the assignment be to a job with the same wage rate.

The Article 25 Argument. In its brief, the Union asks the rhetorical question, "Can Management reassign across wage levels without being in violation of Article 7, Section 2?" The answer, it says, is "Yes," but only under specific provisions that are covered in the National Agreement under Article 25.

ARTICLE 25
HIGHER LEVEL ASSIGNMENTS

Section 1. Definitions

Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

Section 2. Higher Level Pay

An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate.

Section 3. Written Orders

Any employee detailed to higher level work shall be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position. Such written order shall be accepted as authorization for the higher level pay. The failure of management to give a written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

Section 4. Higher Level Details

Detailing of employees to higher bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporary vacant higher level position exists. However, for details of an anticipated duration of one week (five working days within seven calendar days) or longer to those higher level craft position enumerated in the craft Articles of this Agreement as being permanently filled on the basis of promotion of the senior qualified employee, the senior, qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists shall be selected.

Here is the portion of the Union's brief dealing with Article 25:

In the grievance package, the Postal Service enumerates that these employees were paid higher level pay as per the Step 2 Decision. However in the Step 3 Decision the Postal service contradicts the Step 2 Designee by stating that" ***The level 4's are not verifying, dispatching, or performing higher-level duties.*** " In any event, the temporary assignment of the Level 4 Mail processor does not satisfy the provisions of Article 25 for several reasons. Section 1 only speaks of a temporary assignment being one of an employee being assigned to a lower level position and being guaranteed his or her

> own rate of pay. Detailing of employees as in Section 4 specifies from the employee's immediate work area. These areas have been defined in the LMOU Union Exhibit 3 Item #14. Section 5, although not stated above, defines short periods of details as being 29 days or less and long periods being 30 days or longer. In any event, the payment of higher level for any employee does not satisfy the provisions of Article 7.2 B and C of that being the same wage level.

The Union concedes that Article 7.2. B and C permit the Service to cross craft lines and occupational groups, but only when specified conditions relating to workload--and, when the reason necessitating the assignment is not foreseeable; that is, not preventable with the exercise of an expected level of planning skill on the part of Management.[1] The Union resists the contention of the Postal Service that the assignments were necessary Management responses to suddenly arising conditions that could not and should not have been anticipated or planned for. Rather, from the Union's perspective, the assignments were the consequence of poor planning and inadequate scheduling on the part of Management, and certainly were not due to unforeseeable difficulties relating to mail volume, equipment or personnel.

Position of the Postal Service. The Service asserts the right to direct the work force granted in Article 3 as the principal defense of its utilization of the Level 4 Mail Processors. It relies on Management's right to exercise this prerogative freely except where the National Agreement proscribes its authority to do so. Management contends that there is no provision in the National Agreement that prohibits it from moving Level 4 Mail Processors to work jobs normally staffed by Level 5 Distribution Clerks whenever the mail in the Level 4s' area is not

---

[1]This argument comes from the award of Arbitrator Richard I. Bloch in Case Number H8S-5F-C 8027, a case involving an assignment across craft lines for the purpose of avoiding payment of overtime.

reading. Usually, it says, the Level 4 Mail Processors are brought over to the primary unit and kept there only until their machines start reading mail again. Then, as the machines start reading the mail, the Level 4 Mail Processors are sent back to their regular assignments. "When there is downtime at the Rec Site in Little Rock, Ark., it causes the mail not to read on the ISS and OSS machines, and the PTF employees who are guaranteed four hours after clocking in are sent to the outgoing primary and to the flat sorter machine area."

The Postal Service insists that the Union arguments about overtime are without substance because no overtime was worked or required.

ISSUE

Did Management violate the National Agreement when it utilized Level 4 Mail Processors to work Level 5 jobs in the outgoing primary? If so, what shall the remedy be?

DISCUSSION

There are no significant factual disputes. The Postal Service concedes that on August 22 and 23, 1998, it assigned four Level 4 Mail Processors who normally worked in automation to work two hours each in the primary section at a time when Distribution Clerks normally assigned there were available to be utilized from the overtime desired list. It is the Union's position that in making these assignments, the Postal Service breached Articles 7, 8, and 25 of the National Agreement. The burden of persuasion resides with the Union.

Here, summarized, are the Union's arguments, starting with Article 7. Section 2.B provides that in order to facilitate giving an employee minimum hours of work guaranteed by the National Agreement, Management is entitled to transfer a qualified employee from one job to another to do work *in the same wage level.* The following section, 2.C, grants Management the

authority to assign an employee whose group's workload is light to work in a second group where the workload is unusually heavy. Note that even if there *was* downtime in the automation section where the Mail Processors were working, Section 2.B authorizes transfers to work in the same wage level, *only*. And 2.C requires not only that the transfer be to a job with the same wage rate, but also to a work group experiencing an exceptionally heavy workload, which, the Union contends, was not shown.

The Union's Article 8, Section 5 argument is grounded in the requirement that overtime be scheduled among employees regularly working in the same work location. So, because the Mail Processors do not normally work in the primary section, they are not entitled to participate in overtime required by that section.

While recognizing that Article 25 permits assignments "across wage levels without being in violation of Article 7, Section 2," the Union contends that all of the qualifying conditions set specified in Sections 1 though 4 of Article 25 were not met, most specifically, Article 25.4 requires details to higher areas be "within the immediate work area," which was not done in this case.

ANALYSIS

The Union sees the problem and issue as the denial of the opportunity to work overtime. Consistent with this view, up until the filing of its brief (the case was submitted upon stipulation of facts, written statements of witnesses, and post hearing briefs), the nucleus of its claim was the alleged violation of Section 5 (Overtime Assignments) of Article 8, Hours of Work. This excerpt from the letter of Additions and Corrections to the Step 2 Decision Letter is illustrative:

> Management violated Article 8, overtime, which states that, when needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work. These employees are from another section.

From Management's perspective, the issue centers on its right to assign employees to jobs as it deems necessary and expedient, although it has not challenged the Union's contention that had it been required to utilize additional Distribution Clerks, overtime would have been necessary (there was no proof either way on this issue). Still, I do not see that Article 8.5 can be used to support the Union's contention. The primary reason is that no overtime in the primary section was worked by anyone. I do recognize the Union's argument that *but-for* the utilization of the Mail Processors, there would have been overtime for the Distribution Clerks, although, again, there was no proof to support this assumption. Arguably, there are contractual provisions that govern and perhaps prohibit the assignments complained of, but Article 8.5, which simply describes the population among which overtime will be distributed when utilized, is not among them.

The major portion of the Union's brief, and great weight of its argument, revolve around Article 7.2 B and C, contractual references that were not cited or referred to as such, prior to preparation and submission of the brief.[2] The language of Article 7.2 that the Union relies on,

---

[2]Although I have some misgivings about receiving, considering and giving controlling weight to a contractual provision not cited until the party's post hearing brief, the argument for which Article 7.2 is used as authority plainly appears throughout the grievance process. For example, on the Step 3 grievance appeal form, this item appears, "Management is utilizing level 4 clerks in another section (Primary) to prevent paying overtime to clerks who regularly work this section." And, further along in this document, "The Union contends that in accordance with the CBA, *work in different crafts, occupational groups or levels will not be combined into one job,* especially when there was work available in their regular assignment. The italicized portion is

and the contentions made under it, have already been laid out in detail. A short review may nevertheless be helpful: Article 7.2.B and C can be read to limit assignments to (1) those necessitated by (a) a shutdown or shortage of work in the transferring section or (b) exceptionally heavy work in the section receiving the assigned employee, together with a light workload in the sending section *and* (2) those between the same wage level.

Although the *Bloch* award that accompanied the Union's brief, dealt with a cross craft assignment, it has relevance here because it holds that Article 7.2 B and 7.2 C restrict assignments among jobs with different wage rates.

> Inherent in these two provisions [Article 7.2 B and C] . . . is the assumption that the *qualifying conditions* [emphasis added] are reasonably foreseeable or somehow unavoidable.

Arbitrator Bloch went on to observe that the question whether the circumstances "justify Management's invoking Section 2 (B) or 2 (C) [in this instance, in order to cross craft lines] becomes purely one of fact." What is important to the result here is his conclusion that the two provisions constitute restrictions on the authority of the Postal Service to assign its employees.

Arbitrator Bloch's decision was accompanied by the 27-page award of Bernard Cushman in Case No. E7C-2E-C 41567. This extremely detailed, tightly reasoned opinion summarized and discussed more than a dozen assignment cases before this conclusion:

> Thus, the majority of the arbitration decisions reviewed herein support the conclusion that intra-craft assignments are within the purview of Article 7. I so hold.

---

quoted directly from Article 7.2 A. The Postal Service might claim surprise at the depth or success of the research regarding the controlling authority of Article 7, but not at the Union's reliance on this Article.

I commend the *Cushman* award to those interested in a discussion of cases leading him to this holding. While his analysis of the case history apparently includes the principal decisions, none attempts to explain the coexistence of Article 7 with Article 25, Higher Level Assignments, a provision that cannot be ignored. For Article 25 to have any meaning, assignments to work at jobs carrying higher wage levels must be permissible under the National Agreement. Even the Union was constrained to note its acceptance of this notion:

> Can Management reassign across wage levels without being in violation of Article 7 Section 2? The answer to this question is yes, but only under specific provisions which are also contained in our Collective Bargaining Agreement . . . In the grievance package, the Postal Service enumerates that these employees were paid higher level pay as per the Step 2 Decision. However, in the Step 3 Decision the Postal Service contradicts the Step 2 Designee by stating that **"The level 4's are not verifying, dispatching, or performing higher level duties."**

The Union contends that the condition not met is that the assignments of higher level jobs must be within the immediate work area as required by Article 25.4.

After perhaps too long consideration, I have concluded that I must follow the analysis and holding in the *Cushman* decision. Therefore, I find that when the Mail Processors were detailed to do the work of Level 5 Distribution Clerks, a violation of Article 7 occurred, notwithstanding that the Postal Service complied with Article 25 by paying the higher Level 5 pay. Article 25 does not operate as a safe haven for Management because the work was not in the immediate work area of the Level 4 Mail Processors. Neither was Article 7.2 any comfort. The assignment involved different wage levels.

Regular Arbitration Panel

In the Matter of Arbitration	)	
	)	
between	)	Grievant: T. Ball
	)	
United States Postal Service	)	Post Office: Tampa, FL
	)	
and	)	Case No:
	)	H94C-1H-C 97117557
American Postal Workers Union	)	052197DL8

Before: Robert B. Hoffman, Arbitrator

Appearances:

For the Postal Service: Izzy Medina

For the Union: Pat Davis

Place of Hearing: Tampa, FL

Date of Hearing: January 22, 1999

Hearing Closed: February 12, 1999

Date of Award: February 17, 1999

Relevant Contract Provisions/ Handbook/Manual Provisions: Art. 7.2
Contract Year: 1994-98
Type of Grievance: Contract
Award Summary:

The grievance is arbitrable. The motion to dismiss is denied. The focus of this grievance has been the assignment of employees to a different wage level. This is an Article 7.2 contention. It was argued at step 2 and made part of additions and corrections after step 2. The grievance is sustained on the merits. The facts are strikingly similar to the Cushman award, where level 5 clerks worked level 4 automation jobs and a violation of Article 7.2.B and C was found.

Opinion and Award

I. Issues:

Is the Union's claim based on Article 7 arbitrable? If so, did the Postal Service violate the National Agreement when it assigned four level 5 distribution clerks in level 4 automation mail processing on straight time rather than the grievant? If so, what is the remedy?

II. The Procedural Issue

A. Facts

The Service made a motion to dismiss after the Union attempted to frame the issue at the start of the hearing. In essence, it maintains that the grievance is an Article 8 overtime dispute, as the grievance so states, and not an Article 7 case, as the Union proclaimed in its recitation of the issue. It contends that with this new issue the Union would have to change the facts at the hearing to make it into an Article 7 rather than an Article 8 overtime violation. After hearing extensive arguments, including some of the facts concerning the merits, the parties references to conflicting citations, and their desire to submit these citations after the hearing, the arbitrator concluded that the issues involved were of such complexity or significance to warrant reference to the Regular Area Arbitration Panel.[1]

The grievance filed at step 1 alleges a violation of Article 8 and a number of other Articles.[2] It contends in the factual statement that for six dates in May 1997 the grievant was by-passed as an ODL clerk in automation, while level 5 distribution clerks from manual operations were assigned the automation equipment. In the step 2 decision, management designee Jones, stated that level 5 manual clerks can be utilized in a level 4 position. They were paid straight time when the grievant was available for overtime. He noted that management has a right to utilize employees at the straight time rate rather than employees at the overtime rate.

---

[1] The parties stipulated that with the arbitrator's dual role on both panels for these scheduled type cases, the arbitration should proceed as scheduled. The arbitrator so ordered pursuant to Art. 15.5.C.3.e. Citations and argument were received after the close of the oral hearing.

[2] 2, 3, 5, 15, 19 and 30.

Union steward Maier testified that after the step one meeting he discovered an award by Arbitrator Cushman (E7C-2E-C41567) relating to this issue. It had similar facts, but was based on an Article 7 violation. Although the grievance did not specifically refer to Article 7, he gave the award to Jones at the step 2 meeting and discussed the same set of facts as an Article 7.2.B and C violation with an Article 8 remedy. Jones testified that he received the award after the step 2 decision. As a result, he did not include any mention of it in the decision.

The Union filed Additions and/or Corrections to the step 2 decision. "At this time the Union will clarify the issue, it is an Article 7 Employee classification issue with an Article 8 type of resolve." In its step 3 decision, management made no reference to Article 7. It responded that the Service had the right to use both OTDL and non-OTDL clerks for overtime when the mail volume on hand and other operating conditions so necessitate. Scheduling was in accordance with Article 8.

B. Positions of the Parties

Management maintains in its motion to dismiss that the step 1 grievance involved overtime only. The Union in effect abandoned this argument and made it into a craft crossing grievance. The Union admits there is no violation of Article 8. The alleged violation of Article 7 would have to be filed separately and the arbitrator has no jurisdiction. Management cites a recent decision by Arbitrator Byars (H94C-4H-C97086909) who dismissed a grievance. The written grievance concerned a PTF employee whom returned to work on limited duty and management worked carriers in the clerk craft while sending the grievant home. The Union argued at the hearing that the use of Rural Route Associates or non-carrier employees violated the contract. Arbitrator Byars found "no allusion to the use" of these type of employees in lieu of the grievant and "no development of the grievance on such a basis." She concluded that the issue posed by the Union was outside the scope of the grievance.

The Union argues that management re-framed the issue at steps 2 and 3, without discussing the issue raised by the Union under Articles 7.2.B and C. The Union, as the moving party in contractual grievances, has the responsibility to make sure that its grievances are properly framed and developed throughout the grievance procedure. In its step 1 grievance, the Union referred to level 5 clerks three times and the grievant was

described as a mail processor for purposes of clarifying level 4. The Union made this more specific in its additions and corrections. It clarified the issue as Article 7.2.B and C with an Article 8 remedy. "If the framers of Article 15 wanted the step one and step two form as the controlling papers in the grievance procedure, there would be no provisions for additions and corrections." There are a number of arbitrators who have stated that the Union has the right to utilize the "pre-arbitration process" to fully develop the issue.

C. Discussion

Management's motion to dismiss raises an all-too frequent complaint -- whether the grievance filed by the grievant and processed through the grievance steps is the same one being heard at arbitration. As the Service points out, if the Union can change its mind and come to arbitration with a different issue or set of facts than those developed in the grievance steps, the Arbitrator's jurisdiction is placed in question. This simply may be a different grievance than the one processed and developed. But there are two additional concerns not voiced by management here. There is the element of surprise at the arbitration hearing, which neither party is expected to endure, when new facts and contentions are made for the first time. There is also the notion that the grievance should be made with sufficient clarity so it may be resolved at the lowest possible level of the grievance steps. All of these are valid considerations; they are inherent grievance processing concerns that have been tested many times over.

One way to ensure that the arbitrator hears what has been grieved is to make it clear in the grievance procedure that the parties have to set forth in their presentations at the steps with clarity what is being claimed and what is being decided. This much the parties have done. Article 15.2, Step 1 (d) provides for the Union appealing to step 2 with a "detailed statement of facts along with its contentions," "particular contractual provisions" and remedy. Once in step 2, both parties are obligated to make "a full and detailed statement of facts relied upon and contract provisions," and "cooperate fully in the effort to develop all necessary facts. . . ." (Article 15 Step 2 (d)).

Many of the Postal cases involving this issue concern the development of the facts and contentions -- whether there is some history of development prior to arbitration. Other cases have pointed out that the pre-printed portion of the step 2 grievance appeal form states on line 11 that the violation being appealed is "not limited to the following . . . "

There is some suggestion that this language is useful to counteract management's reliance on a technical construction of Article 15. (See Arbitrator Vause's review of many of these decisions in H90T-1H-C95030390.)

But the essence of Article 15 is making certain that the positions and facts are known before arbitration. When individual grievants are involved, the precise nature of the wording can not always be mandated as a rigid standard. Each case may vary depending on the nature of the grievance, the grievant's experience and background, and assistance from the Union in the wording. So, too, as a representative of the grievant during the grievance process, the Union is able to better advocate and clarify the claim. It is this clarification, the need to make certain the grievance is factually correct and the issues and contentions are accurate after the completion of step 2, that the parties provided for the Union to make corrections or additions. This need is vital if the process is to work.

Yet, even with all the obligations for both sides to be "full and detailed" and "cooperate fully," the step 2 answer is obviously not a joint decision. It is written by one of the parties to the dispute and is for that reason open to subjectivity. When this happens there may be some tendency to use only those facts or arguments which support the decision. The parties recognized this concern since Article 15.2 Step 2 (g) specifies that additions or corrections can be used to assert "the facts or contentions set forth in the (Step 2 denial) are incomplete or inaccurate. . . . "

Arbitrator Stallworth in C0C-4M-C2845, ruled that corrections and additions are enough to make them "an integral part of the Step 2 process." It would seem that while this is meant to protect the Union, at the same time it must be used only to correct or add where the decision is "incomplete or inaccurate." This presupposes that the parties discussed or had all of the information for the grievance at step 2, as they are required to develop under the provisions cited above. In those cases cited by the Union the claim could either be sufficiently identified or there was some development of the issues through discussion or correspondence at steps 1 and 2. (E.g. Arbitrator Vause, supra). In the citation offered by management Arbitrator Byars ruled that the Union outright added a new set of facts at the hearing. There is no evidence that the Union filed additions or corrections or otherwise developed those facts before arbitration.

There is a factual dispute about whether the Cushman award, which is based on Article 7 in a similar factual context as here, was provided to Jones by the shop steward at step 2 or thereafter. The step 2 decision clearly is based on overtime and Article 8. It is odd why Jones, an experienced step 2 designee in Tampa, would avoid mentioning the Cushman award, knowing full-well that the Union would make it an issue for step 3, unless he simply did not see it until after the decision. Yet, it is curious why his decision would state that "contrary to the Union's position, level 5 MDCs can be utilized in a level 4 position . . . " This is precisely the Article 7.2 issue. Moreover, when management was made aware of this issue in the additions and/or corrections before step 3, it made no mention of it in the step 3 decision. The contract also obligates the parties at this step to make "certain that all relevant facts and contentions have been fully developed and considered." (Article 15.2 Step 3 (b))

If the Article 7 issue was new at step 3 and was not truly a correction or addition on account of an inaccuracy, it should have been so stated in the answer. Management still had an obligation to consider it. But by ignoring it, the Service opened up the prospect that it may have been part of the step 2 process that needed clarification. Moreover, management can hardly claim surprise about this issue at arbitration when it was fully spelled out prior to step 3. Contrary to its argument, the Union never changed facts at this arbitration. The facts are the same, as is the central theme of this dispute –assigning work to a different wage level than the grievant. This has been part of the grievance since step 1. Changing wage levels and assignment of work unquestionably are issues encompassed by Article 7.2.

Based on the record and the above reasons it is found that the grievance properly encompasses Article 7.2, and as such it is arbitrable. Management's motion to dismiss is denied.

III. Merits

A. Facts

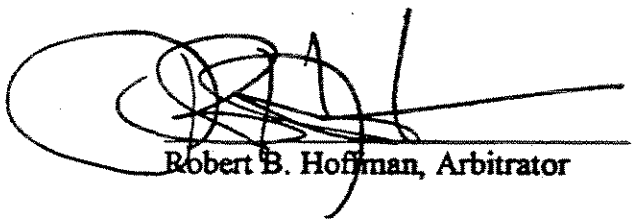
On May 13, 15, 16, 19 ands 21, 1997, management assigned level 5 distribution clerks from manual operations to the automation section on straight time. The parties stipulated that the duties performed by the manual distribution clerks ("MDC") were duties normally fulfilled by level 4 mail processors. The MDCs received level 5 pay for this work. The grievant claimed he was "bypassed as an ODL clerk in automation, while the level 5 MDC clerks worked the automation equipment." According to Steward Maier, "some" of

It is found that the Union has presented a prima facie case for a violation of Article 7.2.B and C. There is no evidence of insufficient work or heavy work load on these days. While capabilities and qualifications to do the work are disputed, the Union did not present sufficient evidence in this hearing to show a lack of qualification to counter Jones' testimony. Nonetheless, the evidence is undisputed that work was not assigned in the same wage level, as mandated by sections B and C. Level 5 clerks worked in level 4 jobs while the grievant, a level 4 clerk on the OTDL, appears to have been available for all or some of these days.

As to remedy, the Union only seeks a remedy for the grievant. The availability of the grievant needs to be determined from the appropriate records. The parties stipulated that if a violation was found, they would make the calculations. The parties shall be directed to examine and consider these records to determine the extent of the remedy to the grievant.

Award:

Based on the above and the entire record, the grievance is sustained. The grievant shall be paid four hours overtime pay at the appropriate rate as make-up for each of the six days noted above that he was bypassed from the OTDL. The records must establish that the grievant was by-passed on these individual days, that level 5 clerks or clerk worked level 4 jobs in automation, and that the grievant was available to complete the assignments. The arbitrator shall retain jurisdiction for clarification and/or enforcement of the award for a period of 90 days from the date of this award.



Robert B. Hoffman, Arbitrator

> occupational groups. Under B and C it is provided that temporary assignments must be in the same wage level. The 'inherent presumption' would appear to apply to wage levels as well as crafts or occupational group levels. Otherwise the term wage levels would be superfluous. . . .

Cushman reviewed some 12 awards for support of this position (see pages 17-23). As to management's contentions in these cases that Article 7 only applies to cross-craft assignments, and that Article 7 is needed for efficiency, Cushman concluded:

> Each of these arguments has been addressed in one or more of the above-cited arbitration awards and, in each case, they have, both singly and in combination, been rejected as sound justifications for avoidance of the Service's obligations under Article 7.

In distinguishing citations made by the Service, Cushman noted that, for example, Arbitrator Marlatt in S4C-3A-C28982 "overlooks the term 'wage levels' in Article 7. That term constitutes a separate category in Article 7 and may not be read out of the contract." Cushman also rejected the notion that if a heavy workload/light workload situation exists, the Service would meet the criteria of B and C. Even if the criteria is met as a factual matter, he ruled that

> . . . there is another express requirement in that the work assignment must be in the same wage level. This express limitation is a mandatory requirement and is not satisfied by the payment of the same wage level rate. This requirement mandates work in the same wage level, not pay on the same level.

The facts in the Cushman award are not unlike these facts. There, the Service assigned two level 5 distribution clerks to work in the OCR/BCS area, which is the job of a level 4 mail processor. There were three level 4 mail processors on the OTDL available to be called in for overtime for these duties. This is not much different than here -- same craft but different wage levels. Management assigned four level 5 distribution clerks to work level 4 automation, and the grievant, a level 4 mail processor, was on the OTDL and apparently available for these duties. Cushman found an Article 7 violation based on these strikingly similar facts.[4]

---

[4] Management was aware of the Cushman award since at least the corrections and additions. The Union had copies at the hearing. It provided one to the arbitrator and offered one to management. This award had not been distinguished, discussed or otherwise disputed by management.

Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.

(g) If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3.

D. Conclusions

Based on the determination from the procedural discussion, the merits will concern the application of Article 7.2. Initially it is well-recognized that Article 7.2 B and C restricts to some extent management's right to freely assign work. E.g., Cushman, supra, and Hoffman, H94T-1H-C 98006595 (1998). Although management made no argument regarding Article 7.2, it is presumed that it would have set forth a position similar to the one made as a defense in these type of grievances – intra-craft assignments are not within the purview of Article 7.2 and Article 7.2 encourages assignment flexibility. This is not the first time these arguments have been made in arbitration.[3] Section A of 7.2 involves crossing craft lines and establishing regular full time and permanent assignments. While it prohibits combining different crafts or occupational groups or wage levels into one job, it allows crossing under certain conditions. But in Sections B and C, there is no reference to different crafts or groups, only to the third grouping from Section A – *wage levels*. The emphasis is on allowing assignments when there is insufficient work or a heavy work load. In those circumstances the assignment must be in the same wage level with the employee qualified to do the work.

The issue here is whether management met the criteria in 7.2 B or C by allowing level 5 clerks to work in level 4 jobs. Arbitrator Cushman, in discussing the same wage level standard stated:

> It seems equally clear from the text of Article 7 that assignments crossing occupational group lines are prohibited except under the criteria contained in B and C. The text of Article 7A also expressly includes 'wage levels.' Thus Section A lists wage levels as a third category coordinate with crafts and

[3] There are a number of decisions deciding this issue. The Cushman award discusses many of them.

the MDCs were not trained on the automated equipment. One of the MDCs, Lyle, was properly trained. Maier noted that there are other grievances on "level crossing" and they have mostly been resolved as overtime make-ups. Jones testified that they were all qualified and trained to do the automated work. They had previously worked in automation and then bid into the manual section.

B. Position of Parties

The Union does not disagree with management's right to work employees at straight time rather than using employees at the overtime rate. But this can only be proper if they are in the same wage level per Article 7. Management may not disregard one part of the National Agreement to use another. All of the Articles must be used together. Most of the level 5's have not been properly trained for the work in automation. Several grievances are pending on this issue. The level 4 work is not consistent with the employee's knowledge and experience or commensurate with their capabilities as level 5's.

Other than stating that the Union did not meet its burden since there are no clock rings to show that anyone worked these hours, management only addressed the procedural argument, claiming that Article 7 should not be before the arbitrator. As seen that position, made for the first time at the hearing and not at step 3 when the Union specifically related Article 7 through additions and corrections, has been rejected.

C. Contractual Provisions:

Article 7 Employee Classifications

Sec. 2 Employment and Work Assignments . . .

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Article 15 Section 2. Grievance Procedure Steps Step 2:

(f) Where agreement is not reached the Employer's decision shall be furnished to the Union representative in writing, within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. The decision shall include a full statement of the