



National Postal Mail Handlers Union

John F. Hegarty
National President

Mark A. Gardner
Secretary-Treasurer

Jefferson C. Peppers, III
*Vice President
Central Region*

Samuel C. D'Ambrosio
*Vice President
Eastern Region*

Paul Hogrogian
*Vice President
Northeastern Region*

Bruce Z. Miller
*Vice President
Southern Region*

Rudy Santos
*Vice President
Western Region*

September 10, 2009

To: Local Presidents
National Executive Board
National/Regional CAD
Regional Dispute Resolution Committee Members
RI-399 National Advocates

From : John F. Hegarty, National President *JFH*
Mark A. Gardner, National Secretary-Treasurer *MS*
William J. Flynn, Manager, CAD *WJF*

Re: National Arbitration Decision on
Small Parcel and Bundle Sorter (SPBS)

We are pleased to report that the NPMHU has prevailed in its National RI-399 dispute concerning jurisdictional assignments on the Small Parcel and Bundle Sorter or SPBS.

In an award dated September 7, 2009, National Arbitrator Joseph Sharnoff concluded that the jurisdictional determination originally issued by the Postal Service in 1988 was consistent with the principles of RI-399, and that the Mail Handler Craft is the proper craft for performing all of the transportation, culling, dumping, and containerizing, and most of the sweeping (except as necessary for clerk rotation) on the SPBS. In a lengthy, 62-page decision, the Arbitrator agreed with the arguments presented by the NPMHU and the Postal Service, and rejected each argument put forward by the APWU. Among the arguments submitted by the APWU, the Arbitrator specifically rejected APWU's attempt to show that the Postal Service and the NPMHU acted in bad faith when they discussed jurisdictional assignments for the SPBS on a bilateral basis; the Arbitrator also rejected the APWU's attempt to analogize the SPBS to various letter and flat sorting machines. For these and other reasons, the Arbitrator held that the APWU grievance "was denied in all respects."

The case was one of the oldest pending before the National Dispute Resolution Committee when hearings began in November 2007. After seven days of hearings, briefs were submitted in July 2008, and the parties have been waiting 14 months for this final and binding decision. The next meeting of the

NDRC is scheduled for next week, at which point the next case scheduled for National arbitration will be discussed.

Attached is a copy of the Sharnoff decision on SPBS, as well as another copy of the briefs filed by all three parties.

Additionally attached, is a copy of the Memorandum of Understanding (MOU), Re: Application of National Jurisdictional Arbitration Awards, dated August 3, 2000. This document is controlling and you should immediately begin implementation of these procedures to deal with any outstanding/withheld cases dealing with SPBS.

Please disseminate this information as widely as you deem appropriate, and please do not hesitate to contact the National Office should you have any questions.

**NATIONAL JURISDICTIONAL DISPUTE
ARBITRATION: RI-399
JOSEPH M. SHARNOFF
ARBITRATOR**

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION

Cases Nos. K87C-1K-07702242
& H7C-NA-C69
Small Parcel and Bundle Sorter

AND

NATIONAL POSTAL MAIL HANDLERS
UNION

Appearances: For the U.S.P.S.: Patrick M. Devine, Esquire
Labor Relations Specialist

For the A.P.W.U.: Anton Hajjar, Esquire
O'Donnell, Schwartz & Anderson, P.C.

For the N.P.M.H.U.: Bruce Lerner, Esquire
Ramya Ravindran, Esquire
Bredhoff & Kaiser, P.L.L.C.

**OPINION AND AWARD
OF THE
ARBITRATOR**

This grievance was filed, on December 27, 1989, at Step 4 of the Parties' Grievance Procedure, by the American Postal Workers Union [APWU herein], representing the Clerk craft

employees of the United States Postal Service [USPS or Employer herein], in protest of the Employer's determination to award, as the "primary craft," certain work on the Small Parcel and Bundle Sorter [SPBS herein] to employees in the Mail Handler craft represented by the National Postal Mail Handlers Union [NPMHU herein]. This jurisdictional dispute was filed pursuant to the Dispute Resolution procedures of Regional Instruction RI-399. The USPS maintains herein that the original assignment of the work to the Mail Handlers, as the primary craft for the work in dispute, was appropriate. This position in favor of the original craft determination is supported by the NPMHU. The original APWU grievance was denied on February 26, 1991. The APWU appealed this denial to arbitration. The grievance appeal subsequently was referred to national arbitration in accordance with the tripartite procedures to which the Parties had agreed in 1992. Arbitration hearings were held on this matter on November 29 & 30, and December 13 & 14, 2007, and January 22 and 31, and February 19, 2008. The Parties and the Arbitrator on November 29, 2007, observed the operation of an SPBS at the Washington BMC. The USPS also presented a video entitled, "Lockhead Martin, Small Parcel and Bundle Sorter, Operator Training," Copyright 2007 USPS. Copies of the transcripts of each hearing day were received by the Arbitrator. The Parties filed post-Arbitration hearing briefs which were received by the Arbitrator on July 5 [USPS] and July 8 [APWU and NPMHU], 2008.

**RELEVANT PROVISIONS OF
REGIONAL INSTRUCTIONS -399
MAIL PROCESSING WORK ASSIGNMENT
GUIDELINES**

Dated February 16, 1979

The relevant provisions of Regional Instructions - 399, Mail Processing Work Assignment Guidelines, dated February 16, 1979, state, in relevant part:

I. Introduction

The enclosed "Mail Processing Work Assignment Guidelines," provide primary craft designations relative to the performance of specific mail processing work functions. Compliance with the principles contained therein is mandatory and applicable to the assignment of all categories of employees in the regular work force. These assignment guidelines are to be implemented at all postal installations which perform mail processing, in accordance with the implementation criteria outlined below and consistent with the terms of the 1978 National Agreement.

II. Implementation Criteria

A. Efficient and Effective Operation

All actions taken relative to implementation of these guidelines must be consistent with an efficient and effective operation. Consistent with this obligation, no postal installation shall declare employees excess, increase the number of employees and/or increase work hours solely as a result of this instruction.

B. Four (4) Hour Criteria

If there are four (4) or more hours of continuous work consisting of one or more work functions in one or more operations designated to the same primary craft, the performance of the work should be assigned to an employee of that primary craft.

C. Distribution Activities

Where the functions of obtaining empty equipment, obtaining unprocessed mail, loading ledges and sweeping are an integral part of the distribution function and cannot be efficiently separated, the entire operation will be assigned to the primary craft performing the distribution activity.

* * *

**RELEVANT PROVISIONS OF
ARTICLE 1, UNION RECOGNITION,
SECTION 5. NEW POSITIONS
of the USPS/APWU Agreement,
dated November 21, 2006, and
of the USPS/NPMHU Agreement
dated November 21, 2006**

**ARTICLE 1
UNION RECOGNITION**

* * *

Section 5. New Positions

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

be used in making this determination:

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

* * *

BACKGROUND

This jurisdictional dispute involves the Employer’s determination and award of the jobs on the Small Parcel and Bundle Sorter machine [SPBS herein].

Craft Determination for the SPBS

Frank Jacquette, during the relevant period, was employed by the USPS in Headquarters Labor Relations from 1983 to 2003, when he left the Agency with the exception of an assignment in the Regional Office in Chicago, from September 1988 to 1990, and in the Automation Department from 1990 to 1992. In the Automation Department, Mr. Jacquette was the Program Manager for Human Resources issues relative to the USPS’ automation program. Mr. Jacquette testified that he also served, as a Labor Relations Specialist in the Office of Contract Administration, as the “staff person who evaluated the equipment [SPBS] and recommended the determination as to what craft should have jurisdiction.” Mr. Jacquette also worked on the determination for the LMLM, Air Contract Data Collection System, and the Automated Parcel Sorter. During the relevant period, Mr. Jacquette reported to Bill Downes, Director, Office of Contract Administration, who, in turn, reported to Joseph Mahon, Assistant Postmaster General for Labor Relations.

Mr. Jacquette testified with regard to the process, which he performed pursuant to RI-399, of making the initial craft determination for the SPBS. According to Mr. Jacquette, based on the following considerations, he made the initial determination which he recommended to Mr. Downes, who accepted it. Mr. Jacquette testified, with regard to the process he followed :

Well, the first thing to do is since I'm usually involved in the first article testing the machine, you go out and look at the machine itself, watch the operation of it, watch the interaction of the different employees that are assigned to it during that test period. In knowing how the operation works and how it fits in with everything else, my approach was then to come back and look at 399 itself and say: okay, how does this equipment fit within the scheme of the existing 399 in terms of equipment that's already out there, a jurisdiction that's already been determined, to see if there's a fit or a good analogy that you can compare the equipment with.

And using that as a guideline, but not necessarily the final determining factor, I then look at all the duties/activities that are performed on that machine, how it works, who they interface with, what other operations are going on in the area, and how it's going to be staffed in deciding what makes the most sense in terms of existing craft jurisdiction, historical craft jurisdiction, as well as how as does [sic] this fit within today's grant scheme of operations, since as we know for the last 20 years there's been quite a change out on the mailroom floor. In this particular case I found that the mechanized parcel sorter was a pretty darned good match in terms of what the people have to do on the machine, what kind of skill level or skill requirement they have to have.

And if you look at that particular machine and you look at the different activities associated with it, a small parcel bundle sorter is just kind of a smaller version of a mechanized parcel sorter. So for the most part, the decision I made followed the decision for what had already been determined for a mechanized parcel sorter.

* * *

Final end product was very similar to what you have in the mechanized parcel sorter, that mail handlers are traditionally assigned the work of dumping, assigned the work of culling, that you have distribution clerks. In this case, they were doing distribution using a keypad, doing the distribution. And sweeping is traditionally the work of the mail handler craft. But as with many other mechanized equipment, you have to build some rotation in for the keyers, because they just can't key for eight hours.

And what again has traditionally been done is you often rotate the keyers down to the sweeping function to give them some relief from the keying, and they just rotate back and forth between the two. In the SPBS, clearly, mail handlers could do the sweeping; and, my determination was the primary craft for doing that. But then we build in the exception to allow those keyers to come down and get some

relief from their keying on the keyboard.

* * *

According to Mr. Jacquette, the First Article Test occurs “when the manufacturer puts out what they believe is the final version of the machine that’s ready for production, and they put it out into a real mail environment and they run it through its paces. There’s a lot of criteria that they have to beat and that determines whether or not the Postal Service will accept the equipment.”

RI-399

Mr. Jacquette testified, with regard to the provisions of RI-399, II Implementation Criteria, [quoted above, in relevant part], regarding, at II.A, “Efficient and Effective Operation”:

Well, if you’re going to have an effective and efficient operation [as stated in RI-399, at I. Introduction]. You want to do it with the least time necessary at the lowest cost, as well as taking a lot of operational aspects into consideration. And looking at the jurisdiction for this, particularly the question comes up, well, why didn’t you just bring in a clerk from somewhere else or do this or do that for rotation, but the reality of it is, on the mail floor these machines are not always smack dab in the middle of any other kind of operation. They’re usually off to the side because of their large footprint. So when you look at the efficiency of the operation, you don’t want to build in a lot of downtime or dead time relative to let’s say movement of people from A to B, as well as people on or off the machine itself.

* * *

Mr. Jacquette testified with respect to RI-399, at II.C. Distribution Activities:

Well, if those allied duties are an integral part of the distribution function cannot be officially [sic, efficiently] separated, then you would assign the entire operation to the primary craft performing a distribution activity, which in this case would be the clerk craft. However, in my opinion on the SPBS, you could teach each of those major elements and you could discretely and efficiently separate them and assign them to the appropriate craft.

* * *

Well, 1 through 4 to me were not integral with the distribution function. In my opinion, they could very clearly be separated and efficiently staffed by the two different crafts.

* * *

Mr. Amma testified, as follows, with respect to the "asterisk" appended to Operation 030 in RI-399:

The position of the Mail Handlers Union always was, during my tenure, and I believe it remains the same now, was that the asterisk basically -- the asterisk, and the note in certain other articles -- basically provide --

* * *

And which parallels the language in the implementation criteria. I think that is section 2C. It is listed as distribution activities.

They use slightly different words, but they both say that, for purposes of maintaining an efficient and effective operation, the Postal Service could assign work assigned to the mail handlers primary craft -- it didn't use that term, but that's basically how the assignments always went -- it could assign primary craft duties that were properly to be performed by the mail handlers to clerks performing the distribution, to the extent that such duties were integral to the distribution function, and could not be efficiently and effectively separated.

When sweeping, using one type of such allied labor -- and it would certainly apply to dumping, anything else, but using sweeping as one type -- our position always was, and I think it's the correct interpretation of the language of 399 and Gamzer's [sic, Gamser's] decision, was that if it got to the point where you could efficiently and effectively separate an allied duty function, such as sweeping, then that allied duty function had to be assigned to the primary craft, which, throughout 399, is the mail handler craft.

* * *

Letter Mahon to Biller
Dated April 7, 1988

The letter [which was undated but the Parties agreed was dated April 7, 1988], from Joseph J. Mahon, Jr., Assistant Postmaster General, to Moe Biller, President, APWU, set forth the Employer's proposed determination of the craft assignments on the SPBS. The same letter was sent

by Mr. Mahon to Joseph N. Amma, Jr., Director, Contract Administration, Laborers' International Union of North America, AFL-CIO, Mail Handlers Division [hereinafter referred to as the NPMHU, the successor organization]. This letter states, in relevant part:

This is in further reference to the deployment of the Small Parcel and Bundle Sorter.

It has been determined that this equipment will be staffed as follows:

- | | |
|--|---------------|
| 1. Transporting empty equipment. | Mail Handler |
| 2. Obtaining mail from staging area. | Mail Handler |
| 3. Dumping sacks, pouches or containers. | Mail Handler |
| 4. Culling by type/characteristic and rewrap of bundles. | Mail Handler |
| 5. Distribution of IPPs, newspapers, rolls, letter or flat bundles or slugs. | Clerk |
| 6. Inserting labels. | Clerk |
| 7. *Pulling containers. | Mail Handlers |
| 8. * Containerizing and transporting. | Mail Handler |

* Clerks will key for no more than 2 hours before rotating to other duties. When not keying, clerks will perform these duties. Personnel assigned to perform these duties in addition to the minimum number required to implement the rotation will be from the primary craft.

The position assigned to the keying function is Parcel Post Distributor, Machine, SP-2-439. This position was modified in 1985 to provide for operation of the Circular Bundle Sorter. In the near future, you will be provided with a modification to the position description that eliminates the reference to "circular," thereby recognizing that the current generation of equipment does not necessarily have to be constructed in a circular configuration.

If you have any questions regarding the foregoing, please contact Frank Jacquette . . . at your convenience.

* * *

Joseph Amma testified for the NPMHU that he was their Director of Contract Administration at the time of the above-quoted April 1988 letter. According to Mr. Amma:

This, basically, was the letter that was sent to the Mail Handlers Union indicating the craft jurisdiction determinations that had been made for the small

parcel and bundle sorter.

In that letter, it assigned the transporting of empty equipment, the obtaining of small mail from the staging area, the dumping of sacks, pouches, and containers, and the culling by type, characteristic, and rewrap of bundle, as well as the pulling of containers and the containerizing and transporting to the mail handlers as the primary craft.

And it designated the distribution of work and the inserting of labels to the clerks as the primary craft.

* * *

Well, you know, my concern when I saw the letter - - and I was certainly happy that the Postal Service followed the general guidelines of 399 of a historical nature and had assigned the allied labor to the mail handlers as the primary craft, I was concerned, however, with the asterisk notation next to pulling containers and containerizing and transporting, which indicated, in the asterisk note below it, that clerks would perform some of that clerk [sic, work] as a matter of the rotation.

It was my view that time that that basically cried out for some clarification, as it left considerable leeway, as written, for misapplication, perhaps, at the local level.

* * *

Mr. Amma testified that he contacted William Downes of the USPS and met with him and, perhaps, Mr. Vegliante and/or Mr. Jacquette, to discuss his concerns.

Mr. Jacquette testified that the reference, in the above-quoted letter, to the Parcel Post Distributor, Machine, SP-2-439, refers to the Standard Position Description 2-439, Occupational Code 2315-06, Craft Designation: Clerk, Title: Parcel Post Distributor (Machine). Mr. Jacquette also testified that the reference in the letter to the Circular Bundle Sorter, was a machine which "they cobbled together some equipment they contracted with a local manufacturer out there [Chicago]. And they put together a piece of equipment that was very similar to what eventually became the small parcel bundle sorter. And they [sic] reason they called it a circular sorter is because it was circular, literally circular in shape." According to Mr. Jacquette:

Essentially, it functioned almost in an identical manner. You sorted the same type of equipment across it. I mean, if you had stretched it out in a straight line or something and modified it a little bit on the input end, you'd have had what eventually became a small parcel bundle sorter. I also believe it may have only had

one induction station. I don't believe it had multiples.

* * *

Mr. Jacquette testified, with regard to the list of positions/crafts listed in the above-quoted letter:

Essentially what you have there is a summary of the various activities that take place on the small parcel bundle sorter that are distinct and apart. And next to each one is listed the primary craft performing that particular equipment. For example, transporting empty equipment, mail handler craft; that's nothing new.

That follows the historical precedent, obtaining mail from the staging area is assigned to the mail handler craft. That again is nothing new; dumping sacks, pouches or containers is assigned to the mail handler craft. That's nothing new. Calling [sic, culling] by type, characteristic and rewrap of bundles is assigned to the mail handler craft. That is not necessarily something new.

* * *

With regard to Mr. Jacquette's frequent use of the phrase "that's nothing new," Mr. Jacquette testified: "If you go back and look at 399, and if you look at the various operations throughout 399, you will find that those four particular activities are almost invariably assigned to the mail handler craft." Mr. Jacquette continued, with regard to the activities:

Distribution of the IPPs: newspapers, rolls, letters or flat bundles or slugs assigned to the clerk craft. Historically distribution of mail is assigned to the clerk craft. Inserting of labels is assigned to the clerk craft. Historically, clerks have been assigned responsibility of inserting labels.

The next one is pulling containers assigned to the mail handler craft. Again, pulling containers is not an unusual or new thing. Mail handlers' containers are pulled, the distribution is general [sic] done at that point. And that's the first step of preparing them for transportation to another part of the mail stream.

Containerizing and transporting is also primarily assigned to the mail handler craft, and that's also historical and that's all part of once the distribution is done and getting mail from point A to point B, that's traditionally mail handler work.

* * *

Mr. Jacquette explained his reference to pulling containers - the distribution generally is done:

Well, at that point, because the SPBS actually drops mail into containers. It doesn't put into someplace that normally, and it's not normally going downstream a little bit for some kind of secondary distribution of anything. It's usually going into a container, which at that point is moved to somewhere else into the mail processing system.

You could put it into wiretainers, BMC, containers, Gaylords, baby buggies, and those containers are all pulled off somewhere else for some kind of processing. So, this is not a question of okay, it comes down into this bin and now I'm going to sit here and I'm going to make some other kind of a secondary distribution. At that point, once it drops into that container, and of course I caveat that with different places around the country, who knows what they do? But for the most part, that's it. The distribution on that machine has been finalized.

* * *

Mr. Jacquette testified, with respect to staging the equipment:

Well, generally what will happen is you have to stage the equipment. They stage both half the equipment and they have to stage the full equipment. And the reason they stage it is because once the container starts to get full, they have to pull it away from the machine and replace it with an empty container. So what they'll do is they'll pull it. They'll set it aside at a staging area where the mail handlers will come along, and then they'll grab that container and then they'll move it off to the next step in the process.

* * *

Mr. Jacquette testified, with regard to the asterisk appended to Item 7 - Pulling containers and Item 8 - Containerizing and transporting:

Well, the note says, "Clerks will keep [sic, key] for no more than two hours before rotating to other duties. When not keying, clerks will perform these duties. Personnel assigned to perform these duties in addition to the minimum number required to implement the rotation will be from the primary craft."

Well that simply means in the practical application of how we handled staffing on SPBS that would mean that clerks who are doing the keying on the keypad, when it comes time to provide them some relief, they rotate down to the floor. And they then engage in the sweeping function of pulling full containers away from the machine for a period of time, and then rotate it eventually back up to their keying station.

* * *

With regard to whether the Clerks also should be rotating through the duties in Items 1 through 4, Mr. Jacquette stated:

You know, if you're going to rotate when we start crossing craft and things like that, you want to keep it to a minimum for obvious reasons. The easiest thing to do in this case was to simply rotate them down to the sweep side of the machine, and just limit them to that one function. It didn't necessarily make a whole lot of sense to be rotating them off.

First of all, you only rotate them across the craft to the extent necessary to provide that rotation. And the way the machine operates, the sweeping function is more than adequate to handle the amount of time that they have to spend down on rotation.

* * *

Letter Downes to Amma
Dated June 16, 1988

The following letter, dated June 16, 1988, was sent by William J. Downes, Director, Office of Contract Administration, USPS, to Mr. Amma, NPMHU. This letter states, in relevant part:

This is in further reference to our discussions regarding staffing of Small Parcel and Bundle Sorters (SPBS).

As we previously indicated, the Mail Handler Craft will be the primary craft for performing sweeping duties. However, clerk craft employees who will perform the keying function will be rotated to sweeping duties to provide relief from keying. Under normal conditions, the maximum number of clerks performing sweeping duties will be as follows:

<u>Keyers</u>	<u>Keyer/Sweepers</u>
1-2	1
3-4	2
5-6	3

If you have any questions regarding the foregoing, please contact Frank Jacquette .

...

* * *

Mr. Amma testified, with respect to the June 16, 1988, letter from Mr. Downes:

Well, this was the result of discussions that we had over the Union's [NPMHU] concerns . . . At any rate, our concerns at that time, as I said, were over the possible misapplication of the asterisk, as it applied to the pulling of containers and transportation. And our interest was in locking in how many clerks who were keying would also be used as keyer/sweeper.

And you will notice that here they use the term "sweeper," but what they are referring back to are the two items that were listed with the asterisk, the pulling and transporting. Sweeping was often used, I think as you mentioned earlier in your opening, sort of as a term of art that covered any number of activities.

At any rate, the nature of the discussions led to this letter, which clarified how many keyers would be involved, and, for specific numbers of keyers, there would be a certain number of sweepers who would be in that rotation, who would fill that rotation. And that beyond that, the sweeping functions would be performed by mail handlers.

* * *

You know, if there were three keyers, then two of the sweepers - - because of the necessity of the rotation for ergonomic purposes - - you know, would be clerks. And that is something that the Union - - you know, what - - we clearly were not happy about that. But it wasn't something that we objected to.

We understood the necessity for the ergonomic rotation. We made our objections, our objections, you know, were not favorably heard. We accepted it, once we got the understanding that there would be a - - that these clearly defined limits would be placed, so that at least in the field we could apply the settlement, and have some interest and have some likelihood - - we always had an interest - - but to have

some likelihood of having some uniform applications across the field.

* * *

Letter from Mr. Amma
to the [NPMHU's] Regional
Directors, Local General Presidents
and Local Union Officers
Re: Small Parcel and Bundle Sorter (SPBS)
Dated June 30 1988

The letter from Mr. Amma to the [NPMHU's] Regional Directors, Local General Presidents and Local Union Officers "Re: Small Parcel and Bundle Sorter (SPBS)," dated June 30 1988, states in relevant part:

For some time now, the Mail Handlers Division of the Laborers' International Union of North America, AFL-CIO, has been holding discussions with the USPS headquarters regarding the deployment of and, particularly, the staffing on the above-referenced machinery. Correspondence regarding deployment schedules and other issues were forwarded to the field on April 3, 1987 and January 20, 1988.

* * *

As it relates to the sweeping function, the parties have agreed that whenever management must place additional sweepers on the machinery without increasing the number of keyers, those additional sweepers will be from the primary craft, i.e., Mail Handlers. For example, if the SPBS is staffed with two keyers and management determines the need to increase the staffing in the sweeper position from one to two sweepers, the second sweeper must be a Mail Handler.

Settlement of this issue in advance of deployment of the machinery has been achieved in recognition of the continuing need of the Mail Handlers Division to secure assignments to the SPBS are in keeping with the general principles outlined in RI 399. Discussions regarding challenging the assignment of the keying function took into consideration the arbitrator's decision in HIM-NA-C14, which involved the assignment of clerk craft employees as mail processors to operate the OCR/BCS.

* * *

Small Parcel and Bundle Sorter

Procedures Handbook (DRAFT)

Dated August 8, 1988

The USPS developed a draft version of the Small Parcel and Bundle Sorter Procedure Handbook, dated August 8, 1988.

Letter Mahon to Biller

Dated September 13, 1988

The letter, dated September 13, 1988, from Joseph J. Mahon, Jr., Assistant Postmaster General, to Moe Biller, President, APWU; a comparable letter was sent on that date to Joseph N. Amma, Jr., Director, Contract Administration, NPMHU. The letter states, in relevant part:

For your information, enclosed is an advanced copy of the Small Parcel and Bundle Sorter Procedures Handbook, dated August 8, 1988. This is an interim handbook developed to provide operating guidelines to field personnel.

When the final version of the handbook is completed, you will be furnished a copy in accordance with the provisions of Article 19 of the collective bargaining agreement.

Also enclosed is the proposed deployment schedule, dated June 22, 1988.

* * *

APWU's Step 4 Grievance

Dated December 27, 1989

The Step 4 Grievance, addressed to Mr. Mahon, was filed by Moe Biller, President, APWU, dated December 27, 1989. This grievance stated:

In accordance with the provisions of Article 15, Section 3.D of the 1987-1990 Collective Bargaining Agreement, the American Postal Workers Union files a step 4 grievance of the following dispute:

1. Designation of the Mailhandlers Craft as the primary craft for sweeping and other allied duties integral to operation of the Small Parcel and Bundle Sorter.

2. The selection of a one and one-half hour rotation between keying and sweeping for Clerks operating the Small Parcel and Bundle Sorter.

The Union contends that these de[c]isions violate Article 19, 34, 14, 7, 1 and 37 as well as various handbooks and guidelines incorporated into the Agreement, including, but not limited to Regional Instruction 399.

* * *

Letter, Re: Small Parcel
and Bundle Sorter Guidelines
Final Draft, Handbook PO-430
Dated December 18, 1990

John E. Potter, Director Office of Distribution Operations and Networks, USPS, issued a letter addressed to Regional Directors, Operations Support, Subject: Small Parcel and Bundle Sorter Guidelines, Final Draft, Handbook PO-430. This letter stated, in relevant part:

This draft is being sent to you for final review and comments. Please forward all comments to my office to the attention of Harry McCulloch within two weeks of the above date. We have to clear this with the Union per Article 18. We hope to release this to the field by March 1, 1991.

Please keep in mind that this draft has already been through the PS 186 process. Your previous comments and recommendations have already been incorporated.

* * *

Draft Version of Small Parcel
and Bundle Sorter Handbook
PO-430
Issued January 1991

The Parties at the instant Arbitration proceeding agreed that the document "Small Parcel and Bundle Sorter Handbook PO-430," was a draft version which issued in January 1991. This document states, in relevant part:

Chapter 4
Conditions for Machine Operation

410 Staffing Guidelines

411 General

Normally when the operation is fully staffed, all craft personnel assigned to the SPBS keying and sweeping operations should be qualified machine operators/keyers. If there is a need to increase the staffing of the sweeping operation beyond the assigned sweepers, the additional staffing will be from the mailhandler craft. Mailhandler craft employees will be assigned to the "input conveyor" which requires dumping and culling of mail for the induction station and other related duties.

412 Staffing

The number of trained employees required to staff a SPBS depends upon the number of induction stations in use. Depending on the mail volumes, both available and anticipated, the mail characteristics, and the sort plan, the SPBS machine should have the following recommended maximum crew size (depending on the induction stations in use during normal operating conditions):

a. 4-Induction Stations - 12 positions

1. Keyers	-4
2., Sweepers	-2
3. Dumpers	-4
4. Cullers	-2

b. 5-Induction Stations - 15 positions

1. Keyers	-5
2., Sweepers	-2
3. Dumpers	-5
4. Cullers	-3

c. 6-Induction Stations - 18 positions

1. Keyers	-6
2., Sweepers	-3
3. Dumpers	-6
4. Cullers	-3

Note: Trained employees, above the crew requirements are authorized to provide relief for all types of absences.

420 Rotation

Keyboard operators rotate on a scheduled basis to other assignments. As a matter of day-to-day operating procedure, operators will not be required to key for more than two consecutive hours or sweep for more than one hour per rotation. Rotation assignments include keying, sweeping, and other related duties.

* * *

512 SPBS Operators

512.1 Keyers. The machine operator (keyer) performs a variety of tasks required to process mail using the SPBS. The machine operator reports to the supervisor responsible for the operation and has the following duties and responsibilities (but is not limited to):

- a. Qualifying on approved SPBS machine program.
- b. Starting and stop the equipment.
- c. Adjusting the keyboard position for efficient operation.
- d. Culling out non-processable items.
- e. Keying for a designated period and rotates.
- f. Clearing jams and resets induction line.
- g. Notifying supervisor or maintenance personnel when malfunctions or unsafe conditions occur.
- h. Remaining at console, keying until relieved.
- i. Performing other duties as assigned by supervisor.

512.2 Sweepers

512.21 General. The sweeper is responsible for removing and verifying mail from bins as scheduled, also emptying full bins immediately. Sweeping involves the physical act of replacing a container that has reached its preset weight limit (full) with an empty container. Sweeping operations vary from site to site and they must be appropriately detailed by the supervisor.

* * *

512.3 Dumpers and Cullers

512.31 General. Dumpers will dump mail received at the SPBS operation onto conveyors. This mail will generally be in sacks, pouches, hampers, or APC or BMC containers. Cullers will ensure that mail received by the keyers is within SPBS processing guidelines. Generally stated this means mail within the following range:

* * *

512.32 Dumping Procedures. The dumper will provide a steady and even flow of mail to the culling belt and/or keyer. Dumpers will also ensure that the conveyors feeding the induction stations are not overloaded with mail that could possibly fall off the induction station. Mail will be continuously dumped so as not to let conveyors run dry. Dumpers will elbow sacks to make sure that they are empty. They will also strip the labels from dumped sacks and finalized all empty equipment. The dumping area must have sufficient space for staging mail without blocking the aisles.

512.33 Culling Procedures. Cullers will take out all mailpieces that are deemed unacceptable for SPBS processing. These mailpieces will be deposited in a throw-off container for manual distribution. Cullers will ensure that the culling belt operation is appropriate (not too much, not too little). They will make sure that all bundled mailpieces are kept faced on the conveyor, to the degree feasible, so that the mailpieces are faced up when received by the keyers. Cullers will maintain the integrity of bundled mail even when it is culled out into nonmachineable bundles. All loose or unsecured bundles must be rebanded when the integrity of the bundles can be readily maintained. This applies to both machineable and nonmachineable bundles.

* * *

USPS' Response to Step 4
Grievance
Dated February 26, 1991

The Employer's Response, dated February 26, 1991, to the Step 4 Grievance, states, in relevant part:

Recently, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this case is two-fold: 1) whether management violated the Agreement by designating the Mail Handler Craft as the primary craft for sweeping and other allied duties on the Small Parcel and Bundle Sorter and 2) whether management violated the Agreement by selecting a one and one-half hour rotation between keying and sweeping for clerks operating the Small Parcel and Bundle Sorter.

It is management's position that no contractual violation can be established. The Union has not identified any provision of the Agreement which would prohibit the

designation of the Mail Handler Craft as the primary craft for sweeping and other allied duties. In the Step 4 appeal, the Union asserts that the sweeping and other allied duties are "integral to operation of the Small Parcel and Bundle Sorter," but has provided no evidence to prove that assertion. Further, the Union has not identified any provision which requires a specific, or a different, rotation.

It was in early 1988 that the Union was informed of management's decisions regarding the staffing and rotation on the Small Parcel and Bundle Sorter which are protested in this grievance. This grievance was not filed until December 1989. It is apparent that the Union's failure to grieve this matter at the time it first became aware of the staffing determinations protested herein contradicts its current position that a violation is involved.

In that no violation has been established in this matter, this grievance is denied.

Time limits were extended by mutual consent.

* * *

APWU's Appeal to
Arbitration
Dated February 28, 1991

The APWU, by letter dated February 28, 1991, appealed to arbitration the Employer's denial of the grievance at Step 4.

APWU Appeal to Arbitration the
Draft of Proposed Handbook PO-430
Small Parcel and Bundle Sorter
Dated May 6, 1991

The letter, dated May 6, 1991, from Mr. Biller, to Sherry Cagnoli, Assistant Postmaster General, states in relevant part:

In accordance with the provisions of Article 19 of the 1987 Collective Bargaining Agreement the American Postal Workers Union appeals to arbitration the draft of proposed Handbook PO-430 Small Parcel and Bundle Sorter.

* * *

Handbook PO-430
Small Parcel and Bundle
Sorter Guidelines
Dated December 1991

The final version of Handbook PO-430, Small Parcel and Bundle Sorter Guidelines, was issued dated December 1991.

Referral of the Grievance
to the Dispute Procedures
of RI-399
Dated December 15, 1992

By letter agreement, dated December 15, 1992, representatives of the USPS and the APWU referred the appeal of the grievance to arbitration to the dispute resolution procedures of RI-399. This letter agreement states, in relevant part:

* * *

Accordingly, we agreed to refer this matter to the National Dispute Resolution Committee (NDRC) as provided for in the April 16, 1992 Memorandum of Understanding between the parties. Additionally, the parties agreed to add this case to the special list of RI-399 cases which has been developed to assist in the administrative handling of this matter.

* * *

Operation of the SPBS

According to Patrick Killeen, who was employed, at the time of the introduction of the SPBS, as a General Supervisor. Mr. Killeen testified, with regard to the operation of the SPBS, as follows:

In layman's terms, it is a mechanized unit that sorts small parcels, irregular parcel post. It can sort parcels up to 20 pounds. It also sorts bundles of catalogs, periodicals, oversized flats, things of that nature.

What it does, as we saw yesterday [reference is to the Plant tour to observe the operation of an SPBS by the Parties and the Arbitrator on November 29, 2007],

the mail goes up an incline belt to an operator. The operator will key in a predetermined code to determine where it's going to go, depending on what sort plan they are running, and then it is taken by the conveyor belt and deposited in a container.

* * *

Mr. Killeen noted that the Employer is in the process of replacing the SPBS with a different machine, the APPS, which can sort heavier packages, as well as packages with greater variations in width, height and length, including smaller packages; the APS [Automated Parcel Sorter] is faster and automated with OCR [Optical Character Readers] capabilities, with no keying required.

Mr. Killeen described the flow of work on the SPBS, as follows:

The machine has a modular concept, so to fit into different sized building, you could have different shapes to make it fit into a building. Most of the ones that we have right now, in fact, I haven't seen a V shaped one in years, most of them are the straight modules, like we saw yesterday [referring to the Plant tour].

* * *

If you start there at the induction station [referring to a diagram of the SPBS from the Guidelines] the mail is inducted onto a belt. It's either hand placed there by a mail handler or we have dumping machine that's an automated machine that will dump the pallet or wiretainer, whatever the mail is in.

It goes up the chute there, up that belt, to the keying station, where the pieces are retrieved by the keyer who observes them, types in the zip code or whatever code is needed to move the mail depending on the sort plan they are working, and places it on the take away belt.

The take away belt will then put it onto the main conveyor, which will take it down to the chute and drop it into the chute. The chutes are on your right-hand side [referering to the diagram] They call it the output sort system. Then it's dropped into the container there.

* * *

Mr. Kileen testified, on cross-examination by the APWU, that the staging area on the sweep side of the SPBS [which was observed during the Plant tour] was about 20 to 30 feet away and that the dump staging area was directly behind the SPBS.

Mr. Jacquette testified, with regard to sweeping on the SPBS:

At the output slides on an SPBS, a little unlike other kinds, particularly letter machines, flat machines and stuff like that, you have the item that's been distributed comes down on the carriage equipment and it gets ejected into a container. Now, in some cases they had these tubs that looked like overgrown flat tubs. Most of the time what you would find however would go into a larger container such as a U-cart or a wiretainer or a BMC container, Gaylord or whatever you want to call them.

So sweeping in that sense, while sweeping in a lot of operations literally means grabbing the mail and pulling it off the machine, the mail pieces themselves, sweeping on an SPBS actually means pulling a container. You're pulling the container away from the chute and moving it on to the staging area or the transportation equipment as the case may be.

* * *

Mr. Jacquette testified that the employees doing the sweeping may use different containers into which the parcels come off the SPBS, including a Gaylord, a large cardboard container which sits on a pallet which is moved with a pallet jack, or a wiretainer or BMC container. Once the mail is brought to the staging area it is picked up by Mail Handlers who transport it to the next stage of operation. They may use a forklift to transport the container or, if it is a wheeled container, they may push it.

Mr. McCarthy agreed that the jurisdictional determination for the SPBS on April 7, 1988, was the first time that the USPS had "broken up the duties of mail processing equipment and divided it among crafts or between crafts." Mr. McCarthy agreed that, before the SPBS was deployed, the small parcels, bundles, IPPs, were processed by manual distribution, which he described, as follows:

In most cases they were done on what we refer to as bag rack operations which was basically you would have an inclined belt and the mail was dumped on it. You would have a series of bag racks. It was a two sided belt. You would have a series of bag racks in which you would have clerks look at the bundle, look at the flat, the bundle of flats, the rolls, checkbooks, boxes of checks, whatever. They would look at it, they would read the address, and then they would pitch it shall we say. They would throw it into the appropriate sack to correspond with the slip label for the sack with the address of the bundle, package, whatever the case may be.

* * *

Those sacks once they reached a certain - - once they were full, or again if there was a dispatch time that had to be met, there was a general expeditor assigned to the racks which is a level, which was a level six clerical position who was responsible to ensure that the mail was dispatched in a timely fashion, that the appropriate labels were on the sacks, and that you had the proper color coding on the labels to determine the delivery standard that's attached to that mail.

* * *

Mr. McCarthy testified that the Clerks physically removed the sacks from the rack and then the mail, if it was going to another operation in the building the sacks would be placed on a nutting truck and pushed into the aisle where a Mail Handler would remove it. The mail that was being dispatched out of the building would be dropped in a hole in the floor, a circular chute to the dock where it was received by a Mail Handler.

With regard to the operation of the SPBS, Mr. McCarthy testified as to its relation to the FSMs:

Well, first of all, they both operate from keypads versus keyboards. The position description used to staff the small parcel and bundle sorter is the parcel post distribution clerk machine. The dexterity portion of that training is exactly the same training that's used for FSM operators. That's phase one of the training for both of those position descriptions. The only thing that separates the two is the application portion.

You have a level five parcel post distribution clerk machine to do the non-scheme distribution on the SPBS. You also have a level six parcel post distribution clerk machine operator that does work on the SPBS when there's scheme distribution involved. You have two pay grades at that job depending on the nature of the distribution, similar to the fact we have two pay grades for - - we had two pay grades for FSM operators as well, whether they were doing scheme or non-scheme distribution.

* * *

With regard to sweeping on the SPBS versus on the FSMs, Mr. McCarthy stated:

It seems to be fairly similar. I'm not saying it's exactly the same because obviously you're dealing with a different type of a class, it's a different type of mail. The tubs used on the SPBS are a little bit larger than the typical flat tubs that would

be used on an FSM. But the basic theory of the machine is analogous with most mechanized distribution operations. The physical components may be somewhat different, but the overall operational theory of the machine is pretty much the same.

* * *

Mr. McCarthy stated that, on the FSMs, the employee who would remove the tub and place it into or onto a container/rolling stock was a Clerk. Mr. McCarthy stated that, "If it was a bag rack operation the dispatch of that mail would be a clerk under the direction of a general expeditor, which is a clerk."

RI-399: Operation 105
Mechanized Parcel Sorter

105 Mechanized	1. *Transporting empty equipment.	Mail Handler
Parcel Sorter	2. *Obtaining mail from staging area.	Mail Handler
	3. * Dumping sacks or containers	Mail Handler
	4. Distribution of parcel post through the use of parcel sorting machines.	Clerk
	5. Pulling and dispatching sacks or other containers.	Mail Handler
	6. * Containerizing and transporting mail to dispatch areas.	Mail Handler
	7. * Hanging sacks and inserting labels.	Mail Handler

* See asterisk below Operation 030.

* * *

[Asterisk below Operation 030]

* In offices where the tasks of obtaining empty equipment, obtaining unprocessed mail, loading ledges, sweeping and containerizing is an integral part of the distribution function, the entire operation is a function of the primary craft performing the distribution.

* * *

Mr. Jacquette testified, with regard to RI-399, Operation 105, Mechanized Parcel Sorter, as follows:

It has a list of seven duties. Really, the only distinction between the list that you see under 105 and what you see for SPBS is that there is a specific reference to culling in the SPBS jurisdiction determination.

Step 1: transporting empty equipment, again, assigned to the mail handler craft; obtaining mail from staging areas, mail handler craft; dumping sacks or containers, mail handler craft; distribution of the parcel post through the use of the machine is clerk, consistent with SPBS. Pulling and dispatching sacks or other containers also assigned to the mail handler craft is the primary, but with the asterisk because we have rotation.

Containerizing and transporting mail to dispatch areas, assigned to the mail handler craft, although there could be an exception based on what the operation is doing. Handling sacks and inserting labels assigned to the mail handler craft.

* * *

I relied on that as a strong guide for the SPBS.

* * *

Mr. Jacquette testified that the reason he did not include on the jurisdiction determination for the SPBS the asterisks for the first four duties was:

In my review of the ASPBS [sic, SPBS] it was really no need to have the asterisks for those particular operations, because the sweeping side was more than adequate to handle the staffing that we normally have on an SPBS for rotation.

* * *

Mr. McCarthy testified that he was not familiar with the operation of any Operation 105 Mechanized Parcel Sorter at any plant in the United States.

The Six Factors

Mr. Jacquette testified that he took into consideration the so-called Six Factors which initially were set forth in the Parties' 1975 Committee Jurisdiction Memorandum of Understanding and, subsequently, as part of the Collective Bargaining Agreements, at Article 1, Section 5. New Positions, A [The Arbitrator notes that the APWU objected to any reliance on, or consideration of, the Six Factors because those factors were established for use in developing *new* positions only.]. Mr. Jacquette testified that he utilized the Six Factors, as follows:

1. existing work assignment practices:

Well, it went back through 399, and I looked at current assignments and various mail processing operations. And to the extent that there was a reasonably good match between the activities and duties that were performed on an SPBS and another type or piece of equipment, I didn't see any reason, in most cases, I saw justification as it existed.

Because in many cases, that same jurisdiction for that same activity occurs throughout a lot of your mail processing operations. It's not just limited to one or two.

* * *

2. manpower costs:

I do not really give that a lot of weight or factor that in, because it wasn't really necessary for me to reach that. In this particular case, when I looked at everything else, it really wasn't necessary to look at the cost issue.

* * *

3. avoidance of duplication of effort and "make work" assignments:

I considered that primarily because if you were to look at some other things that could be done in terms of rotation in particular, you could probably build in a whole lot of downtime trying to travel people from one place to another to facilitate the rotation. For example, if you wanted to bring a clerk in from another operation to help the rotation and send that clerk off to another operation, you are probably

going to waste a lot of time with people walking around. And I don't say that pejoratively. It's just point A to point B, and they're not like right there next to another distribution operation in most cases.

* * *

4. effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis:

Same thing. On that particular criteria, the more compact you can keep the operation, the less travel time that's necessary. That makes it more efficient and effective.

* * *

5. the integral nature of all duties which comprise a normal duty assignment:

As I previously stated, in this particular operation, I think the various activities are pretty discrete and can be pretty effectively staffed with folks of different positions and different crafts.

* * *

6. the contractual and legal obligations and requirements of the parties:

399 is the contractual obligation to be followed, and that's what I believe I've done.

* * *

Standard Position Descriptions

Mailhandler - MH-04; Occupational

Code 2315-01XX, SPD No. KP-0008 (04-04-1994)

Parcel Post Distributor (Machine) PS-05

Occupational Code: 2315-06XX, SPD No. SP-2439
(04-04-1994)

Mr. Jacquette stated the following with respect to whether he also took into account in

making the initial jurisdiction determination the Standard Position Descriptions for the Mail Handler and Distributor/Clerk positions:

To some degree. I mean, once I got to the point where I thought that the, you know, mechanized parcel sorter was an appropriate comparison, then it naturally leads to what would be the appropriate positions to then staff it with. However, when it comes to jurisdiction determinations, the staffing the job was more of a classification issue than it is a jurisdiction issue.

And in this case, here you had a position description. You looked at the duties. The duties clearly fell into that position description and it was very easy for the staffing people to figure out that's the appropriate position to staff the machine with.

* * *

Settlement Agreement USPS
and the NPMHU, Re: MPLSM
Dated February 20, 1987

The Settlement Agreement, between the USPS and NPMHU, dated February 20, 1987, regarding the appropriate craft assignments on the Multi-Position Letter Sorting Machine [MPLSM herein] states, in relevant part:

On October 23, 1986, prearbitration discussions of case HIM-IJC-27836 were conducted between Joseph N. Amma and William J. Downes. The issue in this grievance involves the appropriate craft assignments for the sweeper function on the MPLSM., where an outgoing program is in operation and a 17-person crew rotation is being employed.

During that discussion, it was mutually agreed that the following would represent full settlement of the grievance:

1. When a 17-person crew rotation requires that an employee sweep for two hours and then enter the regular rotation schedule on the MPLSM, the employee performing the sweeper function shall be a clerk craft employee.
2. Where the MPLSM operation employs a dedicated sweeper to perform continuous sweeping and no other clerk craft functions, and said employee is not required to enter the regular rotation, the sweeping function will be performed by Mail Handlers.

3. Nothing in paragraphs (1) and (2) shall be construed to limit the requirements of Regional Instruction 399 where clerk craft tasks are associated with sweeper functions, or to alter the discretion of the employer to assign machine trainees to perform sweeper functions while they are completing their required sweeper training.

4. This settlement shall not be construed to dictate a preferred method of operations with regard to the sweeper function of the MPLSM.

* * *

RI-399, Operation 080-087,
MPLSM [Multi-Position Letter
Sorting Machine] Distribution

RI-399, Operation 080-087, MPLSM [Multi-Position Letter Sorting Machine] Distribution states, as follows:

080-087 MPLSM Distribution	Machine distribution of all classes of letters. Note: Allied labor is required is normally performed by clerks.	Clerk
-------------------------------	--	-------

[The Arbitrator notes that the APWU pointed out that the parties made the following revisions, dated June 15, 1979, to the original "note" in RI-399. The revised note state]s:

3. Operation 080-087 "Note" should read:
Allied labor required is normally performed by clerks
because of the rotation system employed.

* * *

Mr. Jacquette testified regarding the applicability of 080-087, as follows:

Sweeping on an MPLSM technically speaking could be done by mail handlers. Sweeping is sweeping for the most part. However, on an MPLSM you have 12 keyers, and all 12 of those keyers need to be rotated. And when you build in the time for rotating those keyers, you pretty much suck up all the time in the allied duties that you have available on that machine to be able to accommodate those keyers when they're rotating off. It's a lot different when you're trying to rotate 12

people.

* * *

No. We don't have 12 people on the SPBS. You might have four keyers at the most; and, with an MPLSM you've got a lot of separations, usually more separations than you have on here. And depending on the mail flow, you need folks back there and you need them to be able to be back there to sweep those binds on a regular basis and take it over to the appropriate tray that's going to be on the transport equipment. But just rotating those folks around is going to take up all the time you have in the back of the machine.

* * *

With regard to the difference between the physical act of sweeping on each machine, Mr. Jacquette testified:

Well, on an MPLSM you have pretty much all letters. I mean people refer to "chunkies" once in awhile for some of the stuff they try to shove through that machine over the years. But for the most part, you're talking one type of mail piece, and that's a letter. You've got the bins that are filled up. When the light goes off indicating that it's getting full, the clerk would have to go over, wrap the bundle of letters, and then take that and put it on a tray [sic, tray] that's usually on a tray cart that would be used to transport those trays down the road.

SPBS, you've got all kinds of nonsense coming off that machine. You've got small parcels. You've got medium-sized parcels. You have bundles of flats and magazines and what have you. And there again, unlike the MPLSM, the person on sweeping is not actually grabbing the mail in most cases. They're just actually pulling a full container away. So there's a big distinction between what a person sweeping on an MPLSM does versus what a person sweeping on an SPBS does.

* * *

James P. McCarthy, currently the APWU's Director of the Clerk Division, and, at the time of the events in question regarding the jurisdictional determination for the SPBS, National Business Agent, Clerk Division for the New England Region. He served the APWU on the automation excessing committee, as Chairman, which oversaw the roll out of automation and the impacts of automation in the Northeast Region and the Eastern Region. Mr. McCarthy testified that he was "involved in the implementation of the FSM program, starting with the 775 in the late 70's on up through the introduction of the 881 in the year 1981." Mr. McCarthy described the distinction between mechanized and automated equipment as follows:

Well, during the period of the 1970's and 80's, well into the 1990's, most of the distribution that was done in those days had evolved from manual distribution to mechanized distribution as it relates to letters and flats.

You had the early generation of LSMs, which were the binary system. That was converted over in the 70's to ZMT. Then you had the first phase of mechanized distribution of flat mail with the first generation flat sort, which was the 775. That subsequently was replaced in the early 80's with the 881. The LSM was the keystone of letter mail distribution from the 1970's, 1980's through the downsizing of the LSM program in the 1990's.

* * *

Automation began, the early stages of automation was when they first introduced what they called the Filco Ford OCR, which was basically an LSM body which they took the consoles out and they replaced them with two feeder systems. It was the first introduction of basically reading bar codes.

* * *

Mr. McCarthy testified that, subsequently, the USPS introduced remote bar coding:

Remote bar coding was an advanced technology in which they upgraded their automated mail processing equipment with what fundamentally is referred to as image lifting capabilities. What the machine could not read they would capture an image of the mail piece, electronically forward it to a remote coding center to which a clerk craft employee, a data conversion operator, would look at the image and input the appropriate key strokes on a computer keyboard to direct that mail to its appropriate location. They would put an electronic ID tag on the back of the letter so when it was reintroduced into the OCRs it would be able to be processed, so there would be a work hours savings downstream. . . . It eliminated the need for LSMs, letter sorting machines.

* * *

Mr. McCarthy testified that the elimination of the LSMs was a gradual process which occurred during the 1990s.

Mr. McCarthy testified, with respect to the operation of the LSMs, that they had three LSM machines:

In those days the LSMs were basically a binary keyboard system where you had ten keys, one row of keys. The machine - - heck, I'm going to say, let's say it was somewhere around 100 feet long maybe give or take a few. It had 12 keying stations or consoles in the front of the machine and in the back of the machine I believe it was basically six modules. The total amount of sortation bins in the back of the machine I believe was somewhere around 265 bins. . . .

* * *

Mr. McCarthy stated that the LSMs were staffed with Clerks. According to Mr. McCarthy, when he joined the program and while he was there, in the first 12 years, "it was staffed with basically 20 clerks. You would have 12 consoles, you would have 12 LSM operators, clerks, keying on the machine. You had two employees engaged in loading ledges."

Clerks. One clerk had the responsibility of consoles one through five and the 0400 bin. The second ledge loader was responsible for consoles 7 through 12. Then you would have approximately six employees involved in the back of the machine sweeping and doing various allied work around the machine, the stray letter belt, you know, doing some preliminary culls on the mail, you know, taking empty trays from the front of the machine to the back of the machine. They would involved in what we call hold out pulls, if we needed additional labels. It was a variety of duties throughout the LSM area, especially on the machines themselves that the clerks were involved in, as well as sweeping behind the machine.

* * *

Well, before you could - - before you could get assigned to the machine, above and beyond qualifying on the keyboard portion of the machine you also had to go through what we called sweeper ledge loader training. There were safety issues involved as well as what was required when you were in the back of the machine to sweep.

We were given on the job training that when we sweep the machine and you pull a bin the first thing you had to do was riffle the mail. We were instructed that the purpose of riffling the mail was to accomplish several things. Number one obviously was to ensure that the mail that was in that bin belonged there. Secondly if there was mail in the bin that wasn't there you had to - - you know, the operators, especially the experienced operators knew sufficiently based on the zip codes - - and again we were keying zip codes in those days, if there was a problem, (a) with the machine.

Sometimes you would have letters caught on the track that would trip mail into a bin that didn't belong there. Maybe the photocell that dealt with certain things wasn't working properly, or if you could tell by improper mail being in the bin based on the code that the operator would key that there may be a problem with the keyboard, which you would then bring to the attention of the supervisor who would bring over in those days an ZMT tech. You may have had some operators that had problems keying.

* * *

Mr. McCarthy stated that there could be other problems, e.g., "double taps". There was a mechanical tray management system - a mechanical take away system. "You had to pull the mail and after you did you verified, you would verify that everything was okay. You would take the mail and you would put it into the appropriate tray for that mail." They also had hold out mail for mail that did not go directly on the belt, with pie carts around the machine for mail that they were "staging and working on." "We would have hold out mail for specific manual operations that existed in the building that did not go in TMS." When it was dispatch time, the Clerk would come over and push the pie cart into the main aisle in the staging area. "They would affix a placard to the pie cart which would indicate what the mail was and where it was going." These were all Clerks. Mr. McCarthy stated that, even when the crew was 20, there were more sweepers than were necessary in order to accommodate the rotation of the keyers. "Absolutely. You needed 12 keyers, 2 ledge loaders and 2 sweepers to affect the rotation. That was 16 people. We always had 4 additional people assigned to a machine. . . . They would be sweeping and everything else. . . . In all the years I worked on the LSMs, in all my experience [i.e., throughout the Northeast and Eastern Regions], there was never a mail handler working on LSMs." Mr. McCarthy testified that, when the crew on the LSMs was reduced to 17, they actually needed 15 to effectuate the rotation. There always was one more and that individual always was a Clerk. According to Mr. McCarthy, the Clerks would push "nutting trucks," a heavy flatbed truck with six or eight wheels on which they would load up to 40 trays of letter mail, or pie carts, to the main aisle, where they would be taken away by Mail Handlers.

With regard to the OCR machines, Mr. McCarthy testified that when they first introduced the OCR, they took out all of the Clerk Operator consoles on an LSM and replaced them with an early version of the Filco Ford bar coding reading device. Before that, they had retrofitted SPLSMs, a single position letter sorting machine. The IRS in Boston was one of the first large mailers to use bar coding. Using the retrofitted SPLSMs, they were able to break down the various IRS sortations. Later they developed the Filco Ford OCRs. According to Mr. McCarthy, he had not seen anything like mechanized distribution with the early OCRs, like the LSMs and the FSMs. There was no "rotation" as identified in Handbooks regarding mechanized distribution. "As a matter of fact to the best of my knowledge the rotations were always worked out locally, if in fact there was rotations." The Filco Ford machine first came in the early 1970s. There were no Mail Handlers involved.

According to Mr. McCarthy, the single line OCR was the next development, the first generation of OCR after the Filco Ford, which, he believed, was introduced around the middle

1980s. Mr. McCarthy testified:

Again it was an early generation of OCR that could read only the bottom line, basically the bar code or the address. Those early machines did not have a great deal of capability or reading bar codes. They also introduced in conjunction with the single OCR the first generation mail processing bar code sorter, which again was a piece of equipment to process mail that had bar codes on it. They were introduced both roughly around the same time.

* * *

Well, there was two clerks assigned to the machine and fundamentally what they do is they work off the trays of mail, you know, whatever the case may be. They would riffle it, they would position it, they would pull out all the bulkies, certifieds, various other things, and they would feed the mail into the feeders. The machine would process it and the person, the sweeper would basically sweep the mail from the designated bins, do the riffling, place it into the appropriate container, tray, whether it was a pie cart or a standing rack, very similar to what was done in the LSMs in relation to sweeping and things of that nature.

* * *

Well, again in the installation that I worked in we had what we called the TMS system, where the trays would be taken away after the appropriate labels were put on it. And again you had hold outs. You would have pie carts and various other things where they would hold things out. And again if there was a dispatcher value that needed to be made or this mail would have to be processed in another operation, either manually or otherwise, you would have the hold outs.

* * *

Mr. McCarthy testified that the Clerks placed the mail on the TMS system or the pie carts. Once the pie cart was filled, it was pushed out to the aisle by a Clerk and taken away by a Mail Handler.

Mr. McCarthy testified that, on the single line OCR, on the mail processing bar code sorters, there were mail processors. "The mail came to that machine a variety of ways. It would come in on nutting trucks, it would come in in hampers, it would come in over trade lines. There was a variety of ways the mail was brought in." According to Mr. McCarthy, when the mail came in on the nutting trucks, 020B bypass mail which already had been bar coded, the "Mail Handler would bring the nutting truck into the area. They would usually stage it and as the mail was needed on the

machine the clerk went over and brought it to the machine.” Mr. McCarthy stated that there was no involvement of Mail Handlers within the “territory” of the automatic operation.

Mr. McCarthy testified that the next generation was the Multi-Line OCRs, which came in in the late 1980s. “There was an evolution, a more sophisticated machine that could read more than the bottom line. It could read up the address, you know, what they call the address hygiene. It would read up far enough. . . . It would spray bar codes on it so then they could finalize the piece.” With regard to the staffing, “It was the same on the multi-line OCRs as it was on the single line OCRs, two.” The Mail Processing Bar Code Sorters essentially were companion machines, which also was staffed with two Clerks. Mail went to the Mail Processing Bar Code Sorter essentially the same way it went to the single bar. “It either came in over the trade line, nu[tt]ing trucks, hampers . . . Those machines were usually for all in the same area.” The Clerks brought the mail to load it onto the Mail Processing Bar Code Sorters and Clerks took the mail off these machines and pushed it to a staging area where it subsequently was removed by Mail Handlers. The Delivery Bar Code Sorter was the next development, a “multi-functional machine. It can be used to sort what is referred to as the world, which constitutes outgoing distribution. It can sort two or three digit. It can sort to a five digit. It can read mail, it can do bar codes, it can do image lifting, and it can do DPS’ing [delivery point sequencing] of letter mail as well. It’s a very multi-functional machine, which in essence is the machine today that is the workhorse of letter mail automation.” According to Mr. McCarthy, the Delivery Bar Code Sorters are staffed with two Mail Processing Clerks. There is no difference regarding how the mail gets to, or is removed from, these machines.

Memorandum of Understanding

Dated June 4, 2007

The Memorandum of Understanding, dated June 4, 1987, signed by representatives of the USPS, the APWU, and the NPMHU, which MOU the Parties stipulated was in resolution of a law suit, states in relevant part with regard to the OCR:

1. The APWU accepts the Postal Service’s position on OCR Mail Preparation (Case H7C-3Q0C 16764). The Postal Service’s position, as articulated on February 20, 1990, is as follows:

The basic function of cutting bundles, traying mail and otherwise preparing mail for the OCR operations is primary craft work of the mail handler craft and should be so assigned when such work meets the criteria of Regional Instruction 399.

However, such duties may properly be performed by mail processors assigned to the machine as part of the staffing currently outlined in Handbook PO-411. For example, such duties may properly be

performed by the mail processors responsible for loading the ledge, if they are able to cut the bundles during that process. When an employee solely prepares mail and is not part of the regular rotation, the mail preparation function will be performed by mail handlers.

* * *

RI-399, Operation 088-089
Optical Character Reader Distribution

RI-399, Operation 088-089 Optical Character Reader Distribution, states, as follows:

088-089 Optical Character Reader Distribution	OCR machine distribution of all classes of letter mail. Note: See 080-087 note.	Clerk
---	---	-------

[The Arbitrator notes that the revised note to 080-087 states]:

- 3. Operation 080-087 "Note" should read:
Allied labor required is normally performed by clerks
because of the rotation system employed.

* * *

Mr. Jacquette testified with regard to the applicability ti the jurisdiction determination of the SPBS, of staffing on the Optical Character Reader Distribution, Operation 088-089, as follows:

The OCR when you talk about the old OCR, that's really just an MPLSM that's got an automatic feed system on it instead of a keyer position. And that decision came from Arbitration. It's not the decision that I would have made, but that was before my time.

* * *

Flat Sorting Machine (FSM 775) Guidelines
USPS Handbook PO-406, February 1984
Flat Sorting Machine (FSM 881) Guidelines

USPS Handbook PO-406, March 1993

Mr. McCarthy testified that the FSM-775 first was deployed in 1975; the principal function was mechanized distribution of flat mail. Prior to the FSM-775, flat mail was processed manually. Mr. McCarthy described the FSM-775 as a

... pretty big machine. It wasn't as large as LSMs. It had four keying stations. And again it was -- it was functionally very similar to an LSM, a letter sorting machine. You would have a ledge loader. It would take flat mail. They mapped to color, they mapped to various other things.

So they put it on a ledge for lack of a better term and that ledge would move the mail gradually into a pick off head, which is a vacuum head that would pick up the flat, drop it in front of the FSM operator, similar to the pick off head on the LSM would drop a letter in front of an LSM operator. The FSM operator had a keypad and they didn't use a keyboard but they used a keypad, a one hand pad to read the address and key in the appropriate information.

The flat would then go through a chute, drop into a, what I call a serpentine belt for lack of a better term, into a compartment in there, and as it moved around the machine, as it reached the appropriate tub, you know, there was a -- it would drop and slide down and be deposited in a flat tub.

* * *

Once it reached a density level in most cases they had photo cells like they had on the LSMs and in most cases it was a density trigger. When the tub filled to a certain level the clerk would make sure the appropriate label was in the flat tub and then he or she would take the flat tub, depending on the flat tub, and they would place it either on to, again a TMS system or they would put it in some of the various hold ups that were involved.

And again that depended on what the mail, where the mail was going, what time it had to leave, whether it was leaving the building, whether it was leaving the operation, going to a different operation. We had -- we had secondary operations in the general mail facility where we not only sorted to the world but we sorted to various zip codes around Massachusetts as well.

* * *

The Clerks placed the tubs in a variety of containers, most frequently a GPMC, general purpose mail container, which rolls. The GPMC would be pushed out into the aisle where it was

picked up by a Mail Handler. "The clerk had to label the container so the mail handler knew what was in there. Then the mail handler would take it wherever it was supposed to go." There was no involvement by the Mail Handlers within the physical perimeter of the FSM-775. The crew size "depended on what you called the cycle of the machine. It it was - - machines had five day and/or seven day schedules. If it was a five day machine the crew size - - they - - you authorized nine full-time duty assignments for a five day machine. . . . Consistent with the PO406." Mr. McCarthy stated with regard to the nine-person crew and the necessity for rotation:

On the FSM you had four keying stations. You had one ledge loader and you had two sweepers. You only needed six people to effect the rotation. The crew size on the FSM in most cases was seven. The additional two clerks that were part of the crew, they would work in the FSM area. You know, they would be used to bring the mail from the staging area. They may be used to take the mail out of the staging area. They would secure empty tubs, you know, consolidate them. They would take what we call the culled mail, the bulkies, whatever the case may be, and they would tray them up, put them in tubs, because they had to be sent over to manual distribution because they couldn't be worked on the machine. When the FSM 1000 came in they were sent over to the 1000 machine.

* * *

Mr. McCarthy testified with regard to the FSM-881 machines that they did not differ much from the FSM-775s:

. . . The 881's you had the option of putting two keying stations on one side and two keying stations on the other side. Fundamentally the machines were the same. They were more advanced machines technologically. You could - - they were much quieter machines. They replaced a lot of the metal with plastic and various other things. They went a little faster. They were easy to maintain. But fundamentally the principle of the machine was the same.

* * *

The staffing remained the same. It was the PO406A for the 775 applied to the 881, the same staffing criteria, the same staffing levels.

* * *

Mr. McCarthy described the next development as the FSM-1000, which were introduced in the early 1990's. "That was a machine that was designed specifically to handle non-machinable flats. By non-machinable I'm referring to flat pieces that are of such size they couldn't be run through the 881. So they created a special machine to deal with what they - - what we call bulky flats." Mr. McCarthy testified that it was not compatible because it was too large or too heavy or too wide. "The attempt was (a) to mechanize the distribution of mail. That machine pulled more and more volume out of manual distribution because all those bulky stuff had to go through manual distribution because it wasn't compatible with 881 at the time." The staffing was all Clerks and the PO406A was the staffing guideline for the FSM 1000 machine. The Clerks also performed all of the allied duties, with no involvement of Mail Handlers.

Mr. McCarthy agreed that the jurisdictional determination for the SPBS on April 7, 1988, was the first time that the USPS had "broken up the duties of mail processing equipment and divided it among crafts or between crafts."

Mr. Jacquette testified with regard to the applicability to the jurisdiction determination of the SPBS, of staffing on the Flat Sorting Machine, FSM-775 (1984), and Flat Sorting Machine, FSM-881 (1993), as argued by the APWU:

Flat sorter, you could, if I remember correctly, you could have up to four team positions. The flat sorting machine has a much more limited number of run-outs. There again, using the rotation you have to provide rotation for those keyers, and those keyers would rotate out and they would do the loading and the pulling of the flat tubs off the machine once they got full, again to accommodate the rotation.

* * *

That [the same maximum number of keyers on the SPBS as on the Flat Sorter Machine] would be, but you don't have - - first of all, you don't have the distance or the number of run-outs on a flat sorter that you would have on an SPBS.

* * *

So your rotation, similar to the MPLSM when you factor in the number of keyers versus the amount of allied duties, allied labor you would need, pretty much all of that allied labor time to be able to accommodate the rotation.

* * *

Mauro Licciardello, at the time of the hearing an Operation Specialist under Network Operations at Headquarters, testified that, from 1984 until about 1987, he worked at a mail

processing facility in Hicksville, New York, where he was a supervisor of mails or distribution and supervised automation, flats orders, manual distribution operations, the dock operations LSM operations and as sorter supervisor on weekends. He worked with the Flat Sorter machine 775, which came into the facility about six months after he started in mid-1984. He also worked in processing operations at Headquarters involved in developing policies, programs, methods, guides for the delivery bar code sorter. He helped put together the documentation to support the program for the customer service bar code servers that were deployed to the delivery units and GPS letters. He also was involved in about 1996-1997 with the FSM-1000. which added an optical character reader to the FSM-881, in about 1998-1999. "So the OCR that we added took care of both the functions of optical character reading, the address on the mail piece and also read bar codes on the mail piece." He developed the operational guidelines, strategies and policies for operating that machine. Subsequently, in late 1999, he worked on the deployment of the AFSM-100, an Automated Flat Sorting Machine - 100, "... it was the first piece of equipment we put out in the field to automate the sorting of flat-sized mail. Up until this point, the only machines we had out there were mechanized machines where we needed both manual participation and mechanized participation to sort the mail. With the AFSM-100, the mail was sorted primarily through automation.

Mr. Licciardello testified that he is the author of the USPS Publication 128, "Strategic Improvement Guide for Flats," September 1999. According to Mr, Licciardello, this publication states, in relevant part:

Mechanized flat sorting machines, FSMs, purchased and deployed since 1982 include the FSM-775, and the dates of deployment were 1982 to 1988. The FSM-775 converted to the FSM-881, and deployment dates of that were 1990 to 1992, and the FSM-1000 which was deployed from 1996 to 1998.

* * *

In 1992. the USPS began adding bar code readers, BCRs, to the FSM-881. This automation retrofit was completed in 1993. The USPS has contracted for OCR, automation capabilities, to the FSM-881, as well as BCRs to the FSM-1000.

* * *

Mr. Licciardello testified that, as a supervisor in Hicksville, Long Island, New York, in about 1984 to 1985, he supervised the operation of an FSM-775. Mr. Licciardello stated that they staffed that operation with seven Clerks:

We manned the four keying consoles. We had four positions at the keying

consoles. We had one ledge voter [sic, loader], and we had two sweepers.

* * *

That key[er] learned a keying coding strategy to code each mail piece that was in front of them on the ledge, and to sort the piece either to the three-digit or the five digit level of sort. And they had a key pad that they used to key in the proper key codes. It was a 10-digit key pad. That was the keyer.

Then the ledge loader was the person that stood next to the four consoles at the 775 and loaded the mail onto each console, stacking mail about six inches high, three stacks on each ledge. And that was their primary duty. And then the two sweepers took care of each side of the machine.

When the flat trays filled up in each bin, they would pull the trays out and put them on a conveyor belt where the mail was taken down to the end of the machine for dispatching.

* * *

The keyer picks up each mail piece. He has the proper code for it on his key pad. And then lays it into an induction belt that's right next to them, and the induction belt is just wide enough to fit the flat mail piece. And then once it's in there it gets triggered by the sensor and gets put into a main transporter belt. It moves into a main transport belt alongside of the machine, and it's conveyed down to the bin that it's destined for according to the code that was keyed.

* * *

The loader is just making sure that a sufficient volume of mail is on each ledge that the mailer has to key, so that they don't starve the keyers.

* * *

Right, there's three stacks of flats on each keying ledge. As the keyer finishes one stack of mail, the next one automatically moves over by the belt itself, by the sensor in the belt, moves the next stack over to the keyer, and he starts keying the mail from that stack. And what the ledge loader has to do is make sure there's three stacks of mail on each ledge at all times.

* * *

Most keyers are so proficient at what they're doing that they're able to pick up the piece, slap it down into the belt and key at the same time. So it's almost a

simultaneous function.

* * *

Yes. Well, the bar code reader and the optical character reader were not added until retrofitted the 775 into an FSM-881 with no retrofits made to the model FSM-775.

* * *

Mr. Licciardello testified, with respect to USPS LATS Sorting Machine (FSM 775) Guidelines PO-406, dated February 1984, at Chapter 3, "Conditions for Machine Operations," at 321, Positions, that it states: four keyers, two sweepers, and one loader. This Document also includes the following:

310 Staffing Guidelines

311 General

When available, all craft personnel assigned to the FSM operation should be qualified keyboard operators to allow for rotation and leave replacement (sick leave, annual leave, etc.).

* * *

322.2 Frequency

As a matter of day-to-day operating procedure, operators will not key for more than 45 minutes per rotation. Rotation schedules are determined based on the number of qualified operators assigned. Rotation assignments include sweeping and ledge loading.

* * *

Mr. Licciardello testified with respect to the rotation on the FSM-775:

Where I supervised, we maximized the time that we could use the keyers on the keying consoles, which meant that each keyer did key for 45 minutes before they moved on to another position. We rotated everyone, the seven people in the crew were rotated every 15 minutes, going to different positions, and 15-minute intervals.

...

* * *

Everyone in the crew is part of the rotation.

* * *

Mr. Licciardello testified with respect to the rotation on the FSM-881:

I did not directly ever supervise the machine when it became an 881, but I do know that the rotation was among -- we divided the machine into two crews of three on the 881 -- and had three people at the front end of the machine, and you had three people on the back end of the machine.

* * *

Mr. Licciardello testified that it was these three people on each side of the FSM-881, who rotated through the positions:

They rotated through the three positions on their side of the machine, so if you were at the front of the machine, you had a loader, who was a loader and sweeper. You have a two-task, and you had two keyers. Those three people rotated among themselves; and, then on the end of the machine, you have the same thing with the other crew of three. You had a sweeper-loader position, which is one position, two keyers, and they rotated among themselves.

* * *

Mr. Licciardello testified, with regard to an assertion by Mr. McCarthy that the proper crew for the FSM-775 for a five-day operation was nine employees, that the FSM-775 operation he supervised used a seven-employee crew; they had eleven employees who were trained to operate the FSM-775, but with "... more than seven trained, qualified operators, to take care of reliefs on the machine, take care of breaks, lunch periods when you would want to cover for lunch periods, days off and other events that could occur where you would lose a body or a couple of bodies. . . . We ran on a seven-day schedule." Mr. Licciardello explained the difference between the seven-employee crew he used on the machine and the nine-employee crew referenced in the document:

Okay, if they were not part of the crew on the machine and it was not their day off, they would work in the manual distribution fraud cases that were right near

the machine, or they would help tie out mail at the end of the machine.

* * *

They were not a part of the direct operation on the FSM-775.

* * *

Mr. Licciardello testified that he was familiar with the operation of the FSM-881 and that the difference between that machine and the FSM-775 was "they removed two of those four key consoles on the 775 and they installed them at the end of the machine on the opposite side." Mr. Licciardello testified:

They did that for several reasons. One is it allowed us to sort multiple sort programs simultaneously on the flat sorter, as opposed to just running on[e] sort plan at a time. And we could assign bins on one side of the machine from one sort plan and the 50 bins on the other side of the machine could be assigned to the other sort plan.

Or, you could divide the machine up into quadrants, 25 bins apiece, and have four sort plans assigned - - two on each side. And 25 of the bins on one side would be for one sort plan; and the next 25 would be for another sort plan. And the same thing on the other side. Each set of 25 bins would be assigned one sort plan.

* * *

Yes, we reduced the staffing on the machine from a crew of seven to a crew of six.

* * *

Mr. Licciardello testified that he disagreed with the testimony of Mr. McCarthy who stated that the staffing remained the same for the FSM-881 as had been the staffing for the FSM-775. According to Mr. Licciardello, he had a crew of six on the FSM-881.

Mr. Licciardello testified, with respect to the documentation for the Flat Sorting Machine-881, Handbook PO-406-A, March 1992, sweeper duties, at section 581.5, which states:

581.5 Sweeper Duties

581.51 Bins

Withdraw and verify mail from the bins, as scheduled. Empty full bins immediately. Avoid premature (uneconomical) sweeping, except when dispatches are necessary. Check low density bins periodically. Verify designated separations; remove errors and uncanceled mail. Properly prepare errors removed for further distributions. If excessive errors are detected, advise the supervisor immediately.

* * *

Mr. Licciardello testified, with respect to the statement "Withdraw and verify mail from the bins as scheduled.":

It means they should periodically check the mail in the flat trays at each bin for accuracy, and to remove errors as they find them. And errors would mean that the address on the mail piece does not match what's on the display unit above the bin, which tells the operator the mail that should be going in that bin. So, in other words if the display unit is showing Hicksville, New York, in the mail, and the tray is Huntington, New York, they're supposed to be removing that mail from the tray and putting it inside for manual distribution or to be rekeyed.

* * *

Mr. Licciardello testified, with regard to the sweeping duties:

Well, in addition to verifying the mail in the trays, they waited until the trays were at least two-thirds full, which was just about a handle of a tray at the bottom of the handle. And at that point, they would remove the tray from the bin, and behind them they would put it onto a conveyor belt that would take that mail down to the dispatch unit.

That was one of the other duties. Another was to clear any jams that occurred at the bin where the mail did not smoothly go down the shoot [sic, chute] into the flat tray at the bin. If it was stuck in the chute or something was jammed in the machine, they were to press an emergency stop-switch on the machine and clear that jam according to the appropriate steps that they were trained on.

* * *

Mr. Licciardello testified that there was a sensor on the machine which had lights that would blink if the bin was full.

Mr. Licciardello testified, with respect to the differences between the SPBS operation and that of the Flat Sorter Machines, that: the SPBS processes bundles and parcels, the FSM processes single-piece flats; they both use keypads, the keypad on the SPBS is similar to that used on the FSM, but he was not aware whether the keying rules were the same; the containers used on the FSM were flat trays only, the SPBS uses sacks, wire-tainers, pallet boxes, as well as flat trays, although he never saw a flat tray used in an SPBS operation; he was not aware of any verification being performed on the SPBS, while there were frequent verifications performed on the FSMs; there were no dedicated sweepers on the FSMs, neither the -775, nor the -881.

THE POSITIONS OF THE PARTIES

The extensive position of each Party is set forth in their respective post-Arbitration hearing briefs, which are incorporated by reference herein.

DISCUSSION

This jurisdictional dispute, which arose under the Dispute Resolution Procedures of Regional Instruction - 399, after processing as a grievance, involves a protest filed by the APWU of the jurisdictional determination of the primary craft, regarding the staffing of the SPBS, to employee's represented by the Mail Handlers as the primary craft, for all positions with the exception of the two awarded to the Clerks represented by the APWU as the Primary Craft, the "5. Distribution of IPPs, newspapers, rolls, letter or flat bundles or slugs." and "6. Inserting labels.", and the duties of "7. Pulling containers." and "8. Containerizing and transporting." to the Clerks to the extent required for purposes of the rotation when they are not keying. The APWU asserts that the USPS acted contrary to the controlling Guidelines of RI-399, and in a manner which was arbitrary, unreasonable and an abuse of discretion, insofar as the Employer failed to award to the Clerks, as the Primary Craft, the latter two duties, Nos. 7 and 8, and the following remaining duties: "1. Transporting empty equipment.", "2. Obtaining mail from staging area.", "3. Dumping sacks, pouches or containers.", and "4. Culling by type/characteristic and rewrap of bundles.". The APWU acknowledges that, as the Party challenging the USPS's jurisdictional determination, it has the burden of proof, by a preponderance of the evidence, to demonstrate that this assignment was improper under the principles set forth in RI-399 and, to the Six Factors [noting the APWU's objection to their relevance]. With regard to the "burden of persuasion" under the dispute resolution procedures of RI-399, Arbitrator Eischen stated in the Opinion and Award by Arbitrator Dana Eischen, Case No. H7C-NA-C 32, Primary Craft for Spreading the Mail to Carrier Cases" [Eischen Award, herein]: "It is not open to reasonable debate that the Party contesting a primary craft designation under RI-399 *bears the overall burden of persuasion, by a preponderance of record*

evidence, that the Postal Service failed, in the words of Arbitrator Gamser in the seminal case upholding the validity of RI-399, ‘to abide by the [six] guidelines provided in the [1975] Memorandum [establishing the Committee on Jurisdiction] or otherwise.’ Gamser Award, p. 16.” [Emphasis supplied.] This Arbitrator, in the Opinion and Award, Case No. Q90M-4Q-J 94021635, “Letter Mail Labeling Machine, LMLM,” [LMLM Award, herein] at pages 54-58, reviewed and analyzed the Eischen Award and that discussion hereby is incorporated by reference. This Arbitrator noted therein Arbitrator Eischen’s discussion in his “Conclusion” regarding the use, in jurisdictional determinations, of the so-called Six Factors, : “In summary, the Postal Service’s decision to assign mail handlers as the primary craft for the spreading of mail to letter carriers is fully consistent with RI-399

The Arbitrator concludes, for the following reasons, that the jurisdictional determination of positions for the SPBS by the USPS was reasonable, made in good faith, and, in all material respects, was consistent with: the Implementation Criteria of “an efficient and effective operation,” at RI-399, II.A; the “Post Office - Primary Craft Designations” of RI-399; and, to the extent that they may be considered appropriate for consideration of/reliance upon, in the context of a jurisdictional determination, the Six Factors of the Parties’ 1975 Committee Jurisdiction Memorandum of Understanding and, as part of the current Collective Bargaining Agreements, at Article 1, Section 5. New Positions, A [the Arbitrator notes the APWU’s objection to reliance on the Six Factors in these initial jurisdictional determinations]. The Arbitrator, for the reasons, discussed below, is not persuaded that the APWU has met its burden of demonstrating, by a preponderance of the evidence, that the USPS’s initial jurisdictional determination of staffing for the SPBS was arbitrary, unreasonable, contrary to the guidelines of RI-399 or, to the extent they may be applicable, the Six Factors, nor is the USPS’s determination found to constitute an abuse of the discretion of the USPS to make such initial determinations, subject to the grievance/RI-399 review process.

The Arbitrator finds that the nature of the work involved in this proceeding is as testified to by Patrick Killeen, and by Frank Jacquette, the Management official who made the initial jurisdictional determination recommendation which, with certain revisions, became the determination at issue in this proceeding. Mr. Killeen, whose testimony is summarized above and credited and relied upon herein, testified that the SPSB is a mechanized unit that sorts small parcels, irregular parcel post, bundles, periodicals, oversized flats, up to 20 pounds. The Operator, keyer or distributor - work which was determined to be Clerks as the primary craft - keys in a predetermined code to determine where the item is going to go, depending on what sort of plan they are running, and the item is taken by the conveyor belt from which it is removed and deposited in a container. Mr. Killeen stated that the SPBS has a modular concept so that it can fit in different sized buildings/spaces, most of which he has observed are in a straight line. Each piece of mail/bundle/irregular parcel post/etc., is placed on a belt either by hand by a Mail Handler - awarded the work as the Primary Craft - or dumped by an automatic dumping machine that dumps a wiretainer, pallet, whatever the mail is in. The mail proceeds up the chute/belt to the keying station, where the Operator/Clerk retrieves the piece, observes the zip code or other code being used pursuant to the sort plan, and places the mail piece on the takeaway belt. The takeaway belt moves the piece to the main conveyor, which takes the piece down to an appropriate chute and drops it into that

chute, which is referred to as the output sort system. From the chute, the piece drops into a container.

Principles of RI-399

The Arbitrator notes that the RI-399 Implementation Criteria, at II.A, Efficient and Effective Operation, states, in relevant part: "All actions taken relative to implementation of these guidelines must be consistent with an efficient and effective operation." In the Arbitrator's judgment, for the following reasons and based on Mr. Jacquette's reasoning summarized/quoted above, Mr. Jacquette's evaluation of the operation of the SPBS for purposes of establishing his initial recommendation for the jurisdictional determination - i.e., the Employer's *intent* in making the particular jurisdictional determination - was in accordance with the above-quoted guideline concerning an "efficient and effective operation." The Arbitrator further concludes, for the same reasons, that the SPBS operation, *as implemented* at the time, resulted in an operation which met the purpose of these guidelines. That is, while in a hypothetical case, it may be that, due to unforeseen circumstances or the "law" of unintended consequences, the USPS's *intent* in making a particular jurisdictional determination fully is in accord with the guidelines, the *actual implementation experience* may not result in an operation which is in accord with the guidelines. The Arbitrator is not persuaded that, in the instant case, it has been demonstrated that either the *intent* or the *actual implementation/resulting operation* in any significant way was inconsistent with the guidelines for an "efficient and effective operation," or otherwise unreasonable in the context of the RI-399 principles and guidelines, or constituted an abuse of discretion which would be subject to setting it aside.

The Propriety of the Jurisdictional Determination for the SPBS

The Arbitrator finds, for the reasons stated by Mr. Jacquette at pages _____, that he reasonably and appropriately analyzed the duties which were required to operate the SPBS and that he properly assigned these duties to the appropriate primary craft, with due respect for the operations described in RI-399, e.g., Operation 105, Mechanized Parcel Sorter, and the need to have the clerks who perform the keying also responsible, solely for rotational purposes, for the performance of some of the other duties noted on the SPBS jurisdictional determination, i.e., nos. 7 and 8, by means of an asterisk and an explanatory statement:

- | | |
|--|--------------|
| 1. Transporting empty equipment. | Mail Handler |
| 2. Obtaining mail from staging area. | Mail Handler |
| 3. Dumping sacks, pouches or containers. | Mail Handler |
| 4. Culling by type/characteristic and rewrap of bundles. | Mail Handler |

- | | |
|---|---------------|
| 5. Distribution of IPPs, newspapers, rolls,
letter or flat bundles or slugs. | Clerk |
| 6. Inserting labels. | Clerk |
| 7. *Pulling containers. | Mail Handlers |
| 8. * Containerizing and transporting. | Mail Handler |

* Clerks will key for no more than 2 hours before rotating to other duties. When not keying, clerks will perform these duties. Personnel assigned to perform these duties in addition to the minimum number required to implement the rotation will be from the primary craft.

* * *

The Arbitrator is not persuaded that the APWU has met its burden of demonstrating that this jurisdictional determination was improper under the principles and guidelines of RI-399. As pointed out by the NPMHU, a position which was supported by the USPS, the other duties of the SPBS, nos. 1 to 4, which had no asterisk and explanatory statement, and which were assigned to the Mail Handlers as the Primary Craft, as well as the two additional duties, Nos. 7 and 8, which have the asterisk and explanatory note, properly were assigned to the Mail Handlers as the Primary Craft, with the Clerks also assigned for rotational purposes only. The NPMHU, and the USPS, noted that the assignment of these duties, nos. 1, 2, 3, 4, 7 and 8, throughout the operations described in RI-399 routinely and repeatedly have been assigned to the Mail Handlers as the Primary Craft, albeit in some instances with *the asterisk* at operation 030 appended, which states:

* In offices where the tasks of obtaining empty equipment, obtaining unprocessed mail, loading ledges, sweeping and containerizing *is an integral part of the distribution function*, the entire operation is a function of the primary craft performing the distribution. [Emphasis supplied.]

* * *

The Arbitrator finds that Mr. Jacquette, and the USPS, properly analyzed the operation and made an appropriate jurisdictional determination that, in the particular circumstances of the SPBS operation, the "tasks of obtaining empty equipment, obtaining unprocessed mail, loading ledges, sweeping and containerizing," *were not* "an integral part of the distribution function." Compare, this Arbitrator's findings and conclusions, at pages 59-61, of the so-called LMLM Award. The Arbitrator is not persuaded that the type of close integration of functions which were found with respect to the LMLM operation are present with regard to the SPBS operation. The Arbitrator herein also finds that the USPS properly determined, based on the particular facts of the SPBS operation, that the two duties, nos. 7 and 8, which were assigned to the Mail Handlers as the Primary Craft, also should be assigned to the Clerks to perform for rotational purposes consistent with the asterisk and

explanatory note set forth in the jurisdictional determination for the SPBS: “* Clerks will key for no more than 2 hours before rotating to other duties. When not keying, clerks will perform these duties. Personnel assigned to perform these duties in addition to the minimum number required to implement the rotation will be from the primary craft.” In this instance, the USPS properly concluded that the employees required to perform these additional duties, nos. 1, 2, 3, 4, 7 and 8, “in addition to the minimum number required to implement the rotation” were to be from the Primary Craft, i.e., the Mail Handlers.

The Applicability of RI-399
Operation 105
Mechanized Parcel Sorter

RI-399: Operation 105, Mechanized Parcel Sorter, states, as follows:

105 Mechanized Parcel Sorter	1. *Transporting empty equipment.	Mail Handler
	2. *Obtaining mail from staging area.	Mail Handler
	3. * Dumping sacks or containers	Mail Handler
	4. Distribution of parcel post through the use of parcel sorting machines.	Clerk
	5. Pulling and dispatching sacks or other containers.	Mail Handler
	6. * Containerizing and transporting mail to dispatch areas.	Mail Handler
	7. * Hanging sacks and inserting labels.	Mail Handler

* See asterisk below Operation 030.

* * *

[Asterisk note below Operation 030]:

* In offices where the tasks of obtaining empty equipment, obtaining unprocessed mail, loading ledges, sweeping and containerizing is an integral part of the distribution function, the entire operation is a function of the primary craft performing the distribution.

* * *

The Arbitrator finds that Mr. Jacquette and the USPS, in establishing the staffing structure for the SPBS jurisdictional determination, appropriately determined that only two of the six additional duties, i.e., nos. 7 and 8, would be required to provide sufficient alternate duties for the Clerks to perform, for rotational purposes, when they were not performing their Primary Craft duties of 7. keying, and 8. inserting labels. Mr. Jacquette testified, with regard to RI-399, Operation 105, Mechanized Parcel Sorter, as follows:

It has a list of seven duties. *Really, the only distinction between the list that you see under 105 and what you see for SPBS is that there is a specific reference to culling in the SPBS jurisdiction determination.* [Emphasis supplied.]

Step 1: transporting empty equipment, again, assigned to the mail handler craft; obtaining mail from staging areas, mail handler craft; dumping sacks or containers, mail handler craft; distribution of the parcel post through the use of the machine is clerk, consistent with SPBS. Pulling and dispatching sacks or other containers also assigned to the mail handler craft is the primary, but with the asterisk because we have rotation.

Containerizing and transporting mail to dispatch areas, assigned to the mail handler craft, although there could be an exception based on what the operation is doing. Handling sacks and inserting labels assigned to the mail handler craft.

* * *

I relied on that as a strong guide for the SPBS.
[Emphasis supplied.]

* * *

Mr. Jacquette further testified, with respect to the applicability of the RI-399 jurisdictional determination for Operation 105 and the position descriptions for the two positions:

To some degree. I mean, once I got to the point where I thought that the, you know, mechanized parcel sorter was an appropriate comparison, then it naturally leads to what would be the appropriate positions to then staff it with. However, when it comes to jurisdiction determinations, the staffing the job was more of a classification issue than it is a jurisdiction issue.

And in this case, here you had a position description. You looked at the duties. The duties clearly fell into that position description and it was very easy for the staffing people to figure out that's the appropriate position to staff the machine

with.

* * *

Mr. Jacquette testified further that the reason he did not include on the jurisdiction determination for the SPBS the asterisks for the first four duties was:

In my review of the ASPBS [sic, SPBS] *it was really no need to have the asterisks for those particular operations, because the sweeping side was more than adequate to handle the staffing that we normally have on an SPBS for rotation.*
[Emphasis supplied.]

* * *

The Arbitrator finds that the asterisk to which Mr. Jacquette referred in this testimony was the asterisk and explanatory note which Mr. Jacquette and the USPS actually included in the jurisdictional determination for the SPBS operation and not *the asterisk* appended to Operation 030 in RI-399. The Arbitrator notes that *the asterisk* appended to Operation 030 in RI-399, which is referred to in Operation 105, which is the Operation upon which Mr. Jacquette relied heavily. The Arbitrator finds, nevertheless, that *the asterisk* appended to Operation 030, and which also is appended to Operation 105, is not applicable to the SPBS operation because Mr. Jacquette reasonably concluded that, with respect to the relationship between the distribution duties, nos. 5 and 6, on the SPBS, and the other duties on the SPBS, nos. 1, 2, 3, 4, 7 and 8, such other duties were not “an integral part of the distribution function”.

The Arbitrator notes that Mr. Jacquette testified, with regard to sweeping on the SPBS:

At the output slides on an SPBS, a little unlike other kinds, particularly letter machines, flat machines and stuff like that [i.e., the machines relied upon by the APWU], you have the item that’s been distributed comes down on the carriage equipment and it gets ejected into a container. Now, in some cases they had these tubs that looked like overgrown flat tubs. Most of the time what you would find however would go into a larger container such as a U-cart or a wiretainer or a BMC container, Gaylord or whatever you want to call them.

So sweeping in that sense, while sweeping in a lot of operations literally means grabbing the mail and pulling it off the machine, the mail pieces themselves, sweeping on an SPBS actually means pulling a container. You’re pulling the container away from the chute and moving it on to the staging area or the transportation equipment as the case may be. [Emphasis supplied.]

* * *

The Arbitrator also notes that Mr. Jacquette testified that the employees doing the sweeping on the SPBS may use different containers, including a Gaylord, a large cardboard container which sits on a pallet which is removed with a pallet jack, or a wiretainer or BMC container. Mr. Killeen testified that the staging area on the sweep side of the SPBS [on the SPBS observed during the Plant tour] was about 20 to 30 feet away and that the dump staging area was directly behind the SPBS. In the Arbitrator's judgment, these considerations support the position of the USPS, and the NPMHU, that the additional duties on the SPBS, nos. 1, 2, 3, 4, 7 and 8, are not "an integral part of the distribution function" such that they appropriately did not have to be assigned to the Clerks as the Primary Craft. The Arbitrator does not agree with the APWU, therefore, that the USPS's limitation in the jurisdictional determination for the SPBS, of assignment to the Clerks, as the Primary Craft, only duties, nos. 5 and 6, and of assignment to the Clerks only the additional duties, nos. 7 and 8, and only for rotational purposes, was improper under RI-399.

The Arbitrator concludes that the other Operations in RI-399 upon which the APWU relies as support for its position that the Clerks should have been assigned all duties as the Primary Craft, are distinguished, for reasons addressed by Mr. Jacquette.

RI-399, Operation 080-087,
MPLSM [Multi-Position Letter
Sorting Machine] Distribution

RI-399, Operation 080-087, MPLSM [Multi-Position Letter Sorting Machine] Distribution states, as follows:

080-087 MPLSM Distribution	Machine distribution of all classes of letters.	Clerk
-------------------------------	--	-------

Note: Allied labor is required is normally performed by clerks.

The Arbitrator notes that the APWU pointed out that the parties made the following revisions, dated June 15, 1979, to the original "note" in RI-399. The revised note states:

3. Operation 080-087 "Note" should read:
 Allied labor required is normally performed by clerks
 because of the rotation system employed.

* * *

Mr. Jacquette testified, with respect to the differences between the operational manning requirements for the MPLSM and the SPBS:

Sweeping on an MPLSM technically speaking could be done by mail handlers. Sweeping is sweeping for the most part. However, *on an MPLSM you have 12 keyers, and all 12 of those keyers need to be rotated. And when you build in the time for rotating those keyers, you pretty much suck up all the time in the allied duties that you have available on that machine to be able to accommodate those keyers when they're rotating off. It's a lot different when you're trying to rotate 12 people.* [Emphasis supplied.]

* * *

No. We don't have 12 people on the SPBS. You might have four keyers at the most; and, with an MPLSM you've got a lot of separations, usually more separations than you have on here. And depending on the mail flow, you need folks back there and you need them to be able to be back there to sweep those bins on a regular basis and take it over to the appropriate tray that's going to be on the transport equipment. But just rotating those folks around is going to take up all the time you have in the back of the machine.

* * *

In the Arbitrator's judgment, based on the above, the USPS had an appropriate basis for the different treatments of the jurisdictional determinations for the SPBS versus the MPLSM.

RI-399, Operation 088-089
Optical Character Reader Distribution

RI-399, Operation 088-089 Optical Character Reader Distribution, states, as follows:

088-089	OCR machine distribution of all	Clerk
Optical	classes of letter mail.	
Character		
Reader	Note: See 080-087 note.	
Distribution		

[The Arbitrator notes that the revised note to 080-087 states]:

3. Operation 080-087 "Note" should read:
Allied labor required is normally performed by clerks
because of the rotation system employed.

* * *

Mr. Jacquette stated that, in his view, the OCR Operation 088-089, was the same operation as MPLSM, with an Optical Character Reader instead of a Clerk to perform the actual distribution function.

Flat Sorting Machine (FSM 775) Guidelines
USPS Handbook PO-406, February 1984
Flat Sorting Machine (FSM 881) Guidelines
USPS Handbook PO-406, March 1993

The testimony of Mr. Jacquette and Mr. Licciardello [reviewed above], with regard to the applicability to, and controlling effect on, the USPS's jurisdictional determination of the SPBS, of the staffing and crew requirements of the Flat Sorting Machine, FSM-775 (1984), and/or the subsequent machine development, the FSM-881 (1993), as argued by the APWU. The Arbitrator notes the testimony of the APWU's witness, James McCarthy, currently the APWU's Director of the Clerk Division. The Arbitrator is persuaded, based on the testimony of the USPS officials, that these respective FSM operations properly must be distinguished on their different factual operations and, consequently, do not provide an appropriate basis for overturning the jurisdictional determination of the USPS.

Thus, the Arbitrator finds that the FSM operations, -775 and -881, were far more closely integrated than the operations of the SPBS in terms of the coordination required between the Clerk/key operator and other the positions on each respective machine. For example, with regard to the relationship between the keyers and other positions on the FSM-775 versus the relationship between the keyer and the other positions on the SPBS, there was a far more of an "integrated" relationship between the keying and the sweeping and ledge loading on the FSM-775, than on the SPBS. There also was a greater need for additional duties for the Clerks/key operators to perform when they rotated off the FSM-775, than is the case when the Clerks performing keying duties rotate off the SPBS. The keyers on the FSM-775 performed that function for at most 45 minutes, which required more Clerks to key for the full shift, as well as additional alternative duties to fully occupy the time of those Clerks on the crew when they were not keying. With respect to the operation of the FSM-775, there was a much closer coordination between the keyer and the ledge loaders, who had to keep the keyers supplied with three stacks of flats to enter codes. Also, the sweeping function on the FSM-775 involved more "distribution-type" duties, e.g., reviewing the flats coming off the FSM-775 to check for errors, for example, and placing them on trays for different locations. The sweeping function on the SPBS machines essentially involves removing parcels and bundles of mail in carts/wire-tainers/Gaylords from the chutes on the machines when they are getting full and

remove them to a staging area 20 to 30 feet away for subsequent removal. There is no true "distribution-type" work involved with respect to sweeping on the SPBS. As discussed above, the two work duties assigned to the Clerks/key operators for rotational purposes were considered to be sufficient to occupy the time of the Clerks who had rotated off the SPBS. Based on the testimony of Mr. Jacquette and Mr. Licciardello, the Arbitrator concludes that the APWU's reliance on the staffing of the FSM-775 and the later FSM-881 - upon which the APWU relies, in significant part, as a basis for finding that the USPS erred by establishing the staffing on the SPBS as it did - is misplaced insofar as the APWU argues that the staffing and operation of the FSM's requires that the jurisdictional determination for the SPBS should be found inconsistent with the principles and guidelines of RI-399 and, accordingly, set aside.

The Six Factors

The Arbitrator notes the APWU's objection to reliance on the Six Factors or Guidelines, contained in the Parties' 1975 Committee Jurisdiction Memorandum of Understanding and, as part of the current Collective Bargaining Agreements, at Article 1, Section 5. New Positions, A. The Arbitrator notes that Arbitrator Eischen, in the Eischen Award, as discussed by this Arbitrator, in the LMLM Award, at page 57, stated, in relevant part:

In summary, the Postal Service's decision to assign mail handlers as the primary craft for the spreading of mail to letter carriers is fully consistent with RI-399 *per se*. *If it were necessary to go beyond the confines of RI-399 to resolve a jurisdictional dispute under the RI-399 DRP*, logic and the mutual intent of the Parties support a conclusion that the appropriate principal jurisdictional standards to consider would be the six (6) criteria agreed upon by the Parties in the 1975 MOU establishing the Committee on Jurisdiction. [It is noted that those six (6) criteria, used by the parties to develop RI-399, continue to be found in the collective bargaining agreement between the USPS and both APWU and NPMHU as the criteria for determining whether or not a new position was assigned to the appropriate craft].

[Emphasis in second sentence supplied by this Arbitrator.]

* * *

This discussion by Arbitrator Eischen, which was relied upon by this Arbitrator in the LMLM Award, does not state conclusively that the six factors/guidelines/criteria, in fact or in effect, are applicable to a jurisdictional determination dispute resolution pursuant to RI-399. Rather, it is found only that "if it were necessary to go beyond the confines of RI-399" then the six factors would be the next set of guidelines for review. Thus, to the extent that the six factors may be relevant to this jurisdictional determination under RI-399, the Arbitrator finds that Mr. Jacquette's analysis was appropriate. Mr. Jacquette's testimony regarding how he utilized the Six Factors, indicated the

following:

1. existing work assignment practices:

Well, it went back through 399, and I looked at current assignments and various mail processing operations. And to the extent that there was a reasonably good match between the activities and duties that were performed on an SPBS and another type or piece of equipment, I didn't see any reason, in most cases, I saw justification as it existed.

Because in many cases, that same jurisdiction for that same activity occurs throughout a lot of your mail processing operations. It's not just limited to one or two.

* * *

The Arbitrator, as discussed above, finds that Mr. Jacquette's analysis was consistent with the principles and guidelines of RI-399 and accurately states the relationship between the Primary Crafts and the appropriate assignments to the duties involved in the SPBS operation.

2. manpower costs:

I do not really give that a lot of weight or factor that in, because it wasn't really necessary for me to reach that. In this particular case, when I looked at everything else, it really wasn't necessary to look at the cost issue.

* * *

The Arbitrator finds Mr. Jacquette's statement that he did not give this factor "a lot of weight" subject to some doubt. Nevertheless, had he done so, the lower cost associated with work performed by the Mail Handlers, than would the same work performed by the Clerks, is a relevant consideration under the six factors, albeit it is not relevant to the analysis under the guidelines and principles of RI-399.

3. avoidance of duplication of effort and "make work" assignments:

I considered that primarily because if you were to look at some other things

that could be done in terms of rotation in particular, you could probably build in a whole lot of downtime trying to travel people from one place to another to facilitate the rotation. For example, if you wanted to bring a clerk in from another operation to help the rotation and send that clerk off to another operation, you are probably going to waste a lot of time with people walking around. And I don't say that pejoratively. It's just point A to point B, and they're not like right there next to another distribution operation in most cases.

* * *

The Arbitrator finds that Mr. Jacquette's analysis was appropriate for this factor and a correct application.

4. effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis:

Same thing. On that particular criteria, the more compact you can keep the operation, the less travel time that's necessary. That makes it more efficient and effective.

* * *

The Arbitrator agrees that, for purposes of the SPBS staffing, the analysis under factor 4 essentially is the same as under factor 3 above.

5. the integral nature of all duties which comprise a normal duty assignment:

As I previously stated, in this particular operation, I think the various activities are pretty discrete and can be pretty effectively staffed with folks of different positions and different crafts.

* * *

The Arbitrator, for the above-stated reasons, related to the applicability of *the asterisk* related to Operation 030 in RI-399, agrees with Mr. Jacquette's conclusion that "the various activities are pretty discrete and can be pretty effectively staffed with folks of different positions and different crafts."

6. the contractual and legal obligations and requirements of the parties:

399 is the contractual obligation to be followed, and that's what I believe I've done.

* * *

The Arbitrator agrees with Mr. Jacquette's assessment that he appropriately applied the principles and guidelines of RI-399 with regard to his initial jurisdictional determination of the staffing of the SPBS operation.

The Good Faith of the USPS

The Arbitrator is not persuaded that a contrary result is required herein solely, or primarily, based on the APWU's contention concerning the assertedly improper nature of the process used by the USPS at the time to address problems with its initial proposed jurisdictional determination for the SPBS. That is, the APWU tool issue with the Employer's having engaged in bilateral discussions/negotiations with the NPMHU, which resulted in certain modifications of the jurisdictional determination for the SPBS. First, the Arbitrator points out, the determinative test in evaluating the propriety of the jurisdictional determination is whether the resulting jurisdictional determination is appropriate under, and consistent with, the principles and guidelines of RI-399 and, to the extent appropriate for jurisdictional determinations, the Six Factors [See above discussion of this matter.]. The Arbitrator, for reasons addressed above regarding the application of RI-399, has concluded herein that the resulting jurisdictional determination for the SPBS, which: awarded the Mail Handlers, as the Primary Craft, duties nos. 1, 2, 3, 4, 7 and 8; awarded the Clerks, as the Primary Craft, duties nos. 5 and 6 only; and awarded the Clerks duties 7 and 8 only, which duties were awarded to the Clerks for rotational purposes only and not as the Primary Craft. While the results regarding the SPBS, as noted, favored to this extent the Mail Handlers, for the reasons reviewed above, these determinations were based upon valid and appropriate considerations which fully supported this result under RI-399 and, to the extent applicable, the Six Factors.

The Arbitrator finds further, however, that, given the history of negotiations between the USPS and the APWU and the NPMHU (as well as other Unions not at issue in these proceedings), as described by Mr. Amma, there was nothing inherently improper with respect to the USPS discussing and agreeing to changes with one or the other Union. The Arbitrator notes that the Employer, under the National Labor Relations Act, has a separate and independent duty to bargain in good faith with the NPMHU, as well as with the APWU, concerning the employees in the bargaining units represented respectively by these Unions. Although, as Mr. Amma testified, at one time, both of these Unions, as well as other Unions not at issue herein, bargained together with the USPS, by the time of the events in question in the late 1980s, the NPMHU and the APWU each bargained separately with the Employer. The results of any such bilateral negotiations, while

binding with respect to the USPS and whichever Union with which it had bargained, of course, to the extent that the rights and interests of the other Union may have been involved, any such results necessarily were subject to protest by the non-bargaining Union through the grievance procedure and/or through the special dispute resolution procedures of RI-399.

That is, if the Union which was not a party to a particular resolution took issue with such result as violative of the rights of the craft employees it represented, that Union - as the APWU has done herein - had the right to have its position reviewed under the appropriate grievance or special jurisdictional dispute resolution procedure. The Parties subsequently recognized the benefits from having all Parties involved earlier in the process. Again, however, the determinative question which must be resolved with regard to the APWU's claims regarding the Employer's good faith is whether whatever "deal" to which the USPS and the negotiating Union agreed in the bilateral process was in accord with the principles and guidelines of RI-399 and, to the extent applicable, the Six Factors. That is, the final test is whether the results of any bilateral "deal" fully were in accordance with the standards and guidelines which equally are applicable to both Unions under RI-399.

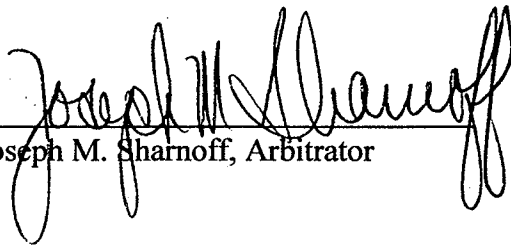
The Arbitrator is satisfied, based on the record evidence presented in this proceeding, that neither the USPS nor the NPMHU engaged in actions which were improper, unethical or constituted bad faith with respect to the interests of the craft employees represented by the APWU. Indeed, the NPMHU's letter, dated June 30, 1988, setting forth its understanding of the resolution reached with the USPS is couched in terms of attempted compliance with the principles and guidelines of RI-399.

Further, there is evidence that the APWU engaged in the same type of discussions with the USPS, with respect to other jurisdictional determinations for different operations. To the extent that the APWU complains herein that the bilateral procedure which was used inherently was "inequitable" because one Union could make deals with the Employer at the expense of the other Union and without that Union having an opportunity to be participate before a deal is made, the APWU's position must be considered under the *equitable maxim* that the party seeking equity, here the APWU, must do equity. That is, in the Arbitrator's judgment, since the APWU has engaged in identical bilateral discussions/negotiations/resolutions with the USPS without the participation of the NPMHU, the APWU cannot be heard in this proceeding successfully to complain of the same conduct when engaged in by the USPS and the Mail Handlers.

For all of the above reasons, the Arbitrator concludes that the jurisdictional determination of the primary craft awards and awards of other work for rotational reasons, was appropriate under the principals and guidelines of RI-399 and, to the extent applicable, under the Six Factors.

AWARD

The grievance appeal of the APWU protesting the propriety of the jurisdictional determination of the USPS for the SPBS is denied in all respects.


Joseph M. Sharnoff, Arbitrator

Dated: September 7, 2009
Oakton, Virginia

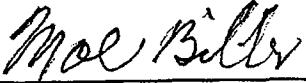
**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE,
THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO,
AND THE
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO**

Re: Application of National Jurisdictional Arbitration Awards

The parties at the national level agree that the following actions shall be taken upon receipt of national awards issued under the procedures contained in the Memorandum of Understanding, Re: Dispute Resolution Procedures, dated April 1992:

1. Regional Dispute Resolution Committees shall convene within 60 days of the date of the national award to discuss all cases held pending the outcome of the national case. Local Dispute Resolution Committees shall convene within 60 days of the date of the national award to discuss all cases held at that level pending the outcome of the national case. In addition, Local Dispute Resolution Committees shall convene within 60 days of any referral or remand from the regional level to discuss any cases referred or remanded to the local level.
2. If the parties agree that the case is fully resolved by the national award and no reassignment of work to a different craft is necessary, the case shall be withdrawn by the grieving union.
3. If the parties agree that the case is fully resolved by the national award and reassignment of work to a different craft is necessary, the Postal Service shall make such reassignments as expeditiously as possible. Any remaining issue of additional remedy will be processed under Article 15 of the appropriate collective bargaining agreement and therefore may be settled by agreement between the Postal Service and the grieving union.
4. If the Postal Service believes that a case is fully resolved by the national award but one or both of the union parties disagree, the Postal Service may unilaterally reassign the work to the appropriate craft, consistent with the principles described in Regional Instruction 399 and the 1992 Dispute Resolution Procedures Memorandum of Understanding. The union challenging this management decision will then have the right to file a new dispute under the RI-399 dispute resolution procedures, and any such dispute will be given priority in arbitration scheduling. Any remaining issue of additional remedy will be processed under Article 15 of the appropriate collective bargaining agreement and therefore may be settled by agreement between the Postal Service and the grieving union.
5. If the parties agree that the case is not fully resolved by the national award, and that there are factual disputes or other disputes regarding the proper application of RI-399 to the fact circumstances, those cases should be resolved by the appropriate Dispute Resolution Committee, if possible, or arbitrated if necessary.

6. No reassignment of work within a facility will be made based on a national award unless there is a properly initiated dispute pending on that issue in that facility.



AUG 03 2000

Moe Biller
Moe Biller
President
American Postal Workers Union, AFL-CIO



William H. Quinn
William H. Quinn
President
National Postal Mail Handlers Union, AFL-CIO



Anthony J. Vegliante
Anthony J. Vegliante
Vice President, Labor Relations
U.S. Postal Service