

IN ARBITRATION
BEFORE NATIONAL ARBITRATOR HOWARD G. GAMSER

In the Matter of)
AMERICAN POSTAL WORKERS UNION,)
AFL-CIO,)
Grievant,)
and)
UNITED STATES POSTAL SERVICE,)
Employer,)
and)
NATIONAL POST OFFICE MAIL)
HANDLERS, WATCHMEN, MESSENGERS)
AND GROUP LEADERS DIVISION OF)
THE LABORERS INTERNATIONAL)
UNION OF NORTH AMERICA,)
AFL-CIO,)
Intervenor.)

Case No. AD-NAT-1311

POST-HEARING BRIEF
ON BEHALF OF
MAIL HANDLERS DIVISION OF LIUNA

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I. NATURE OF THE PROCEEDINGS

This proceeding concerns the propriety of certain work assignments made by the United States Postal Service (hereinafter referred to as "USPS" and "Postal Service") in its Regional Instructions No. 399 entitled "Mail Processing Work Assignment Guidelines."^{1/}

R.I. 399, as formally issued on February 16, 1979, is actually a two-part document. The second part contains the work assignment guidelines for each of the major mail processing operations in post offices and bulk mail centers. Those guidelines divide each operation into its component functions and assigns each function to either the Clerk Craft or the Mail Handler Craft as the "Primary Craft" for performance of the function. The first portion of R.I. 399 sets forth several criteria for implementation of the work assignment guidelines.

The American Postal Workers Union (hereinafter referred to as "APWU") grieved, under the 1978-1981 National Agreement, the issuance of R.I. 399 and the assignment therein of the Mail Handler Craft as the Primary Craft for certain operations and functions, contending that the Clerk Craft should be the Primary Craft for those operations and functions.

Hearings before the Arbitrator on the APWU's grievance were first held on October 25-26, 1979. At that time the Mail Handlers Division of the Laborers' International Union of North America (hereinafter referred to as "LIUNA") intervened in the arbitration as is its right under the National Agreement.

^{1/} Hereinafter Regional Instructions No. 399 is referred to as "R.I. 399." R.I. 399 is in the record as American Postal Workers Union Exhibit ("APWU Ex.") 8. Amendments to R.I. 399, which should be considered as incorporated into R.I. 399, are in the record as APWU Ex. 15 (as corrected by APWU Ex. 16).

Those first hearings were largely consumed by procedural matters. The APWU initially maintained that the USPS had violated the National Agreement, as interpreted by Impartial Chairman Sylvester Garrett in the 1975 "West Coast Case" (APWU Ex. 48), by unilaterally issuing R.I. 399, irrespective of the nature of the assignments therein. The APWU further asserted that nearly every assignment of the Mail Handler Craft as the Primary Craft in R.I. 399 was erroneous. See Tr. 78-95. The USPS and LIUNA defended on the basis that the APWU's grievance was untimely and, hence, not arbitrable. The USPS and LIUNA further objected to the APWU raising claims to many operations and functions for the first time at the arbitration.

After much discussion on and off the record, the parties agreed to enter into a stipulation to resolve the procedural matters. That stipulation (Tr. 155-157) provided (1) that the USPS and LIUNA would withdraw their arbitrability objection, (2) that the APWU would not challenge the legality of the Postal Service's issuance of R.I. 399, (3) that the parties would meet and agree on what particular assignments were contested by the APWU and would be arbitrated, and (4) that the USPS and LIUNA would not object to the APWU seeking a retroactive remedy should the Arbitrator hold that the USPS violated the National Agreement.

Pursuant to the stipulation, the APWU agreed that the only R.I. 399 assignments at issue were those listed in APWU General President Emmet Andrews' September 28, 1979 letter to Assistant Postmaster General James Gildea (APWU Ex. 21), to wit:

"(1) Operation 010 - We dispute the award of any portion of this operation to the mail handler craft as the primary craft with the exception of letter cancellation on facer-cancellers.

(2) Operation 020 - This Union disputes the assignment of any portion of this operation to the mail handler craft as the primary craft.

(3) Operation 050/055 - We dispute the assignment of any work in the primary mail function to mail handlers as the primary craft.

(4) [Operation] 100 - We dispute the award of the distribution of all parcel post without scheme knowledge to the mail handlers.

(5) Operation 105 - We dispute the assignment of dispatching in Item No. 5 to the mail handler craft. We also challenge the award of inserting labels to the mail handler craft.

(6) Operation 109 - We dispute the re-addressing of parcels and recordkeeping other than an actual count of parcels rewrapped as a primary function of the mail handler craft. We also challenge the insertion of the note at the bottom of the Operation 109 as we claim all distribution work.

(7) Operation 168/169 - We dispute the assignment of mail handlers to the box section in any post office.

(8) Operation 180/189 - We dispute the assignment of the labeling of sacks and the dispatching of pouches to the mail handler craft.

(9) Operation 200 - We dispute the assignment of labeling of sacks and the distribution [sic: read as "dispatch"] of pouches as a primary function of the mail handler craft.

(10) [Operations] 210/239 - We dispute the assignment of the manual sorting of outside parcels as a primary function of the mail handler craft, even though such a distribution is nonscheme.

(11) We challenge the award of loading of ledges and sweeping cases as a primary function of the mail handler craft wherever such an award is made throughout the several pages of Regional Instruction No. 399.

(12) In the Bulk Mail Centers we dispute the award of the missent/malfunction chutes as a primary function of the mail handler craft.

We also dispute the assignment of non-machinable outside parcel sortation to the mail handler craft as a primary function."

The APWU contended, on the basis of the criteria listed in the USPS-APWU-LIUNA-NALC Memorandum of Understanding on Jurisdictional Disputes (LIUNA Exhibit No. 4 at 142-143),^{2/} that those operations and tasks should be assigned to the Clerk Craft as the Primary Craft, except that Operations 010 and 020 should be jointly assigned to both Crafts.

Further hearings were held before the Arbitrator on November 30, 1979, January 9-11, 1980, April 10-11, 1980, June 6 and 24, 1980, October 27, 1980, December 18, 1980, January 7 and 9, 1981, and February 6, 1981. In addition, the Arbitrator and the parties' representatives toured the Washington Bulk Mail Center in Largo, Maryland and the Baltimore, Maryland General Post Office.

The parties agreed to simultaneously file post-hearing briefs with the Arbitrator on April 23, 1981.

II. PRELIMINARY STATEMENT: AN OVERVIEW

Leaving aside the legal technicalities for the moment, the process that produced R.I. 399 as well as the nature of the document itself argue conclusively against alteration of any of the work assignments therein by the Arbitrator.

R.I. 399: The Process

R.I. 399 is the culmination, and product, of a jurisdictional dispute among the parties which has raged on, literally, for decades. The APWU has claimed that the cause of the dispute has been an aggressive campaign by LIUNA to steal work away from the Clerk Craft.^{3/} From LIUNA's perspective, the dispute arose and has continued because of progressive encroachment on

^{2/} LIUNA exhibits are hereinafter referred to by the designation "LIUNA Ex." Similarly, Postal Service exhibits are designated as "USPS Ex."

^{3/} Far from stealing any other craft's work, the Mail Handler Craft has experienced a sharp decline in employees since 1970. See Tr. 1642-1643 (Johnson).

traditional Mail Handler Craft jurisdiction by the APWU as zip code technology has reduced the Postal Service's reliance on scheme knowledge, the talisman of the Clerk Craft.^{4/} Whatever the causes, however, all agree that the root problem of the jurisdictional dispute has been the overlapping of mail handler and clerk assignments; the inconsistency of craft assignments from post office to post office and, indeed, from tour to tour in particular post offices; the "mixed bag" of jurisdictional practice which has prevailed over the years in the absence of definitive national Post Office Department and USPS guidance. See Tr. 113, 1573-1575. This "mixed bag" has been the subject of prior arbitral consideration. See APWU-USPS-LIUNA, Case No. AW-NAT-5753, A-NAT-2964 and A-NAT-5750 ("West Coast Case") (Garrett, Arb., 1975);^{5/} NALC-USPS-APWU, Case No. N-NAT-3061 ("Centralized Markup Case") (Gamser, Arb., 1973) ("Thus, the NALC contended that clerks have always done some mail distributor work, carriers have always done some clerical work, and both have done some work more appropriately perhaps assigned to mail handlers.")

The necessity of national guidelines to untangle the "mixed bag," the carnage of the dispute and, perhaps most importantly, the press of the national negotiations deadline lead the parties to agree to the Memorandum of Understanding on Jurisdictional Disputes in 1975 and establish a mechanism for resolving the APWU-USPS-LIUNA jurisdictional disputes. Tr. 1588-1589 (Johnson), 1130-1132 (Downes). During the largely unproductive meetings of the joint Jurisdiction Committee created by

^{4/} See Tr. 1570-1571, 1588, 1654-1655 (Johnson); APWU Ex. 48. See also LIUNA Ex. 5, James Wolff's 1974 version of the development of the Clerk and Mail Handler Crafts. LIUNA maintains, as discussed infra, that past practice supports the assignments to mail handlers here in dispute.

^{5/} This award is in the record as APWU Ex. 48.

that Memorandum, and the APWU-USPS-LIUNA Subcommittee thereof, the APWU and LIUNA joined in pressuring the USPS to take a position on which mail processing tasks should be assigned to their respective crafts. Tr. 1593, 1596-1597 (Johnson), 1142, 1143 (Downes). The Postal Service eventually acceded to developing a position on craft work assignments, and undertook such development by establishing a study group composed primarily of field managers. Tr. 1143-1145 (Downes), 1222-1235 (Campbell), 1597-1598 (Johnson).

Applying the criteria of the Memorandum of Understanding on Jurisdictional Disputes to the facts that they knew and discovered, the USPS's study group developed a work assignment program that was the progenitor of R.I. 399. Tr. 1143-1146 (Downes), 1222-1235 (Campbell).

Having developed, at the Unions' insistence, a jurisdictional program, the Postal Service undertook a campaign to "sell" its program to the Unions. That campaign included a series of bilateral meetings with each of the Unions through 1977 and into 1978. Tr. 1598-1606 (Johnson), 1878-1882 (Bratcher), 1146-1154 (Downes). During its meetings with the Postal Service, LIUNA objected to many of the assignments made in the USPS's program to the Clerk Craft on the basis that mail handlers were in fact performing those assignments. Tr. 1598-1603 (Johnson), 1882 (Bratcher), 1150-1151 (Downes). On the basis of an understanding that compromise would bring comparable compromise from the APWU and a final settlement, LIUNA made major concessions on its claims against the USPS program. Tr. 1601-1603, 1614 (Johnson), 1888, 1890-1895 (Bratcher), 1150-1151 (Downes). However, while it appeared that agreement in principle would be reduced to formal settlement, extraneous considerations -- the PS-4 clerk controversy -- foreclosed such an "early" trilateral resolution. Tr. 1600-1605 (Johnson), 1153-1154 (Downes).

In the Spring of 1978, LIUNA attempted to arrange with the APWU a bilateral settlement of the jurisdictional dispute. Tr. 1605-1607 (Johnson), 1882-1883 (Bratcher). Meetings between the two were held, but were inconclusive as extraneous political considerations precluded the APWU from taking the final steps to settlement. Id. LIUNA nevertheless continued its pursuit of a resolution by offering to defer settlement to a time when the APWU's political concerns would be quelled. Tr. 1608-1612 (Johnson). Although it showed promise, that effort too proved insufficient to overcome APWU intransigence. Tr. 1611-1612 (Johnson).

Having exhausted all informal avenues to resolution of the jurisdictional problem, LIUNA resorted to the ultimate mechanism for settlement: it placed a version of the Postal Service's work assignments program in issue at the joint, main table during 1978 National Negotiations and stated that there would be no National Agreement until that jurisdictional issue was resolved. Tr. 1613-1614, 1625-1627 (Johnson), 1883-1884 (Bratcher), 1155-1156, 1193 (Downes). The APWU placed its own jurisdictional demands on the main table. Tr. 1614 (Johnson), 1156-1169 (Downes); USPS Ex. 8. A subcommittee of the main table composed of representatives of the APWU, the USPS and LIUNA was designated to consider the jurisdictional demands. Tr. 1627-1628 (Johnson), 1884-1885 (Bratcher), 1156-1180 (Downes), 581-582 (Wolff). That subcommittee considered at length, and in some instances altered, the Postal Service's work assignments program, but failed to conclude an agreement. Tr. 1627-1628 (Johnson), 1883-1885 (Bratcher), 1156, 1169-1171, 1175-1180 (Downes). Hence, the issue was returned to the principals at the main table, shortly before the negotiations deadline of July 21, 1978. Id.

When the principals next considered the jurisdictional issue, it was in the early hours of July 21, 1978, the last

negotiations session. The USPS and LIUNA agreed to continue negotiations toward a settlement. The APWU, however, walked out and refused to participate in the continuing negotiations. Tr. 1629-1632 (Johnson). The USPS-LIUNA negotiations produced a memorandum of understanding (APWU Ex. 1) as part of the National Agreement to the effect that the USPS would formally promulgate its work assignments program as altered by the main table sub-committee. Tr. 1635 (Johnson).

Following the failure of ratification of the tentative 1978 National Agreement by the memberships of the APWU, LIUNA and the NALC, the USPS and the Unions agreed to "meditate" their disputes before arbitrator James J. Healy. Despite knowing of the USPS-LIUNA memorandum on jurisdiction, the APWU agreed with the other Unions and the USPS that the only issues to be considered by Healy were wages and the no-layoff provision. Tr. 1636-1638, 1641 (Johnson), LIUNA Ex. 4 at 145. At no time did the APWU seek to place the USPS-LIUNA memorandum in issue before Healy. Id. Healy's final award, pursuant to the parties' agreement, incorporates all other provisions of the tentative 1978 National Agreement, including the USPS-LIUNA jurisdictional memorandum. See LIUNA Ex. 4 at 145, 147.

In August 1978, the USPS sent to each of the Unions a draft of the work assignment guidelines which it intended to issue pursuant to its memorandum of understanding with LIUNA. See APWU Ex. 2; Tr. 1181-1182 (Downes). At the APWU's request trilateral meetings were held, throughout the balance of that year and during the first four months of 1979, to discuss the Postal Service's guidelines, which in February 1979 were designated as R.I. 399. Tr. 1182-1183 (Downes), 1949-1950 (Bratcher). See APWU Ex. 3-9. At the urging of the APWU during those meetings, a number of changes were made in R.I. 399. See APWU Ex. 9, 15. LIUNA agreed to those changes, albeit with the reluctance of one who had already made many concessions. Tr. 1949-1950 (Bratcher)

R.I. 399 is hardly the unilateral document that has attempted to portray it as. Undoubtedly to a greater than any other document ever issued by the USPS, R.I. 399 is a product of tripartite, labor-management study and negotiation. It is no mere coincidence that the APWU contests relatively few of the assignments made in R.I. 399 (and that most of the issues which it has raised are "red herrings" designed to entice the Arbitrator to "split the baby").

From LIUNA's perspective, at least, R.I. 399 is the consequence of costly concessions made by LIUNA in the interest of ending the fratricide of the decades-long jurisdictional dispute. LIUNA is not satisfied with R.I. 399 to the extent that it assigns many operations and tasks that have in practice been performed by mail handlers to the Clerk Craft. Tr. 1600-1603 (Johnson); 1881-1882, 1888-1895 (Bratcher). The APWU is the beneficiary of those jobs lost to the Clerk Craft by LIUNA, and the APWU has been aggressively pressing to collect the benefits afforded it by R.I. 399. See e.g., LIUNA Ex. 21 ("How to Recover Work Lost to Mailhandlers") and LIUNA Ex. 22 ("Clerk Craft Awarded IPP Work Under Regional Instruction 399"). Given the relative size of the two Unions, the impact of R.I. 399 is proportionally greater on the Mail Handler Craft than on the Clerk Craft. However, LIUNA elected not to contest any of the R.I. 399 assignments in this proceeding because of its firm belief that overall R.I. 399, in its present form, provides a reasonable national program for the rationalization of the tangled jurisdictional practices in the USPS's mail processing systems; a program which all parties can live with.

Any arbitral alteration of R.I. 399 would upset a delicate balance achieved through the tortured process hereinabove described, and would severely penalize the party which suffered the concessions that made R.I. 399 possible. Such a disappointment would redound to the detriment of future negotiations among the parties.

R.I. 399: The Document - The Program

R.I. 399 is not a mere listing of craft assignments; it sets forth a total jurisdictional program. That program includes many features intended to maximize the impact of the craft assignments on efficiency and productivity, and minimize the inevitable changes necessitated by any rationalization process; changes which affect all parties.

Such features include the "Implementation Criteria" set forth on the first two pages of R.I. 399. Those criteria provide that the craft assignments are to be implemented through attrition (see IID - "No employee's current duty assignment will be modified by removing functions designated to another primary craft until and unless such duty assignment becomes vacant through attrition."), and that "no postal installation shall declare employees excess" solely as a result of R.I. 399 (see IIA). Unlike the common situation in which jurisdictional decisions result in the layoff of employees, no postal employees will be involuntarily removed from their duty assignment, much less from their postal employment, because of R.I. 399.

The Implementation Criteria further provide for the use of employees across craft lines when there are less than four hours of work designated to the Primary Craft. See Criterion IIB. Accordingly, the USPS will be able in many instances to use members of a non-Primary Craft to perform functions assigned to the Primary Craft.^{6/} The APWU overlooks this criterion in complaining about the impact of R.I. 399 on clerks in "small offices."

^{6/} For instance, this "Four (4) Hour Criteria" would permit the USPS to utilize clerks to perform mail handler functions in Operations 010/020 in situations where there is insufficient work in those and other operations to provide four continuous hours of mail handler work. See pp. 40-41, infra.

The Implementation Criteria, as well as the Work Assignment Guidelines themselves, also provide, at the APWU's insistence, that "allied labor" functions such as loading ledges and sweeping will be assigned to the Primary Craft performing the distribution function if those allied functions constitute an integral part of the distribution function. See Criterion IIC; Work Assignment Guidelines, notes at 3-14. Those provisions accord local managers flexibility in maintaining efficient mail distribution systems, while providing the APWU a basis for arguing that mail handlers should be excluded from allied labor functions traditionally performed by their craft.^{7/}

The Work Assignment Guidelines include several other accommodations to the APWU's special desires. See APWU Ex. 9, 15. For example, Operation 010, item 4 includes a parenthetical note that "[d]istribution to cases or sack/pouch racks will be assigned in accordance with the appropriate distribution operation." Further, Operation 109 includes a note to the effect that rewrapping parcels may be assigned to the craft performing the distribution functions in Operations 100 and 200.

Thus, R.I. 399, on its face, negates several of the APWU's complaints.

The APWU, however, is quick to assert that the mitigating features of R.I. 399 may not be honored in practice by local management. Breaches of R.I. 399 are, in LIUNA's view, matters for the contractual grievance procedure and are not relevant to the instant proceeding. Inevitable differences of opinion over application of any agreement to a particular factual situation do not render the agreement itself invalid. The very purpose of a grievance procedure is to provide a mechanism for resolution of disputes concerning implementation of agreements.

^{7/} See pp. 59-60, infra.

R.I. 399: The Challenger's Burden

Given the process which produced R.I. 399 and the nature of the overall program established by R.I. 399, a party contesting particular aspects of that program must bear a heavy burden of proving that those challenged aspects are unreasonable standing alone and in the context of the total program. Mere assertion of an equally reasonable alternative is not sufficient for the challenger to prevail.

LIUNA submits that the APWU has failed to satisfy this burden.

III. ISSUES

The basic issue in this arbitration is simply whether the USPS violated the 1978-1981 National Agreement by assigning the work functions contested by the APWU to the Mail Handler Craft.

There are two sub-issues. First, did the APWU waive all right to challenge the work assignments made in R.I. 399 by refusing to negotiate concerning those assignments during the 1978 National Negotiations? Second, if the APWU's refusal to negotiate did not constitute a waiver, do the criteria listed in the Memorandum of Understanding on Jurisdictional Disputes, among other relevant factors, require that the contested work functions be reassigned from the Mail Handler Craft to the Clerk Craft?

IV. ARGUMENT

A. THE APWU WAIVED ALL RIGHT TO CHALLENGE THE WORK ASSIGNMENTS MADE IN R.I. 399

1. Operative Facts

The 1978 National Negotiations between and among the Postal Service and the APWU, LIUNA and the NALC, like all prior

National Negotiations after 1970, were structured such that there were two levels of bargaining; one level known as the "main table" negotiations and the other level known as the "craft table" negotiations. Tr. 1607-1608, 1612-1613 (Johnson); 1155-1156, 1193 (Downes). See NALC-APWU-LIUNA-USPS, Case No. C-NAT-15 (Gamser, Arb., 1976). The main table negotiations included the principals of each of the Unions and of the USPS. The issues considered and negotiated at the main table were those of mutual interest to the Unions; issues which cut across craft lines. Craft table negotiations were conducted separately between each Union and the USPS, and concerned issues only of interest to that Union. The Unions negotiated together at the main table through an entity known as the Postal Labor Negotiating Committee ("PLNC").^{8/} Tr. 1607-1608 (Johnson).

During internal PLNC discussions, Mail Handlers National Director Johnson informed APWU General President Andrews that he intended to place a jurisdictional proposal in issue at the main table unless Andrews would agree to a procedure for concluding a settlement between them on the Postal Service's work assignment program that had been under consideration by them for some time. Tr. 1609-1610 (Johnson). Johnson told Andrews that, having wrestled with the jurisdictional dispute for years, he was "not about to let this negotiation go by unless it's [i.e., the jurisdictional dispute] resolved." Id.

Johnson believed that he and Andrews had come to an understanding on an informal procedure for resolving any differences in the Postal Service's program which procedure would be invoked after National Negotiations and the APWU election of officers. Tr. 1610-1612. When Andrews subsequently reneged on

^{8/} Whether the Unions' main table negotiations could be legally characterized as "joint bargaining" or "coordinated bargaining" is not necessarily relevant for purposes of establishing a waiver by the APWU.

that understanding, Johnson told Andrews and Joseph Vacca, NALC General President, in no uncertain terms that he intended to place the matter of the APWU-USPS-LIUNA jurisdictional dispute in issue at the main table of National Negotiations:

"A. (Johnson)... Then I said I was going to do what Sylvester Garrett said. I don't care whether it would affect the election or not. I will be putting a package on the table on jurisdiction.

Q. What do you mean by the table?

A. The main negotiating table where all parties are at, all unions are present."

Tr. 1612.

As promised, Johnson did place on the main table a jurisdictional demand. Tr. 1613, 1625-1627 (Johnson), 1883-1884 (Bratcher), 1155-1156, 1193 (Downes). His demand was essentially the Postal Service's work assignments program that had been under consideration by both Unions and the Postal Service, although he reclaimed therein the work functions which LIUNA had conceded during the Postal Service's "sales campaign" on the understanding that compromise would produce a final resolution. Tr. 1613-1614 (Johnson), 1883-1884 (Bratcher). The LIUNA jurisdictional demand was accepted as a main table issue. Tr. 1625-1626 (Johnson). Indeed, the APWU placed its own counter-demand on jurisdiction on the main table in response to LIUNA. Tr. 1614 (Johnson), 1156-1169 (Downes), 580-581 (Wolff); USPS Ex. 8.

A subcommittee of the main table was established by the principals to consider the various jurisdictional demands and report back to the main table. Tr. 1627-1628 (Johnson). Appointed to that subcommittee were Bill Downes for the USPS, Jim Bratcher for LIUNA and James Wolff for the APWU, as well as a FMCS mediator. Tr. 1627-1628 (Johnson), 1156-1180 (Downes), 1884-1885 (Bratcher), 581-582 (Wolff). The subcommittee members agreed

to use the Postal Service's work assignments program as the focus of their deliberations. Tr. 1885 (Bratcher), 1156, 1176 (Downes). For at least three days, the subcommittee engaged in a complete and detailed discussion of the Postal Service's program. Tr. 581-582, 637-638 (Wolff). In the course of the subcommittee's deliberations, changes in that program requested by the APWU were agreed upon (Tr. 582, 1169-1171), but the members were unable to conclude an agreement on an entire jurisdictional program (Tr. 1180, 1885). Consequently, the jurisdictional issue was referred back to the main table for consideration by the principals, a day or two before the July 21, 1978 negotiations deadline. Tr. 1628 (Johnson), 1885 (Bratcher).

During the last hours of main table negotiations, Postmaster General Bolger joined Deputy Postmaster General James Conway and Assistant Postmaster General James Gildea, who had been leading the USPS negotiating team, to attempt to cinch a final agreement with the Unions. Tr. 1629-30 (Johnson). All Union principals, including APWU General President Andrews, jointly participated in these "midnight negotiations" with Bolger. After issues concerning life and health insurance had been disposed of, Johnson raised the unresolved jurisdictional issue with Bolger. Tr. 1632 (Johnson). Bolger inquired of Conway as to the nature of the jurisdictional issue. Conway replied to Bolger that Johnson had declared that "he was not leaving the bargaining table until jurisdiction has been settled." Id. Bolger stated to all assembled principals that, since jurisdiction was the last unresolved issue, he would "leave Mr. Conway and Mr. Gildea here to finish negotiations on the jurisdiction package." Id. Bolger then exited.

NALC General President Vacca stated that the jurisdiction issue was a matter between the APWU and LIUNA, and that he considered the NALC as having a final agreement. Id. He thereupon

left the room. APWU's Andrews "stood up and said, 'Well, I've got an agreement, too. I'm leaving.'" Id. To which Johnson replied, "Well, I don't have an agreement and the jurisdiction package is before all of us." Id. Knowing that Johnson was staying to continue negotiating with the USPS on the jurisdictional program or package, Andrews walked out. Tr. 1632-1634 (Johnson).

Johnson stayed and negotiated with the USPS the memorandum of understanding in the record of this proceeding as APWU Ex. 1. That memorandum was intended to provide for USPS issuance of its work assignment program; the program that had been considered by the APWU, the USPS and LIUNA prior to and during the National Negotiations. Tr. 1635 (Johnson). See APWU Ex. 2. LIUNA sent a copy of that program to each of its members as part of the tentative agreement for ratification. Tr. 1636 (Johnson).

The memberships of each of the PLNC Unions refused to ratify the tentative agreement reached on July 21, 1978. Tr. 1636 (Johnson). To arrive at a final National Agreement, the Unions and the USPS on August 28, 1978 entered into a stipulation to submit the matter to "meditation." Tr. 1636-1638 (Johnson). That stipulation stated that only the terms of Articles 6 (no-layoff provision) and 9 ("Salaries and Wages") would be subject to resolution by the mediator, and that all other provisions of the July 21 tentative agreement would be made a part of the mediator's decision which would be final and binding on all parties. Tr. 1638 (Johnson). See LIUNA Ex. 4 at 145. Despite being aware of the USPS-LIUNA memorandum of understanding concerning work assignments (see APWU Ex. 2), the APWU at no time during the meditation process sought to place that memorandum in dispute. Tr. 1641 (Johnson). The award of the mediator, James Healy, specifically addresses only Articles 6 and 9 of the

National Agreement but, pursuant to the parties' stipulation, incorporates all other provisions of the July 21 tentative agreement. See LIUNA Ex. 4 at 145, 147.

2. Applicable Law

Craft work assignments are obviously a mandatory subject of bargaining about which employers and unions are required to bargain in good faith upon request under sections 8(a)(5), 8(b)(3) and 8(d) of the National Labor Relations Act (NLRA), 29 U.S.C. §§ 158(a)(5), (b)(3), (d).^{9/} That NLRA duty to bargain is imposed on the Postal Service and the Postal Unions by operation of section 1209(a) of the Postal Reorganization Act of 1970, 39 U.S.C. §1209(a).

That the union must request bargaining of the employer to activate the employer's duty to bargain is a fundamental principle of NLRA law. NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292, 297-298 (1939). "It is well established that it is incumbent upon a union which has notice of an employer's proposed change in terms and conditions of employment to timely request bargaining in order to preserve its right to bargain on that subject. The union cannot be content with merely protesting the action or filing an unfair labor practice charge over the matter" Citizens National Bank of Willmar, 234 NLRB No. 47, 102 LRRM 1467, 1468 (1979). "[A] union which receives timely notice of a change in conditions of employment must take advantage of that notice if it is to preserve its bargaining rights and not be content in merely protesting an employer's contemplated action. Such lack of diligence by a union amounts to a waiver of its right to bargain." Clarkwood Corp., 233 NLRB No. 167, 97 LRRM

^{9/} See section 10(k) of the NLRA, 29 U.S.C. §160(k). See also National Woodwork Mfgs. Assn. v. NLRB, 386 U.S. 612 (1967).

1034, 1035 (1977). Accord, NLRB v. Alva Allen Industries, Inc., 369 F.2d 310, 321 (8th Cir., 1966); NLRB v. Spun-Jee Corp., 385 F.2d 379 (2nd Cir., 1967); Medicenter, Mid-South Hospital, 221 NLRB 670, 90 LRRM 1576 (1975); U.S. Lingerie Corp., 170 NLRB No. 77, 67 LRRM 1482 (1968); American Buslines, Inc., 164 NLRB No. 136, 65 LRRM 1265 (1967).

On the same principle, abandonment of negotiations or a refusal to bargain by a union constitutes a waiver of the union's right to bargain. Westinghouse Electric Corp., 122 NLRB No. 173, 43 LRRM 1316, 1318, review denied sub nom, IUE v. NLRB, 273 F.2d 243 (3rd Cir., 1959); Phil Rich Fan Mfg. Co., 171 NLRB No. 87, 69 LRRM 1388 (1968); Curley Printing Co., 169 NLRB No. 50, 67 LRRM 1147, 1148 (1968); Murphy Deisel Co., 179 NLRB No. 27 72 LRRM 1309 (1969); American Buslines, Inc., supra. Notably, American Buslines involved an employer's "unilateral" promotion of all of the employees in the union's bargaining unit out of the unit so that the union's unit disappeared. The NLRB held that the employer had not failed to bargain in violation of NLRA section 8(a)(5) because the union was aware of the employer's promotion plans but had failed to accept the employer's invitation to discuss those plans and contented itself with sending a letter of protest and filing unfair labor practice charges.

3. Application of the Law to the Facts

The 1978 National Negotiations main table was the most appropriate forum for resolving the APWU-USPS-LIUNA jurisdictional dispute. See LIUNA-USPS-APWU, Case Nos. AW-NAT-5753, A-NAT-2964, A-NAT-5750 ("West Coast Case") (Garrett, Arb., 1975). All three parties to the dispute were participants in the negotiations. Had the APWU acted responsibly, the dispute would have been finally resolved during those negotiations; either through a negotiated trilateral agreement or, if the parties were unable to

agree, through Mr. Healy's mediation. By operation of the dispute resolution procedures of PRA section 1207, the dispute would have been resolved one way or another. The APWU, however, sought to avoid the inevitability of those statutory procedures and frustrate the intent of the PRA by simply abandoning negotiations on the jurisdictional issue on the theory that ignoring the issue would prevent its resolution.

The APWU's abandonment strategy has succeeded in prolonging the dispute for nearly three years beyond the 1978 negotiations. However, as a matter of law, the settlement which those negotiations did produce, albeit with the signatures of only the USPS and LIUNA, is the settlement of the dispute to which the APWU must now be held.

Once LIUNA placed its jurisdictional demand on the main table and the USPS agreed, as was its 8(a)(5)/8(d) duty, to bargain over that demand, the APWU was confronted under the aforementioned case law with a legal choice: it either had to bargain in good faith on the jurisdictional issue with the USPS and LIUNA or waive its right to bargain and suffer whatever agreement the other parties reached. The APWU was on notice that the Employer intended to negotiate with LIUNA on jurisdiction and that their negotiations would unavoidably impact on the terms and conditions of employment of the Clerk Craft.

Initially, the APWU elected to bargain. It placed jurisdictional counter-proposals on the main table, and participated fully in the main table subcommittee deliberations on the Postal Service's work assignments program. However, when the main table principals for the USPS and LIUNA stated their intent to continue negotiations towards a jurisdictional settlement on July 21, the APWU's principal refused to participate and expressed indifference as to the outcome of those negotiations.

That APWU abandonment of negotiations and disregard for their impact on the Clerk Craft constituted, under the aforementioned case law, a waiver of the APWU's right to bargain and a waiver of all right to complain about the effects of the USPS-LIUNA jurisdictional agreement which resulted from those negotiations on the Clerk Craft.

The APWU reaffirmed its disinterest in the impact of the USPS and LIUNA jurisdiction agreement on the Clerk Craft by failing to take issue with that agreement during the Healy meditation process. The APWU, by entering into the August 28, 1978 meditation stipulation, agreed that the only outstanding issues between and among it, the USPS and the other PLNC Unions were pay and the no-layoff clause. By that stipulation the APWU further agreed that all other agreements reached on July 21 on main table issues would be incorporated into the mediator's final and binding award. The USPS-LIUNA jurisdictional agreement was among those items incorporated into the Healy award by which the APWU is bound. The jurisdiction issue was a main table issue, and the USPS-LIUNA agreement on that issue was as binding on the APWU as any main table agreement to which the APWU expressly subscribed, because of the APWU's refusal to accept the USPS-LIUNA invitation to negotiate on jurisdiction.^{10/}

In the context of jurisdictional disputes, it is not uncommon for unions and employers to be confronted with a choice of either participating in proceedings to resolve the dispute or waive any right to complain about the work assignments that result from those proceedings. See e.g. Columbia Broadcasting Assn., 293 F.Supp. 1400, 1402 (S.D.N.Y., 1968), aff'd, 414 F.2d

^{10/} For example, the USPS-LIUNA memorandum of understanding on jurisdiction stands on equal footing in terms of incorporation into the Healy award as the USPS-APWU-NALC-LIUNA Memorandum of Understanding on Jurisdictional Disputes. The fact that the APWU expressly agreed to the latter but not the former is of no legal significance due to the APWU's waiver of its bargaining rights with regard to the former memorandum.

LIUNA does not disagree that the stipulation resolved all "previously raised" challenges to the arbitrability of the APWU's grievance. But that is beside the matter. LIUNA's waiver argument does not contest the arbitrability of the APWU's grievance, that is, the jurisdiction of the Arbitrator to consider the merits of the APWU grievance. Rather, LIUNA's waiver argument goes to the merits of the APWU's grievance. LIUNA avers that the APWU's complaints about assignments of operations and functions in R.I. 399 to the Mail Handler Craft are meritless because the APWU conceded the appropriateness of those assignments by its refusal to negotiate concerning them. The Arbitrator is clearly free to consider any defense raised by APWU as to why its refusal to negotiate did not constitute a concession as to the appropriateness of the R.I. 399 assignments. In ruling on LIUNA's waiver argument and the APWU defenses thereto, the Arbitrator will not be ruling on the arbitrability of the APWU's grievance, but rather on whether that grievance has merit.

Arbitrability is a matter of jurisdiction to hear a grievance. For example, the timeliness objections raised by the USPS and LIUNA at the beginning of the arbitration (Tr. 26-34, 44-45) were objections to the arbitrability of the APWU's grievance. The USPS and LIUNA argued that the Arbitrator had no jurisdiction to consider the merits of the APWU's grievance under either Article XV of the National Agreement or the Memorandum of Understanding on Jurisdictional Disputes because the APWU had not filed its grievance in a timely manner. Tr. 31-32, 44-45. Had the Arbitrator been compelled to rule on those timeliness objections, he would have been ruling on the arbitrability of the APWU's grievance.

It was those "previously raised" timeliness objections to which the stipulation's arbitrability provision related.

Accordingly, the APWU's contention that LIUNA waived its waiver argument by entering into the stipulation is faulty for two reasons. First, the only "previously raised" arbitrability challenges waived in the procedural stipulation concerned timeliness.^{11/} Second, LIUNA's waiver argument is, by definition, not a challenge to the arbitrability of the APWU's grievance.

Furthermore, LIUNA's waiver argument has independent relevance under the Memorandum of Understanding on Jurisdictional Disputes.^{12/} Criterion number 6 of that Memorandum is "the contractual and legal obligations and requirements of the parties." LIUNA's waiver argument plainly falls within the ambit of that criterion in that it holds that the APWU waived its legal obligation and right to bargain over the now-contested work assignments and acquiesced in the USPS and LIUNA entering into a contract awarding those assignments to the Mail Handler Craft. Moreover, the Memorandum expressly authorizes consideration of "relevant factors" other than the enumerated criteria. Certainly, the APWU's conduct during the 1978 National Negotiations is a "relevant factor."

B. THE DISPUTED WORK ASSIGNMENTS WERE APPROPRIATE UNDER THE CRITERIA OF THE MEMORANDUM OF UNDERSTANDING ON JURISDICTIONAL DISPUTES

LIUNA maintains that the APWU conceded the propriety of the now-disputed work assignments by its waiver during the 1978

^{11/} See Tr. 42-45. LIUNA took the position that the APWU's grievance was procedurally defective because (1) it had not been filed within the 15-day period set by Article XV of the National Agreement, and (2) the APWU had failed to abide by the 180-day provision of the Memorandum of Understanding on Jurisdictional Disputes. LIUNA counsel clearly distinguished LIUNA's procedural, arbitrability argument from its substantive position on the merits of the APWU grievance. See Tr. 43-44 ("I would say parenthetically.... But getting back to the main point here....")

^{12/} See pp. 26-27, infra.

National Negotiations, and that, therefore, no independent arbitral analysis of those assignments under the criteria of the Memorandum of Understanding on Jurisdictional Disputes is necessary. Nevertheless, LIUNA submits that those criteria support the primary craft assignments made to the Mail Handler Craft.

Because the APWU is the party challenging the assignments made in R.I. 399 by the USPS with the agreement of LIUNA, the APWU has a burden of proving that the assignments made to the Mail Handlers Craft are unreasonable. That burden is not satisfied by merely demonstrating that assignment of the disputed operations and functions to the Clerk Craft would be equally reasonable. LIUNA submits that the APWU has failed to prove that assignment to the Clerk Craft would be reasonable, much less that assignment to the Mail Handler Craft was unreasonable.

1. The Criteria

The Memorandum of Understanding provides in pertinent part as follows:

"In resolving disputed assignments, the Committee shall consider, among other relevant factors, the following:

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

Although the memorandum does not expressly provide for application of the same criteria by an arbitrator, as opposed to the "Committee," such authorization seems implicit. See NALC-USPS-APWU, Case No. NC-NAT-1576 at 17 (Hollywood, Fla.) (Garrett, Arb., 1977).

The six enumerated criteria are obviously not exclusive. The Memorandum provides for consideration of "other relevant factors" in addition to the six. LIUNA submits that there are other factors which are highly relevant and require the Arbitrator's consideration in connection with one or more operations or functions at issue. Those factors are: (1) the tripartite process that produced R.I. 399; (2) employer preference; (3) employee skills and qualifications; (4) safety; and (5) physical location. Most, if not all, of these additional factors are contemplated by the criteria expressly set forth in the Memorandum. However, LIUNA prefers to specifically identify them as important factors.

Some of the criteria and factors lend themselves to a general discussion because they apply in a more or less consistent fashion to all of the disputed operations and functions. Others are best analyzed in the context of particular operations and functions. Accordingly, what follows is, first, a general discussion of the criteria/factors and, second, an analysis of each of the disputed operations and functions on the basis of the criteria/functions.

2. The Criteria Applied: In General

a. The Process That Produced R.I. 399.

As discussed in the Preliminary Statement hereinabove, R.I. 399 is the product of extensive tripartite consideration and negotiation. In the course of that process, the APWU accomplished many of the changes in the work assignment guidelines

it desired. In the course of that process, LIUNA conceded the assignment of many operations and functions being performed in fact by mail handlers, to the Clerk Craft. The most outstanding of those concessions was LIUNA's eventual acquiescence in the assignment of nonscheme distribution of "SPRs," now known as "IPPs," to the clerk craft on the understanding that the APWU would withdraw its objections to the assignment of nonscheme manual distribution of parcel post, particularly outside parcel post and non-machinable outsides, to the Mail Handler Craft.^{13/} R.I. 399 is a total work assignment program; a delicate balance of gains and losses by both the APWU and LIUNA.

To the extent that the Arbitrator alters the assignments in R.I. 399, he will be punishing LIUNA for negotiating in good faith with a sincere desire to achieve a fair resolution. Such punishment would have the foreseeable effect of discouraging good faith bargaining among the parties in the future. Upholding the disputed assignments would encourage such bargaining. It must be remembered that these parties are not "ships passing in the night," but rather have continuing relationships which are affected by the results of the arbitration process.

b. The Employer's Preference

Each of the disputed assignments to the Mail Handler Craft was made by the Postal Service upon the recommendation of its internal study groups. Tr. 1222-1234 (Campbell), 1497-1508 (Jacobson).

In section 10(k) proceedings under the NLRA, the National Labor Relations Board (NLRB) accords great, if not predominant, weight to the employer's assignment.^{14/} C. Morris, The

^{13/} See pp. 41-44, infra.

^{14/} The Arbitrator recognized the relevance of the NLRB's 10(k) and unit determination criteria to postal jurisdictional disputes in the Centralized Markup Case. Employer preference was one of the criteria specifically cited by the Arbitrator in that case.

Developing Labor Law, 1978 Supplement at 174 (BNA, 1978); C. Morris, The Developing Labor Law, 1977 Supplement, at 217 (BNA, 1978); C. Morris, The Developing Labor Law, 1970-1975 Supplement at 359 (BNA, 1976); R. Gorman, Basic Text on Labor Law at 276-277 (West, 1976). See also NLRB v. ILWU, Local 50, 504 F.2d 1209, 1220 (9th Cir., 1974), cert. den., 420 U.S. 973 (1975) ("Our own independent review of the Board's §10(k) decisions reveals that the commentators are correct in concluding that the Board's work award coincides 'in virtually every case' with the employer's preference.")

Not surprisingly, the postal precedent in jurisdictional cases coincides with the NLRB's deference to the employer's assignment of disputed work: in every case, the USPS's preference has been upheld. See APWU Ex. 40, 43; USPS Ex. 5; Centralized Markup Case.

Preferential weight is given to the employer's assignment in recognition of "the critical stake that the employer has in the outcome of jurisdictional disputes." NLRB v. ILWU, Local 50, supra at 1221. See also NLRB v. Plasterers Union, 404 U.S. 116, 124-125, 130 (1971). The employer's assignment normally reflects its evaluation of employee skill, safety, job integration, economy and operational efficiency.^{15/}

According controlling weight to the USPS's preference is particularly appropriate in this case. Both the APWU and LIUNA put heavy pressure on the USPS to develop the work assignment guidelines which become R.I. 399. Tr. 1142, 1143 (Downes), 1593, 1596-1597 (Johnson). The guidelines were developed by the USPS on the basis of extensive study, and were fine-tuned through

^{15/} Beside the great weight given to employer preference, the NLRB is influenced by the employer's evaluation of the criteria normally applied by the Board. NLRB v. ILWU, Local 50, supra, at 1221, note 10 and accompanying text.

the crucible of tripartite negotiations. Hence, the Postal Service's preference could hardly be characterized as arbitrary and thoughtless.

c. Manpower Costs

The manpower cost criterion of the Memorandum favors the assignment of all of the disputed operations and functions to the mail handler craft.

The mail handlers who perform the assignments are paid at PS Level 4. Clerks are paid at PS Level 5 and above. Tr. 1651-1652 (Johnson), 1270 (Campbell). There is ample evidence in the record that in some cases PS-6 clerks are being used to perform these mail handler assignments, e.g. in Operations 010/020. Tr. 2047 (Salisbury), 2135-2136 (Wolfe), 1522 (Hanvey).

The salary differential between the crafts is substantial, particularly when considered in terms of the thousands of employees involved. But salary difference is only a part of the manpower costs story. The fringe benefits provided under the National Agreement have a multiplying effect on the salary differential. Retirement program contributions, life insurance premiums, annual leave, sick leave, holidays, holiday pay, overtime pay, night shift differential and Sunday premium pay are costs that are higher for Clerk Craft employees than for mail handlers because they are based on each employee's salary.

The cost differential was a factor considered by the USPS in developing the work assignment guidelines. Tr. 1270-1271 (Campbell), 1507 (Jacobson).

d. Employee Skills and Qualifications

This criterion, which is both one of the NLRB's criteria^{16/} as well as implicit in one or more of the Memorandum

^{16/} See Centralized Markup Case; NLRB v. ILWU, Local 50, supra.

criteria, supports the R.I. 399 assignments to the Mail Handler Craft disputed by the APWU.

Each of the assignments is consistent with the mail handler position descriptions (LIUNA Ex. 9a-9h) and qualification standards (LIUNA Ex. 10-12). Mail handlers have in fact been performing each of the disputed assignments, as hereinbelow discussed. The Postal Service's assignment of these operations and functions to the Mail Handler Craft indicates employer satisfaction that employees of that craft are qualified to perform those operations and functions. Tr. 1270-1271, 1289-1290 (Campbell), 1507-1508 (Jacobson). See e.g. Laborers, Local 676, 229 NLRB No. 105, 95 LRRM 1108 (1977) (Employer satisfaction with employee performance is a factor to be considered.)

Indeed, in the case of nonscheme distribution of outside parcel post (Operations 210/239; NMOs), the Mail Handler Craft is the only craft which meets the mental and physical qualifications.^{17/}

Both crafts have good and bad workers; there is no basis for concluding that overall one craft is more productive than the other. LIUNA Ex. 30 at 19. However, there is evidence that members of the Clerk Craft have expressed dissatisfaction with the notion of performing the "mail handler work" here in dispute. Tr. 2104 (Wolfe), 1653 (Johnson).

e. Effective Utilization of Manpower

This criterion is perhaps best discussed with reference to each particular assignment. Nevertheless, some general points are in order.

First, the Memorandum indicates that one of the factors embraced by this criterion is "the Postal Service's need to

^{17/} See pp. 44-46, infra.

assign employees across craft lines on a temporary basis." The "Four Hour Criteria" of R.I. 399 gives the Postal Service the flexibility to assign employees of a non-Primary Craft (including clerks) to a disputed operation or function if there are less than four hours of continuous work available for mail handlers. Tr. 1184-1185 (Downes). R.I. 399 assigns operations and functions to a "Primary Craft," and leaves open the potential for cross-craft assignments consistent with the Implementation Criteria.

Second, Implementation Criterion IIC ("Distribution Activities"), in conjunction with the asterisked notes on pages 3 through 14 of the Work Assignment Guidelines, provides for the performance of various disputed allied labor functions (e.g. loading ledges and sweeping cases) by clerks when those allied functions are an integral function of the distribution operation. Tr. 1188-1191 (Downes).

Third, Implementation Criterion IIA requires that R.I. 399 be implemented in a manner consistent with efficient and effective operation. Tr. 1184-1185 (Downes). That criterion precludes the excessing of employees, and the increasing of employees or work hours solely because of R.I. 399.

Finally, Implementation Criterion IID requires implementation of the work assignments through attrition so that no employees will be displaced from the jobs which they hold and for which they are already trained and experienced.^{18/}

f. Contractual and Legal Obligations

This criterion of the Memorandum conclusively establishes the propriety of the disputed assignments.

^{18/} Notably, the APWU had insisted on such a phased-in approach for R.I. 399. Tr. 1180 (Downes).

In terms of the contractual obligations of the parties, as discussed hereinabove, the USPS and LIUNA entered into a memorandum of understanding under which the operations and functions now disputed by the APWU were assigned to the Mail Handler Craft. The APWU is a non-signatory party to that memorandum because of its waiver of its right and obligation to participate fully in the negotiations which produced that memorandum.^{19/}

As for the legal obligations of the parties, the APWU had an obligation under sections 8(b)(3) and 8(d) of the NLRA to continue to engage in negotiations with the USPS and LIUNA in the early hours of July 21 concerning the work assignment guidelines of to be contented with the outcome of those negotiations without its participation. The APWU chose non-participation despite its awareness that the USPS-LIUNA negotiations would affect the Clerk Craft. Under law, the APWU has no right to complain about R.I. 399.

The APWU's abandonment of negotiations was not only inconsistent with the Union's NLRA obligations, it also frustrated the labor dispute procedures of PRA section 1207 which were designed to provide a final resolution for bargaining table disputes, and which would have finally resolved the jurisdictional dispute in 1978 had it not been for the APWU's misconduct.

3. The Criteria Applied: By Operation/Function

- a. Operations 010 (Originating Mail Preparation) / 020 (Originating Meter Mail Preparation)

As indicated by the record, these operations are generally discussed in tandem because, although they handle different

^{19/} See pp. 14-22, supra.

types of mail, they involve essentially the same functions and are physically juxtaposed as well as operationally related.

(1) Work Assignment Practices

The APWU concedes that mail handlers have been employed in 010/020 in post offices throughout the country and that the operation of facer-canceller machines (Mark II) is a mail handler function. Tr. 595; APWU Ex. 21. The APWU seeks to rationalize its aspirations for 010/020 with those necessary concessions about past practice by contending that jurisdiction over the 010/020 functions assigned to the mail handlers as the Primary Craft (but, notably, not the 010/020 functions which are assigned to the Clerk Craft) should be joint. That is, for what is assigned to the mail handlers there should be joint jurisdiction, but the Clerk Craft should maintain exclusive jurisdiction over the functions assigned to it.

However, the record establishes that the functions of 010/020 have long been considered basic mail handler work, and that mail handlers have held the bids and regular assignments in those operations throughout the country, although in some offices casual employees and employees in other crafts are used to temporarily supplement the mail handlers in those operations during the peak volume period.

The Mail Handler Key Position ("KP-8"), LIUNA Ex. 9a, indicates that preparation of mail for distribution is a mail handler function. The Mail Handler Group Leader Standard Position Description, LIUNA Ex. 9b, states that group leader duties include serving as a "working leader of a group of at least five (5) mail handlers as an assigned work unit engaged in . . . culling, facing or canceling pieces of mail." That Position Description further states that a group leader "[t]akes charge of nondistribution work units requiring work of a number of mail handlers such as culling area, facing tables, canceling operation, etc." See also LIUNA Ex. 12.

The USPS study group which developed the post office work assignment guidelines found that 010/020 constituted basic, traditional mail handler work. Tr. 1270-1271, 1289-1291 (Campbell).

James Wolff, the APWU's uniquely qualified witness,^{20/} confirmed on several occasions that the functions of 010/020 should properly be assigned to the Mail Handler Craft. When Mr. Wolff was employed by LIUNA in the early 1970s as a consultant, he so advised LIUNA officials. Tr. 1648 (Johnson). In 1978, while serving as the APWU's representative on an APWU-LIUNA committee concerning the Postal Service's work assignment guidelines, Wolff told James Bratcher, LIUNA's representative, that there was really no conflict between the Unions over 010/020 because 010/020 is basic mail handler work. Tr. 1883 (Bratcher); 637 (Wolff). During the 1978 National Negotiations, and specifically during the deliberations of the main table subcommittee on the jurisdictional demands, Wolff, again the APWU's representative, stated to the other subcommittee members that 010/020 is basic mail handler work. Tr. 1179 (Downes).

Mr. Wolff's colleague, Pete Garren,^{21/} has corroborated Wolff's representations that 010/020 is mail handler work:

^{20/} Mr. Wolff is uniquely qualified because of his history of employment. He has worked for all of the parties to this proceeding. He was employed as a postal clerk (Tr. 614) and later as a management official responsible for making craft determinations (Tr. 567). He worked for LIUNA and supervised the work of two associates (Mr. Bouffard and Mr. Gervus "Pete" Garren) in performing work surveys concerning, *inter alia*, 010/020. Tr. 628-631. He has worked for the APWU now for several years.

^{21/} Mr. Garren has an impressive background in postal management, including manpower and staffing. See LIUNA Ex. 33; 29 at 356-68. He was employed by Mr. Wolff to perform studies for LIUNA in the early 1970s (Tr. 630-31), later to perform studies for the instant proceeding on behalf of the APWU (Tr. 634).

"[W]e [i.e., management manpower study team] assigned all the allied service functions to the mail handler craft.

...

"Allied service functions consist of, first of all, preparations of the mail for case distribution. It is culling the mail, facing, canceling. It is moving the mail into the distribution area, sweeping the case, transferring them to a subsequent handler, and it is dispatching the mail to the trucks."

LIUNA Ex. 29 at 365, 369.

According to Garren, practice has coincided with theory with respect to the assignment of mail handlers to 010/020:

"Of the 178 largest post offices, which handle 75 percent of all mail volume, unless the trend has changed -- but that is normal -- that the mail handlers are assigned, have the nucleus assignments in all of the operation 010 and 020."

Id. at 413. To the same effect, see LIUNA Ex. 30 at 2 (Garren's written testimony).

To say that 010/020 is traditional, basic Mail Handler Craft work and that mail handlers typically hold the bids and regular, nuclear assignments is not to say that mail handlers perform this work exclusively. In a number of post offices during the peak mail volume periods management has assigned employees of other crafts (including casuals, public policy employees, carriers, manual distribution clerks, and LSM operators) to supplement the mail handlers. However, such supplemental use in some offices does not provide the APWU with a claim to the work which is qualitatively or quantitatively the equal of LIUNA's claim.

The other evidence in the record supports the finding that mail handlers have predominated in 010/020, see:

(a) Tr. 1521-1522 (Barranca) concerning the Baltimore post office (mail handlers with bids supplemented at peak by casuals, postal assistants, clerks, LSM operators);

(b) Tr. 1391-1392 (Lynn) concerning the Seattle, Los Angeles and Louisville post offices (mail handlers with bids supplemented at peak with clerks);

(c) Tr. 1236, 1332-1333 (Campbell) concerning the Atlanta post office (mail handlers with bids supplemented at peak with casuals and some clerks);

(d) Tr. 1721, 1722, 1756-1759 (Rogacki) concerning the Buffalo post office (mail handlers with bids supplemented at peak with casuals, clerks and LSM operators);

(e) Tr. 1727, 1766 (Rogacki) concerning the Rochester post office (mail handlers supplemented at peak by clerks and LSM operators);

(f) Tr. 1734 (Rogacki) concerning the Albany post office (always mail handler operations);

(g) Tr. 1870-1874 (Bratcher) concerning the Portland, Oregon post office (mail handlers with bids supplemented at peak by clerks, casuals, carriers - anyone management could get);22/

(h) Tr. 1913 (Bratcher) concerning the Memphis post office (always exclusive mail handler operations);

(i) Tr. 1918 (Bratcher) concerning the St. Paul post office (basic mail handler crew supplemented by casuals);

(j) Tr. 1918-1919 (Bratcher) concerning the Miami post office (100 percent mail handler operations);

(k) Tr. 1921-1922 (Bratcher) concerning the Orlando post office (010 located in dock area and worked by basic mail handler crew with assistance during peak);

22/ The APWU's rebuttal witness, Thomas Wolfe, confirmed rather than contradicted Bratcher's account of the practice in Portland. He agreed that the mail handlers were assigned to the "key positions" which "might have trouble with mail flow" (Tr. 2121-2122), and that clerks and casuals were "grabbed" to work in 010/020 only during peak periods (Tr. 2119, 2135-2136).

(l) Tr. 1907-1908 (Bratcher) concerning the Houston post office (prior to R.I. 399 clerks and casuals supplement mail handlers, since R.I. 399 no clerks used, all clerks returned to clerk work); 23/

(m) Tr. 1930 (Bratcher) concerning the Chicago post office (mail handlers and PS-4 clerks);

(n) Tr. 1936 (Bratcher) concerning the Detroit post office (100 mail handlers assigned, supplemented at peak if needed);

(o) Tr. 1938 (Bratcher) concerning the Cincinnati post office (all mail handlers);

(p) Tr. 1942 (Bratcher) concerning the Salt Lake City post office (basic mail handler crew supplemented at peak by clerks);

(q) Tr. 1939 (Bratcher) concerning the Dallas post office (basic mail handler crew supplemented at peak by clerks if needed); 24/

(r) Tr. 1947 (Bratcher) concerning the Oakland post office (always mail handler operations, but occasionally use a clerk in peak);

(s) Tr. 1944 (Bratcher) concerning the Phoenix post office (mail handlers supplemented at peak by clerks); 25/

(t) Tr. 751-752 (Taylor) 26/ concerning the Birmingham, Alabama post office (since at least 1975 010/020 primarily mail handler; to extent worked by non-mail handler employees previously, it was worked by casuals and part-time flexible clerks);

(u) LIUNA Ex. 26 (Article XIII, C, 5), 27 (p.8), 28 (p.7) - culling is "light duty" for mail handlers at the Metairie and Shreveport, Louisiana post offices as well as at the Minneapolis post office;

(v) Tr. 331-332, 369-370 (Spencer) 27/ concerning the Denver post office (exclusively use mail handlers in 010/020);

23/ The APWU's witness from Houston, Peter O. Vogel, testified to the same effect. See Tr. 728-734.

24/ The APWU's rebuttal witness from Dallas, Archie Salisbury, conceded that the clerks' used in 010/020 are used during the peak period. Tr. 2047, 2053.

25/ The APWU's rebuttal witness from Phoenix, Robert Strunk, actually confirmed Bratcher's testimony. Strunk testified that the mail handlers hold 010/020 bids and form the basic crew for those operations and that clerks are used in 010/020 only part-time. Tr. 2067.

26/ Mr. Taylor was an APWU witness.

27/ Mr. Spencer was an APWU witness.

(w) Tr. 1949 (Bratcher) concerning James Bratcher's experience with and observation of 010/020 at various post offices during his postal and union careers;

(x) Tr. 1653 (Johnson) concerning Lonnie Johnson's experience and observations at various post offices during his postal and union careers.

It was with considerable fanfare that the APWU introduced into the record "studies" of the "joint" manning of operations 010/020 in several postal facilities in the western United States both prior to and after the issuance of R.I. 399. See APWU Ex. 56, 57, 71, 72. ^{28/} Aside from the rather serious defects in those studies which were revealed during the parties' cross-examination of Mr. Spencer (see Tr. 310-369, 1006-1073), those studies fail to contradict the other evidence in the record that mail handlers typically hold the bids and the regular assignments in 010/020 while the clerks' involvement, if any, in those operations is nearly always temporary and supplemental. Overall, the "studies" reveal a greater use of mail handlers than of clerks in terms of hours. Moreover, the "studies" results do not reflect which craft held the bids and regular assignments in 010/020 in any of the studied facilities. See APWU Ex. 56, 71. See also Tr. 1059-1060 (Spencer). For example, compare the testimony of Bratcher and Strunck that mail handlers held 010/020 bids in the Phoenix post office (Tr. 1944, 2067) with APWU Ex. 56.

In sum, the work practices criterion supports the assignment of the disputed functions of 010/020 to the Mail Handler Craft as the Primary Craft.

^{28/} The Arbitrator ruled that he would not consider as admissible evidence those portions of the APWU exhibits which purportedly reflected the studies performed by Pete Garren because of the APWU's refusal to produce Garren as a witness. Tr. 999.

(2) Manpower Costs

This criterion has already been addressed in general.

However, it is of particular note in connection with this operation that a number of witnesses testified to the use of PS Level 6 LSM operators in some post offices to supplement the mail handlers in 010/020 during peak periods. Tr. 1722, 1756-1759 (Rogacki), 1727, 1766 (Rogacki); 727-728 (Vogel); 2047 (Salisbury); 2135-2136 (Wolfe), 1522 (Hanvey).

Obviously, the cost differential between PS-4 mail handlers and PS-6 LSM operators is even more substantial than that between mail handlers and PS-5 clerks.

(3) Employee Qualifications/Skills

This criterion was also discussed in general. However, it should be noted that the disputed functions in 010/020 generally require easily acquired skills, Tr. 624-625 (Wolff), 1270-1271, 1289-1290 (Campbell). Indeed, the record is replete with references to the use of casual employees in 010/020. See e.g. Tr. 3135-2136 (Wolfe), 626-627 (Wolff), 1721, 1722, 1756-1759 (Rogacki), 1870-1874 (Spencer); APWU Ex. 71. By definition and contract, casual employees have a relatively short period of employment with the USPS and, hence, have time to acquire complex skills. The USPS has even developed machines which cull mail. Tr. 624 (Wolff).

As concluded by the USPS (Tr. 1270-1271), mail handlers have the skills to perform the 010/020 functions.

(4) Avoidance of Duplication of Effort,
Effective Utilization of Manpower,
and the Integral Nature of All Duties
Which Comprise a Normal Duty Assignment

All three of these criteria substantially overlap with respect to operations 010/020. The following points could be categorized in two or more of the criteria.

First, the functions of 010/020 are operationally related to other mail preparation or allied labor functions concededly performed by the Mail Handler Craft. The "mail flow" through a post office starts generally with mail handlers unloading sacks of mail off of trucks on the docks. The mail is transported by mail handlers from the docks to 010/020. After the mail is culled as part of 010 it is faced and cancelled by mail handlers operating Mark II facer-cancellers. Mail handlers then take the trayed mail that is "produced" by 010/020 and transport it to the distribution areas. LIUNA Ex. 9d (Mark II operator oversees employees who cull in 010); LIUNA Ex. 30 at 1-2 (Garren's written testimony); LIUNA Ex. 29 at 369 (Garren's oral testimony); APWU Ex. 55, part 422; Tr. 1870-1873 (Bratcher), 622-624 (Wolff), 2050 (Salisbury). Hence, the 010/020 functions are an integral part of the normal mail handler duties of preparing the mail for distribution which begin when the mail is unloaded on the docks and continues through the cancellation process and transportation of the mail to the cases and the LSMs.

Second, there is substantial evidence in the record that when clerks are used in 010/020 they are taken away from distribution operations, which operations are adversely affected by this loss of manpower. See e.g. Tr. 1521-1522 (Barranca), 2135-2136 (Wolfe), 2047, 2054 (Salisbury), 727-732 (Vogel), 1060-1061 (Spencer), 1721-1722, 1756-1759, 1727, 1766 (Rogacki), 1870-1874 (Bratcher). Such practice hardly seems consistent with the efficient processing of mail and the effective use of manpower.

Third, and perhaps most importantly, R.I. 399 on its face in large measure satisfies the APWU's desire for joint jurisdiction over 010/020 through the so-called "Four Hour Criteria." See Tr. 1187 (Downes). Management reserves the right

under R.I. 399 to assign clerks to the mail handler functions of 010/020 where there is, in combination, less than four hours of continuous mail handler work.

In addition, at the APWU's insistence, a note was added to 010, item 4 in the work assignment guidelines that indicates that distribution is normally to be performed by the Clerk Craft. See APWU Ex. 9, 15. This note was characterized by APWU witness James Wolff as a "reasonable compromise."

Tr. 591-594.

Accordingly, all of the criteria/factors overwhelmingly weigh in favor of the R.I. 399 assignments to the mail handler craft.

- b. Nonscheme Separation/Distribution/
Sortation of Parcel Post: Operation
100 (Outgoing Parcel Post), Operations
210-239 (Platform Operations), NMOs

These three operations are consolidated for discussion because they involve the same basic issues. The APWU contests the assignment in Operation 100 of manual distribution of parcel post without scheme knowledge to the Mail Handler Craft. In regard to Operations 210-239 the APWU challenges the assignment to mail handlers of nonscheme separation and distribution of outside parcel post in item 4 ("nonscheme separation of sacks, pouches or outside parcels for further processing") and item 6 ("manual separation of sacks, pouches and outside parcels requiring no scheme knowledge.") Finally, the APWU grieves the assignment of NMO sortation at the Bulk Mail Centers (BMC) to the Mail Handler Craft.

(1) The Process that Produced R.I. 399

During the long process of negotiation that produced R.I. 399, discussed hereinabove, LIUNA entered into a compromise which it believed had obviated the APWU's concerns about these mail handler assignments. In particular, LIUNA agreed to

withdraw its claim to the function of distributing SPRs (small parcels and rolls), now known as IPPs (irregular parcel post), on the understanding that the APWU would drop its objections to the Postal Service's assignment of nonscheme parcel post distribution/separation/sortation to the Mail Handler Craft as the Primary Craft. Tr. 1601-1602, 1614, 1641 (Johnson), 1822 (Bratcher).

LIUNA's claim to the SPR/IPP distribution function was hardly frivolous. The record contains overwhelming evidence that mail handlers dominated that function prior to R.I. 399. Indeed, the APWU broadcast in its publications the great victory it had achieved in securing the assignment of the SPR/IPP work to the Clerk Craft in R.I. 399, and encouraged APWU locals to step up efforts to retrieve this work which in "office after office throughout the Postal Service, Mail Handlers have infiltrated... for at least the past 10 years." LIUNA Ex. 22,

21. See also:

- (a) Tr. 1234-1235, 1271-1273 (Campbell) to the effect that the mail handlers had a substantial claim to SPR distribution because they were performing the work in many instances;
- (b) LIUNA Ex. 34 at 3, 4, 6, 7; LIUNA Ex. 35 at 1; LIUNA Ex. 37 at 3 - New York Bulk Mail Center mail handlers bid announcements reflecting mail handler bid positions working SPRs;
- (c) USPS Ex. 16 -10 mail handler positions on SPRs/IPP to be reassigned to clerk craft under R.I. 399;
- (d) USPS Ex. 17 - full-time mail handler SPR/IPP positions lost to the Clerk Craft under R.I. 399;
- (e) USPS Ex. 18 - mail handlers used to distribute SPRs/IPP to;
- (f) USPS Ex. 20 - 11 longstanding mail handler bid positions distributing SPRs/IPP to be reassigned to the Clerk Craft under R.I. 399;

- (g) APWU Ex. 78 (Portland Implementation Plan for R.I. 399 - "The major area of non-compliance is the current use of mailhandlers to perform the distribution in Operations 115, 120 and 125");
- (h) Tr. 1866, 1868, 1875-76, 1980-1981, 1982, 1986-1990, 1993-1994 (Bratcher) concerning the longstanding use of mail handlers to distribute SPRs at the Portland post office and the loss of those mail handler positions to the Clerk Craft due to R.I. 399; 29/
- (i) APWU Ex. 79 (Pittsburgh Implementation Plan for R.I. 399 - "Operation 182/185, City non-pref belt andrack distribution is redesignated from the mailhandler craft to the clerk craft."); 30/
- (j) Tr. 1720 (Rogacki) concerning the near exclusive use of mail handlers to distribute SPRs at the Buffalo post office;
- (k) Tr. 1728 (Rogacki) concerning the assignment of mail handlers to distribute SPRs by zip code at the Rochester post office;
- (l) Tr. 1903, 1905, 1906-1907 (Bratcher) concerning the exclusive use of mail handlers to perform distribution of SPRs in Operation 110 at the Houston post office prior to R.I. 399, as well as the regular assignment of up to 42 mail handlers, many with bids, to perform such distribution in Operation 185 at the same office;
- (m) Tr. 1913 (Bratcher) concerning mail handlers regularly assigned to sort SPRs by zip code at the Memphis post office;
- (n) Tr. 1920 (Bratcher) concerning the 14 mail handlers with bids, and the use of up to 45 mail handlers at peak, to separate SPRs by zip code at the Miami post office;

29/ The APWU's rebuttal witness from Portland, Thomas Wolfe, conceded that mail handlers have been used to distribute SPRs. Tr. 2115-2118. In any event, APWU Ex. 78 certainly corroborates Bratcher's testimony.

30/ See also testimony of Anthony Joseph, an APWU witness, to the effect that "several jobs" at the Pittsburgh post office are to be transferred from the mail handlers to the Clerk Craft under R.I. 399. Tr. 959.

- (o) Tr. 1923-1924 (Bratcher) concerning the exclusive use of mail handlers on two tours at the Orlando post office to separate SPRs by zip code;
- (p) Tr. 1929-1930 (Bratcher) concerning mail handlers regularly separating third class and newspapers by zip code at the Chicago post office;
- (q) Tr. 1935-1937 (Bratcher) concerning the exclusive use of mail handlers to distribute incoming circs by zip code, and the use of mail handlers to distribute non-pref city circs by zip code, in the Detroit post office;
- (r) Tr. 1942-1943 (Bratcher) concerning mail handlers' regular assignments to separate SPRs at the Salt Lake City post office.

Obviously, LIUNA's concession of SPRs/IPPs to the Clerk Craft was not easily made, given the number of mail handler jobs affected. LIUNA's affiliates and members have not reacted lightly to this concession. See e.g. Tr. 1601-1602, 1614, 1641 (Johnson); 1993-1994 (Bratcher).

To the extent that the APWU's attempt to deprive LIUNA of the quid pro quo for this major concession is effectuated, future relations among the parties will be severely hampered to the detriment of all. Good faith bargaining will have breathed its last breath among the Postal Unions and the Postal Service.

(2) Employee Qualifications/Skills and Safety

There is no dispute among the parties that outside parcel post, and NMO parcel post in particular, is by definition oversized, oddly shaped and heavy; including items such as cases of books, trees, bushes, boxes of fruit, tires, steel rolls, mufflers, bee hives, boxes of engine valves and castings, and the like. See LIUNA Ex. 39; APWU Ex. 66; APWU Ex. 55 at part 443.132; USPS Ex. 12, 13, 14; Tr. 1696 (Margrino), 1715 (Rogacki), 936 (Joseph - "heavy stuff"), 1898 (Bratcher), 1507-1508 (Jacobson). The daily volume of such parcels can get quite

heavy. See e.g. USPS Ex. 14 (San Francisco BMC handles 12,500 NMOs daily). Distribution/separation/sortation of such parcels generally requires employees to physically lift and otherwise move and handle them. See Tr. 1808-1899 (Bratcher), 1714 (Rogacki), 1455-1456, 1457-1458, 1483 (Hanvey); USPS Ex. 13, 13, 14.

The USPS has concluded that mail handlers have the necessary skill to perform each of the disputed functions.^{31/} Tr. 1291-1292, 1294 (Campbell), 1507-1508 (Jacobson). Moreover, the Mail Handler Craft is the only craft with the skills and qualifications to perform these functions. Tr. 1507-1508 (Jacobson). To be hired as a mail handler an applicant must pass a mental test and physical test. LIUNA Ex. 10; 11; 14; 40; 30 at 14 ("Thus, only the mail handler is tested on both requirements necessary to the nonscheme distribution of parcel post: strength and stamina and mail processing skills."). The mental test is a written test designed to measure the applicant's "ability to remember names and locations as needed for simple sorting." LIUNA Ex. 10. This test is similar to the mental test administered to applicants for clerk and letter carrier positions.^{32/} LIUNA Ex. 14.

The physical test is a test of strength and stamina. The test consists of "lifting, shouldering, and carrying mail sacks, weighing 70 pounds, pushing a hand-truck, and loading and unloading mail sacks of various weights." LIUNA Ex. 10. Persons suffering from any "condition which makes it dangerous to the applicant to lift and carry 70-pound weights" are discouraged from applying: "Applicants must be physically

^{31/} James Wolff has agreed with the USPS assessment. See LIUNA Ex. 5 at 6.

^{32/} See also APWU Ex. 55 at part 416.11 to the effect that all postal employees receive zip code training.

able to perform efficiently the duties of the position." Id. Indeed, mail handlers who are unable to continue to satisfy the physical requirements of their positions are subject to discharge. Tr. 1896-1897 (Bratcher).

Clerk Craft employees are not required to pass a strength and stamina test. Tr. 936 (Joseph), 1896-1897 (Bratcher), 1507-1508 (Jacobson). Accordingly, the assignment of clerks to distribute outsides would be inconsistent with the qualifications of such craft employees. Indeed, clerks do not desire such heavy work. Tr. 2104 (Wolfe), 1653 (Johnson).

Moreover, safety considerations require that mail handlers, who are qualified to handle heavy and oversized parcels, perform the disputed functions. Tr. 1507-1508 (Jacobson). Mishandling of such parcels could cause injury to the handler and to other employees, as well as to the parcel itself. Injuries to unqualified workers caused by their handling of heavy parcels could create serious workmens' compensation problems for the USPS.

Safety is a jurisdictional factor which has been accorded increasing weight by the NLRB. See e.g. ILA Local 1037 (ADM Grain Co.), 237 NLRB No. 173, 99 LRRM 1129 (1978); Operating Engineers, Local 158, 172 NLRB No. 192, 69 LRRM 1033 (1968). See also C. Morris, The Developing Labor Law, 1977 Supplement at 215-216 (BNA, 1978).

Hence, the criteria of employee qualifications and skills, and safety favor the assignment of the disputed functions to the mail handler craft.

(3) Work Assignment Practices

The nonscheme distribution/separation/sortation of parcel post is traditional, basic mail handler work. What has historically distinguished mail handlers and clerks is scheme

knowledge: clerks have performed scheme distribution of parcel post, mail handlers have performed nonscheme distribution.

The Mail Handler Key Position (KP-8) established by Congress in 1955 (LIUNA Ex. 9a) expressly lists among mail handler duties "[s]eparates all mail received by trucks," "separates and delivers working mails," "separates outgoing bulk mails for dispatch," and "[m]akes occasional simple distribution of parcel post mail requiring no scheme knowledge." The Mail Handler Group Leader Standard Position Description (LIUNA Ex. 9b) provides that the group leader serves as a "working leader of a group of at least five (5) mail handlers as an assigned work unit engaged in separating, filing, loading and unloading of incoming and outgoing bulk mails and outside parcels on post office platforms, and at other points where bulk mails are separated." It further states that the group leader "[c]ontrols and guides a work unit of mail handlers and participates in the nonscheme separation of incoming or outgoing bulk mails, [and] the dumping and sorting of incoming and outgoing bulk mails at primary handling units." See also LIUNA Ex. 12.

The APWU seeks to make much of the inclusion in 1955 of the word "occasional" in KP-8. The APWU avers that that word limits the ability of the USPS to regularly assign mail handlers to nonscheme distribution of parcel post. However, in the West Coast Case (APWU Ex. 48), Sylvester Garrett cautioned against placing undue weight on the Congressionally-enacted Key Positions. Moreover, the APWU's reliance on a literal reading of KP-8 is a "two-edged sword:" a literal reading of the Clerk Key Position, KP-12 (APWU Ex. 53a), fails to disclose any reference to nonscheme distribution of parcel post. At least such distribution is mentioned, albeit modified by "occasional," in KP-8.

In any event, the record in this case reflects that, whatever the motive of the Congress in including "occasional" in KP-8 ^{33/} and whatever the intended meaning of that term in context, the fact of the matter is that since long before KP-8 and ever since mail handlers have been regularly assigned on a full-time basis performing nonscheme distribution of parcel post.

(a) LIUNA Ex. 15 indicates that in 1932 the duties of "laborers," the predecessor title for mail handlers, included "making simple distribution of parcels by numbers where no scheme knowledge or readings of addresses is involved." Notably, this statement of duties is preceded by a prohibition against the performance of clerk duties, thereby distinguishing clerk duties and nonscheme distribution of parcels. Also notable is the absence of the modifier "occasional."

(b) LIUNA Ex. 16 demonstrates that nonscheme distribution of parcels continued to be a laborer as distinguished from a "clerical duty," through 1940.

(c) APWU Ex. 28, 29 and 30 demonstrate that by the late 1940s laborers had been renamed as mail handlers but that their duties continued to include, as opposed to "clerical duties," "making simple distribution of parcels where no scheme knowledge is involved." ^{34/}

^{33/} The Congressional documents introduced into evidence by the APWU (APWU Ex. 31-36) suggest a political "deal" engineered by the APWU's predecessor unions. Compare APWU Ex. 31 at 14 with APWU Ex. 34.

^{34/} Actually the language used to describe the mail handler duties had changed somewhat from the earlier descriptions of laborers duties, to wit, the condition that "no... reading of addresses" be involved which appeared in LIUNA Ex. 15 and 16 was dropped by the time APWU Ex. 28-30 were issued in 1948. In these latter exhibits the Post Office Department continued to distinguish "clerical duties" from nonscheme parcel post distribution.

(d) LIUNA Ex. 17 and 18 demonstrate that the Post Office Department did not construe "occasional" in KP-8 as restricting its continued use of mail handlers to perform nonscheme distribution of parcel post. LIUNA Ex. 18, an excerpt from a 1962 Postal Personnel Manual, states in pertinent part:

"To avoid any misunderstanding of the use of the word 'occasional' in the key position of mail handler, all mail handlers currently assigned full-time or substantially full-time to the simple distribution of parcel post requiring no scheme knowledge will continue to be designated as mail handler and ranked in level 3. The law is not interpreted as requiring any change in work assignments.

...

"Even though the position of a mail handler who regularly performs simple distribution of parcel post mail is not treated as indential with the key position, the position would nevertheless be placed in level 3. Obviously, the work of a mail handler assigned only to simple distribution of parcel post mail requiring no scheme knowledge is more closely comparable to the normal duties of the mail handler described in KP-8 than it is to the duties of a distribution clerk (level 4, KP-12), who separates incoming or outgoing mail in accordance with established schemes."
(Emphasis added.)

LIUNA Ex. 17 (an excerpt from a 1962 Postal Operations Manual) at part 362.244 includes among mail handler duties the nonscheme separation of outgoing parcel post.

(e) LIUNA Ex. 19 (an excerpt from a 1966 Postal Personnel Manual) at part 757.12b confirms the Post Office Department's interpretation of "occasional" in KP-8 as not prohibiting the continued full-time use of mail handlers for nonscheme distribution of parcel post.

(f) LIUNA Ex. 20 (a 1968 Regional Instruction on Staffing) at 10-11 reaffirms the assignment of mail handlers to perform nonscheme distribution of outgoing parcel post.

(g) APWU Ex. 36 is a 1956 report of the Post Office Advisory Committee to the Senate Post Office and Civil Service Committee. That Advisory Committee was chaired by E.C. Hallbeck who later became President of the Clerks Union. Tr. 1895-1896 (Bratcher). No representatives of the Mail Handler Craft

served on the Committee. Id. At pp. 7-8 of the Report, the Advisory Committee stated that, despite the inclusion of "occasional" in KP-8:

"we find that in many instances mail handlers are being assigned to full time duties on parcel-post distribution. ... [T]he Post Office Department now maintains it to be proper for mail handlers to perform distribution on a full-time, around-the-clock basis. Departmental reasoning appears to be that Public Law 68 contains no position description covering unskilled distributor assignments, that were there to be such positions, they would be at level 3, the mail handler level."

(h) LIUNA Ex. 5 is a written statement prepared by James Wolff 35/ for LIUNA in 1974 at a time when he worked for both LIUNA and the APWU. Tr. 1649-1650 (Johnson). In this statement, Wolff corroborates what the foregoing historical postal documents establish: that historically laborers and mail handlers have regularly performed the nonscheme distribution of parcel post. Said Wolff therein:

"If allied labor has not increased in proportion to the increase in the distribution process, it is obvious that the pure distribution function has declined--declined because numerical separation work for Mail Handlers, has replaced scheme distribution. Mail Handlers have always performed separation.... Laborers performed the same separation earlier, but the volume of such work was much smaller."

Id. at 5. Earlier therein (at 4-5) Wolff described how zip code distribution was a mere continuation of the nonscheme distribution--or separation, as Wolff calls such distribution--that laborers and mail handlers had long been performing. Later in the statement (at 5-7) Wolff describes the nonscheme manual distribution of outgoing parcel post by zip code as not complex. Wolff concludes that Arbitrator Powers in the Sack Sorting Machine Case (APWU Ex. 43) effectively awarded nonscheme parcel post distribution to the mail handlers craft.

35/ This is the same James Wolff who appeared as a witness for the APWU in the instant case.

(i) Consistent with LIUNA Ex. 5, Wolff told LIUNA officials in the early 1970s that the nonscheme distribution of parcel post was traditional mail handler work. Tr. 1649 (Johnson). During the hearing, Wolff reluctantly conceded on cross-examination that mail handlers are in fact performing such distribution in post offices and BMCs. See Tr. 583-584, 649, 650-651 (Wolff).

(j) Further confirmation of the historical performance of nonscheme distribution of parcel post by mail handlers is provided by the testimony and other evidence given in a prior proceeding involving the same parties by Pete Garren, an employee/colleague of James Wolff.^{36/} Garren performed a survey of the craft assignment practices with respect to outside parcel post distribution in 40 cities (LIUNA Ex. 31) and a survey of the craft assignment practices with respect to ordinary parcel post in 28 cities (LIUNA Ex. 2).^{37/} On the basis of those surveys as well as his extensive travel to postal facilities as a manpower/staffing specialist for the USPS, Garren concluded that nationwide there was a consensus of mail handlers employed to perform nonscheme distribution of outside parcel post and about an equal mix of mail handlers and clerks used for the nonscheme distribution of ordinary parcel post. LIUNA Ex. 29 at 384-385, 390. See also LIUNA Ex. 30 at 15, to the same effect. Indeed, LIUNA Ex. 31 shows that of the 42 postal facilities surveyed with respect to outside parcel post, 29 used mail handlers exclusively, 8 used mail handlers and clerks (see e.g. LIUNA Ex. 29 at 375 concerning Chicago), and 3 used clerks exclusively. In each of the three facilities using clerks exclusively, a scheme was required to distribute the outsides. Garren testified that while serving on management staffing teams between 1961 and 1971 he assigned mail handlers to perform nonscheme distribution of parcel post, and in fact assigned 150 additional mail handlers to work parcel post at the Atlanta Parcel Post Annex in 1965 to free clerks for scheme distribution assignments. LIUNA Ex. 30 at 14. Garren further testified that mail handlers exclusively performed the primary separation of parcel post at the Seattle Terminal Annex.

^{36/} See note 21, supra. See also Tr. 1647, 1683 concerning the Garren-Wolff relationship.

^{37/} See LIUNA Ex. 29 at 369-383, concerning the development of LIUNA Ex. 31 and 32.

(k) The APWU acknowledged LIUNA's claim on the basis of practice to nonscheme distribution of parcel post in its 1975 jurisdictional demands, LIUNA Ex. 3a-d. In LIUNA Ex. 3d, the nonscheme distribution functions of each of the following parcel post operations are marked by an "x", indicating, as explained in LIUNA Ex. 3b at 4, that they are in dispute between the parties because of mixed practice: 090, 095, 100, 195, 200.

(l) LIUNA Ex. 6, 23 and 24 are grievance decisions rendered in the 1970s concerning Rochester, Orlando and Indiana respectively, which uphold the propriety of the assignment of mail handlers to the nonscheme distribution of parcel post by zip code.

(m) LIUNA Ex. 7 and 8 are mail handler bid announcements dating to 1971 which demonstrate that mail handlers not only have held bids for the nonscheme distribution of parcel post in Albany, New York, but that group leaders have been bid to supervise the mail handlers performance of that work.

(n) LIUNA Ex. 25 (at 278, et seq.) indicates that at the Oakland post office in the early 1970s mail handlers performed the nonscheme distribution of outsides on a machine known as the "Green Monster."

(o) LIUNA Ex. 34, 35, 36 and 37 are mail handler bid announcements from the New York Bulk, Military and Foreign Mail Center dating to the opening of that facility in 1974. Each announcement contains mail handler bid assignments to nonscheme distribution of outside parcel post and NMOs. See LIUNA Ex. 34 at 2, 3, 5, 6, 9, 16, 17, 18; LIUNA Ex. 35 at 1, 2, 6, 7, 8; LIUNA Ex. 36 at 3, 14, 19, 20; LIUNA Ex. 37 at 6, 7, 8, 10.

(p) USPS Ex. 12 is a sworn affidavit from the General Manager of the Los Angeles BMC which states, inter alia, that all of the employees who have ever held bid assignments to the distribution of NMOs at that facility have been mail handlers.

(q) USPS Ex. 13 is a sworn affidavit from the Manager of the Seattle BMC which states, inter alia, that all of the bid assignments to distributing NMOs at that facility have been held by mail handlers.

(r) USPS Ex. 14 is a sworn affidavit from the Director of Mail Processing at the San Francisco BMC which states, inter alia, that: "work involving non-machinable outsides (NMOs) has been assigned to members of the Mail Handler Craft ever since the Bulk Mail Center has been operational. To my knowledge, no full or part-time members of the clerk craft have ever been assigned to work non-machinable outsides."

(s) Vito Magrino testified that at the Morgan Post Office in New York between 1947 and 1967, mail handlers performed the entire foreign parcel post operation including distribution and dispatching. Tr. 1687-1695, 1705. Magrino further testified that from 1967 until at least 1970 at that same office mail handlers were regularly assigned on all three tours to distribute outside parcel post by zip code. Tr. 1695-1699, 1704. Indeed, Magrino was a group leader in that outside parcel post operation for a number of years. Tr. 1696, 1698-1699. Magrino stated that there was never less than 15 mail handlers per tour assigned to work the outside parcels. Tr. 1698-1699.

(t) Fred Rogacki testified about the assignment of mail handlers to nonscheme distribution of parcel post in Buffalo, Rochester, Utica and Albany, New York. He testified that at the Buffalo post office he and other mail handlers had distributed parcel post for the sectional center (Tr. 1712, 1747-1748), had distributed New York State parcel post off of a parcel sorting machine by destination and zip code (Tr. 1713, 1744), and had distributed customs parcels by zip code (Tr. 1718, 1752-1754). Rogacki further testified that mail handlers have regularly distributed outside parcel post at the Buffalo Truck Terminal (Tr. 1713-1714), and have regularly distributed "sticks" (oddly shaped parcels such as "rose bushes, trees, a roll of steel, tires, overweight pieces, gears" which cannot be sacked) by zip code at Buffalo (Tr. 1715, 1749, 1750). Rogacki further described in his testimony the history of craft assignments to Buffalo's outside parcel sorting machine. Tr. 1715-1718, 1742-1743. According to Rogacki, prior to 1974 mail handlers distributed outsides from the runoffs of the machine and a clerk, using scheme knowledge, keyed the parcels. Id. However, in 1974 the machine was retooled so that scheme knowledge was no longer necessary to key and, consequently, mail handlers were assigned to the keyer position in lieu of the clerks. Tr. 1717-1718. Prior to the introduction of the outside sorting machine, mail handlers distributed the outsides manually. Tr. 1742-1743. As for NMO distribution

at Buffalo, Rogacki stated that such work has been regularly performed by mail handlers. Tr. 1749-1750.

With regard to the Rochester post office, Rogacki testified that since prior to 1973 mail handlers have been regularly assigned to perform nonscheme distribution of parcel post on a multislides; in the "crow's-next" as well as at the bottom of the multislides. Tr. 1722, 1723, 1724-1727, 1760, 1762-1763. See also LIUNA Ex. 6, 31. He further testified that mail handlers have regularly distributed NMOs at the Rochester post office. Tr. 1728-1729, 1735, 1767-1768.

As for Utica, Rogacki testified that at the Utica Truck Terminal mail handlers have been distributing parcel post by zip code into sacks. Tr. 1729-1730, 1768, 1769. At the Albany post office mail handlers have historically worked city parcel post as well as outside parcel post on a multislides. Tr. 1731-1732, 1770. See also LIUNA Ex. 7, 8, 31.

(u) James Bratcher testified about his personal work experience at the Portland, Oregon post office as well as about his observations at several other postal facilities. He testified that at Portland mail handlers have historically performed nonscheme distribution of outgoing parcel post by zip code (Tr. 1867) and have separated parcel post on roller table runouts from the parcel sorting machine (Tr. 1977-1979). He further testified that since the early 1970s mail handlers have been assigned full-time to separate NMOs and transit parcel post on a device known as a "gross machine," which is similar to a multislides or "spider." Tr. 1876-1877, 2128. The APWU's rebuttal witness from Portland, Thomas Wolfe, corroborated Bratcher's testimony concerning the gross machine. See Tr. 2100-2101, 2124-2128. Bratcher further testified that mail handlers have historically performed zip code separation of NMOs in Portland. Tr. 1863, 1877. The APWU's rebuttal witness, Wolfe, conceded that mail handlers have customarily distributed outsides and other parcel post in Portland. Tr. 2111-2112, 2143-2144.

Bratcher testified about the performance of nonscheme distribution of parcel post by mail handlers in other postal facilities, as follows:

-- Chicago General Post Office: mail handlers separate preferential parcel post according to a clerk's marking (Tr. 1926-1927), and distribute primary parcel post by use of a "dumb-head scheme" (Tr. 1927);

- Memphis Post Office: mail handlers distribute parcel post by zip code at the bottom of a multislides (Tr. 1912-1913);
- St. Paul Post Office: mail handlers separate city parcel post by zip code (Tr. 1918);
- Miami Post Office: mail handlers separate incoming parcel post on a multislides using zip code (Tr. 1919-1920);
- Orlando Post Office: mail handlers sort priority parcels on a multislides using zip code (Tr. 1922-1923) and exclusively distribute parcel post in operation 100 using zip code (Tr. 1922-1923);
- Detroit Post Office: distribution of NMOs by zip code has historically been an exclusive mail handler function (Tr. 1931-1932), 47-50 mail handlers working with a mail handler technician distribute preferential parcel post (Tr. 1933), and mail handlers and casuals separate city parcel post by zip code (Tr. 1934);
- Phoenix Post Office, Watkins Annex: mail handlers perform nonscheme distribution of parcel post at the bottom of a multislides using zip code (Tr. 1946-1947);38/
- Houston Post Office: NMOs have historically been separated using zip code by mail handlers on a gross machine or multislides (Tr. 1908);
- St. Paul BMC: mail handlers have distributed NMOs ever since the BMC became operational (Tr. 1915);
- Denver BMC: mail handlers and clerks work side-by-side distributing NMOs, although mail handlers predominate (Tr. 1940), and mail handlers distribute the preferential NMOs (known there as "sticks") (Id.).

On the basis of his experience and observations at several other post offices

38/ The APWU's rebuttal witness from Phoenix confirmed rather than contradicted Bratcher's testimony in this regard. See Tr. 2075, 2089 (conceding that mail handlers work the Mesa and the City runouts on two tours).

and BMCs visited during his postal and union career, Bratcher testified that the nonscheme distribution of parcel post by zip code and other criteria has been historically dominated by the Mail Handler Craft. Tr. 1949.

(v) Lonnie L. Johnson testified that on the basis of his observations at numerous postal facilities throughout the country, mail handlers have historically dominated the nonscheme distribution of parcel post. Tr. 1653.

(w) William Campbell testified that the USPS study group that developed the post office work assignment guidelines found that the past practice criterion favored the assignment of nonscheme distribution of parcel post in Operations 100 and 210-239 to the Mail Handler Craft. Tr. 1291-1292, 1294.

(x) Peter Jacobson testified that the USPS study group which developed the BMC work assignment guidelines found that the past practice at the BMCs concerning the distribution of NMOs was split three ways: at one-third of the BMCs mail handlers were exclusively assigned, at one-third clerks were exclusively assigned, and at the final third a mix of mail handlers and clerks were assigned. Tr. 1506-1507.

(y) Jack Hanvey testified that in the New York City/Northern New Jersey area NMOs have historically been distributed by mail handlers. He testified that all NMO bid jobs at the New York Bulk, Military and Foreign Mail Center have always been held by mail handlers. Tr. 1455-1456. See also LIUNA Ex. 34-37. He further testified from personal experience as a former clerk and supervisor at each facility, that mail handlers held bid positions and regular assignments distributing NMOs at the Kearney, New Jersey facility, which handled New York Area NMOs prior to the opening of the BMC (Tr. 1456-1458, 1483, 1484), at the Hoboken, New Jersey post office from 1961 through 1964 (Tr. 1459), and at the North Jersey Truck Terminal from 1964 through 1971 (Tr. 1459-60). Hanvey also testified from personal experience that mail handlers had performed the manual and mechanized sorting of outsides in platform operations 210-239 at the Meadows facility and the North Jersey Truck Terminal during his tenure at those facilities. Tr. 1468-1470.

(z) John Smith testified that both mail handlers and clerks have worked NMOs at the Atlanta BMC. Tr. 794-795, 813-814. But, William Campbell testified that prior to the

opening of the Atlanta BMC, outside parcel post was distributed at the Atlanta Parcel Post Annex primarily by mail handlers. Tr. 1244, 1287-1288. See also LIUNA Ex. 30 at 14, concerning Garren's assignment of 150 mail handlers to work parcel post at that Annex.

(aa) Kenneth Lynn testified from personal experience that the manual nonscheme separation of outside parcel post (Operations 210-239) was a mail handler function at the Tacoma, Seattle, Los Angeles and Louisville postal facilities. Tr. 1396-1399. He further testified that the craft assignments to nonscheme distribution of parcel post in Operation 100 at those facilities were mixed between mail handlers and clerks. Tr. 1393-1395, 1452.

(bb) Anthony Joseph testified that mail handlers distribute non-pref parcel post at the bottom of a multislid at Pittsburgh's Vista Termina. Tr. 957-958, 959.

(cc) There is substantial evidence in the record that significant numbers of outside parcels are distributed through sack sorting machines operated by mail handlers. Tr. 1727, 1763, 1764 (Rogacki), 1915-1916, 1941 (Bratcher); LIUNA Ex. 39; APWU Ex. 66. See also LIUNA Ex. 9e, 9f, 13 concerning assignment of PS-4 and PS-5 Sack Sorting Machine Operator Standard Positions to the mail handler craft. Sack sorter operators are required to distribute sacks, pouches and outsides by zip code and several other criteria. Id. See LIUNA Ex. 5 at 6-7, to the effect that manual nonscheme distribution of parcel post is less complex than operating a sack sorting machine.

In sum, the overwhelming weight of evidence on past practice favors assignment of the disputed nonscheme distribution of parcel post functions to the Mail Handler Craft.

- (4) Avoidance of Duplication of Effort,
Effective Utilization of Manpower,
and the Integral Nature of All Duties
Which Comprise a Normal Duty Assignment.

The truck docks and platforms are mail handler operations; where, among other activities, incoming mail is unloaded from trucks and outgoing mail is loaded onto trucks by mail handlers. LIUNA Ex. 30 at 1, LIUNA Ex. 96; Tr. 1244, 1287-1288,

1295 (Campbell), 1507 (Jacobson). Due to their size and weight, outsides and NMOs are processed on or near the docks and platforms. LIUNA Ex. 30 at 14; Tr. 1244, 1287-1288, 1295 (Campbell), 935 (Joseph), 1507 (Jacobson). See generally the testimony and documentary evidence concerning past practice. Indeed, the disputed functions in Operations 210-239 are by definition performed on the docks and platforms.

Since the nonscheme distribution of outsides and NMOs is performed on or near the docks and platforms, efficiency requires that that work be assigned to the mail handler craft. See Tr. 1507 (Jacobson), 1295 (Campbell), 1455-1456, 1483 (Hanvey); LIUNA Ex. 30 at 14. In the case of functions 4 and 6 of Operations 210-239, it would be absurd to distinguish the nonscheme separation of sacks and pouches from that of outsides.

c. Sweeping of Cases and Loading of Ledges

(1) Work Assignment Practices

Sweeping and ledge-loading are allied labor duties which have traditionally been performed by mail handlers as a part of their basic mail preparation duties. LIUNA Ex. 29 at 365; 369; LIUNA Ex. 30 at 2; APWU Ex. 28. The APWU has admitted as much in several ways. In its 1975 jurisdictional claims (LIUNA Ex. 3a-d), the APWU listed the functions of sweeping and ledge-loading in the following operations (in Ex. 3d) as joint mail handler and clerk work: Operations 035, 040, 045, 050, 070, 075, 150, 160, 170, 175. During the hearing, APWU counsel conceded that mail handlers perform sweeping and ledge-loading in the large cities. Tr. 96-98. James Wolff acknowledged in his testimony that prior to the introduction of LSMS mail handlers performed much more sweeping and ledge-loading than is available to them now. Tr. 645.

The record contains several additional references to mail handlers performing sweeping and ledge-loading. James Bratcher testified that at the Orlando post office mail handlers sweep cases in Operations 060, 070, 030, and 150/175 (Tr. 1921-1922), that at the Detroit post office mail handlers sweep in Operations 060/070 during peak hours (Tr. 1935-1936), and that at the Phoenix post office mail handlers ledge-load in Operation 175 (Tr. 1946 - see also Tr. 2072, 2085). Peter Vogel testified that mail handlers sweep cases at the Houston post office at peak periods to maximize clerks' time casing mail. Tr. 735. Kenneth Lynn testified that in Seattle mail handlers hold bid sweeping/ledge-loading jobs. Tr. 1400-1402. LIUNA Ex. 26, 27 and 28 indicate that sweeping and ledge-loading is light mail handler duty in the Metairie and Shreveport, Louisiana post offices as well as at the Minneapolis post office. Jack Hanvey testified that mail handlers performed sweeping and ledge-loading at the North Jersey Truck Terminal, the Meadows and the Hoboken facilities during his tenure. Tr. 1470-1476.

The manpower practices criterion weighs in favor of the disputed assignment to the Mail Handler Craft.

- (2) Avoidance of Duplication of Effort,
Effective Utilization of Manpower,
and the Integral Nature of All Duties
Which Comprise a Normal Duty Assign-
ment.

There is no disagreement among the parties that there are various methods of sweeping and ledge-loading that may be employed in a particular post office. See Tr. 664-665 (Wolff), 1400-1402, 1408-1409 (Lynn), 1524-1525 (Barranca). See also APWU Ex. 58 at parts 151, 171. In large facilities it is often more efficient to use mail handlers to sweep and ledge-load and maximize the clerks' distribution time, while in smaller facilities it may be more efficient to allow the distributors to do

their own sweeping and ledge-loading. Id. See also Tr. 1400-1402, 1408-1409 (Lynn), 1524-1525 (Barranca), 756-757 (Taylor). By way of example, Kenneth Lynn testified that in the Seattle office mail handlers hold bid jobs for sweeping and ledge-loading, while in Takoma clerks perform their own allied functions.

R.I. 399 preserves management flexibility to determine on an office-by-office and operation-by-operation basis whether it is more efficient to employ traditional allied labor, that is mail handlers, to sweep and ledge-load, or to work such allied functions into the distributors' routine, considering variables such as mail volume, dispatch times, manpower availability, etc. This flexibility is provided by Implementation Criterion IIC and the asterisked notes found on pages 3 through 14 of the Work Assignment Guidelines, as well as by the Four Hour Implementation Criterion. The first two of those provisions provide for performance of sweeping and ledge-loading by the distributors when those allied functions are an integral part of the distribution function. Those provisions of R.I. 399 satisfy the APWU's underlying complaints. Tr. 1190-1191 (Downes). Whether a particular local manager errs in determining whether the allied functions are integral to the distribution function in a particular operation in a particular office is a matter for the grievance procedure and is not relevant to the instant proceeding. Clearly, as indicated by the testimony of Lynn and Barranca as well as by APWU Ex. 58, local managers have already been making such determinations for some time.

Accordingly, the three "efficiency" criteria support the primary craft assignment of sweeping and ledge-loading to the Mail Handler Craft.

d. Operation 109 (Rewrap)

(1) Work Assignment Practices

Rewrapping of parcels, and all of its component functions, is traditional, basic mail handler work; so basic that KP-8 (LIUNA Ex. 9a) expressly assigns such work to mail handlers. Accordingly, the Postal Service long ago assigned the Mail Rewrapper Standard Position Description (LIUNA Ex. 9c; USPS Ex. 6) to the Mail Handler Craft.

The record is littered with references to the regular assignment of mail handlers to the rewrap operation. See LIUNA Ex. 34 at 2, 5, 9, 10, 12, 13, 18 (mail handler bid positions); LIUNA Ex. 35 at 2, 4, 8 (mail handler bid positions); LIUNA Ex. 36 at 4, 15, 20 (mail handler bid positions); LIUNA Ex. 37 at 4 (mail handler bid positions); LIUNA Ex. 7 (mail handler bid position includes rewrap); LIUNA Ex. 27 and 28 (rewrap is mail handler light duty). See also Tr. 1719, 1946 (Rogacki: mail handlers bid rewrap including readdressing parcels); 1909 (Bratcher: mail handler bids in Houston); 1916-1917 (Bratcher: mail handler operation at St. Paul BMC); 1920 (Bratcher: mail handler bid in Miami); 1925 (Bratcher: mail handler operation in Orlando); 1927-1928 (Bratcher: always mail handler operation in Chicago); 1466-1467 (Hanvey: mail handlers do all rewrap functions including readdressing and record-keeping at Meadows facility, Hoboken post office, North Jersey Truck Terminal and the New York BMC); 1524 (Barranca: mail handlers perform rewrap operation in Baltimore).

The work practices support the assignment in R.I. 399 of the rewrap operation in toto to the Mail Handler Craft.

- (2) Avoidance of Duplication of Effort, Effective Utilization of Manpower, and the Integral Nature of All Duties Which Comprise a Normal Duty Assignment.

The functions of readdressing parcels and record-keeping are integral functions of the rewrapper position. It would

constitute "featherbedding" to segregate those integral functions merely to assign them to the Clerk Craft since mail handlers are obviously capable of performing these and all functions of the rewrapper position.

Furthermore, at the APWU's urging, a note was added at the end of Operation 109 in R.I. 399 which note states that rewrapper work can be considered an integral function of Operations 100 and 200 and may be assigned to the craft doing the distribution in those operations.

Like the work assignment practices criterion, the three "efficiency" criteria favor the assignment of all of Operation 109 to the Mail Handler Craft.

e. The Remaining Disputed Assignments:
"Red Herrings" and Quibbles

The remaining disputes with R.I. 399 raised by the APWU are either "red herrings" put at issue to entice a "split decision" by the Arbitrator or mere quibbles. The governing criteria, as discussed in general hereinabove, require confirmation of the assignments made in R.I. 399. However, some brief comments about each disputed assignment are in order to demonstrate the frivolity of the APWU's complaints.

(1) Operations 105, 180-189, 200.

The APWU's complaints concerning these operations as assigned in R.I. 399 are essentially the same: the labeling and dispatching of sacks and pouches ought not to be assigned to the Mail Handler Craft. However, the APWU never fully explained the basis for its position during the hearing.

There is ample evidence in the record that labeling and dispatching are allied labor functions traditionally performed by mail handlers. See e.g.:

(a) KP-8 (LIUNA Ex. 9a), which states that a mail handler "[p]laces empty sacks or pouches on racks, labels them where labels are prearranged or racks are plainly marked, ... removes filled sacks and pouches from racks, closes and locks same [and] [p]icks up sacks, pouches, and outside pieces, separates outgoing bulk mails for dispatch and loads mail onto trucks;"

(b) LIUNA Ex. 29 at 365, 369, in which Pete Garren testifies that dispatching is traditional mail handler allied labor;

(c) Tr. 1246-1320-1322 to the effect that in William Campbell's experience mail handlers label and dispatch pouches and sacks;

(d) Tr. 1946 (Bratcher), 2071-2072, 2085 (Strunk) concerning mail handlers labeling and dispatching in Phoenix;

(e) Tr. 1687 (Margino) concerning mail handlers dispatching parcel post in New York's Morgan Post Office;

(f) Tr. 1730 (Rogacki) concerning mail handlers dispatching parcel post in Utica;

(g) Tr. 1864 (Bratcher) concerning mail handlers dispatching preferential mail pouches in Portland;

(h) Tr. 1928-1929 (Bratcher) concerning mail handlers labeling and dispatching airmail in Chicago;

(i) Tr. 1464-1465 (Hanvey) concerning mail handlers performing all functions of Operation 105 at the Meadows facility and the New York BMC;

(j) Tr. 1467-1468 (Hanvey) concerning mail handlers labeling and dispatching pouches and sacks;

(k) Tr. 1524 (Barranca) concerning mail handlers labeling and dispatching in Operation 110 in Baltimore;

(l) LIUNA Ex. 26, 27, 28 to the effect that labeling is a mail handler "light duty" in those facilities;

(m) Tr. 400 to the effect that in Kenneth Lynn's experience mail handlers pouch, label and dispatch;

(n) LIUNA Ex. 3d in which the APWU conceded that labeling and dispatching were joint mail handler and clerk assignments in Operations 035, 040, 045, 050, 060, 070, 075, 100, 110, 115, 120, 125, 150, 160, 170, 175, 180, 185, 190, and 200.

The labeling and dispatching of sacks and pouches requires easily acquired skills, since labels are preprinted and prearranged in the pouch/sack racks and are inserted into the pouches/sacks when empty so that the pouches/sacks are pre-labeled for dispatch. Tr. 688 (Wolff), 1899 (Bratcher).

Finally, the APWU's underlying concerns with respect to labeling and dispatching are resolved by Implementation Criterion IIC ("Distribution Activities") and the asterisked notes on pages 3 through 14 of the Work Assignment Guidelines. Tr. 1189-1190 (Downes). Each one of the disputed functions is preceded by the asterisk, indicating that those functions may be performed by the distributors when such functions are integral to the distribution function.

(2) Operations 050/055 and 168/169

The APWU's objections concerning these operations are also directed to functions which are allied labor functions historically performed by mail handlers. The answer to those objections is that Implementation Criterion IIC in conjunction with the asterisked notes on pages 3 through 14 of the Work Assignment Guidelines resolve the basis for those objections. Each one of the disputed functions is preceded by the asterisk, indicating that the distributors may perform those functions where they are integral to the distribution function.

(3) BMC Missent/Malfunction Chutes

The APWU has offered little, if any, rationale for its challenge to the assignment of the Mail Handler Craft to tend missent/malfunction chutes in the Outbound Docks Operation and in the Sack Sorting/Rewrap/IPPs/Non-Zip Coding Operation. The disputed functions are allied labor functions of the type historically performed by mail handlers. The evidence in the record

establishes that mail handlers have been performing this work in practice. See Tr. 1461-1462 (Hanvey: New York BMC); 1910 (Bratcher: Memphis BMC); 1916 (Bratcher: St. Paul BMC).

Furthermore, the disputed functions are performed in "mail handler areas" of the BMC; the out bound docks and the sack sorting and rewrap section.

4. The Criteria: Results of the Analysis

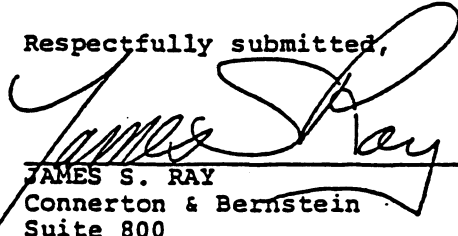
LIUNA submits that, with respect to each and every operation and function disputed by the APWU, the criteria listed in the Memorandum of Understanding as well as the other relevant factors discussed hereinabove, mandate affirmation by the Arbitrator of the appropriateness of the craft assignments made in R.I. 399.

V. CONCLUSION

The APWU's grievance is unmeritorious because (1) that Union conceded the propriety of the craft assignments made in R.I. 399 by its waiver of its right to bargain over those assignments, and (2) the now-disputed assignments were appropriate under the criteria of the Memorandum of Understanding on Jurisdictional Disputes and other relevant factors.

Accordingly, the APWU's grievance must be denied.

Respectfully submitted,



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