



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Appeal to Arbitration, National Dispute

Greg Bell, Director
Industrial Relations
1300 L Street, NW
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September 3, 2009

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Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: USPS Dispute No. Q06C4QC09280137, APWU No. HQTG200911

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,

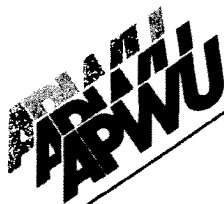

Greg Bell, Director
Industrial Relations

USPS #: Q06C4QC09280137
APWU #: HQTG200911

Case Officer: Greg Bell
Step 4 Appeal Date: 6/30/2009
Contract Article(s): ;

cc: Resident Officers
File

GB/bw



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Article 15 - 15 Day Statement of Issues and Facts

Via Facsimile & First-Class Mail

September 2, 2009

Ms. Mary Hercules
Labor Relations Specialist
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, D.C. 20260

Re: APWU No. HQTG200911, USPS # Q06C4QC009280137

Dear Ms. Hercules:

On July 28, 2009, we met to discuss the above-referenced dispute at Step 4 of the grievance procedure. The parties mutually agreed to submit their written statements no later than September 2, 2009. The following represents the APWU's understanding of the issues to be decided, and the facts giving rise to the interpretive dispute.

The issues involved in this dispute are whether the Postal Service violates the collective bargaining agreement when it reassigns non-bargaining-unit employees to bargaining-unit positions in an installation or craft where (1) there is a planned reduction of bargaining-unit employees, (2) bargaining-unit positions are being withheld or captured to accommodate impacted bargaining-unit employees, and (3) where bargaining-unit employees have retreat rights or other contractual rights to bargaining-unit positions pursuant to Article 12 and related provisions of the National Agreement.

The Postal Service takes the position that Article 3 gives it the right to hire, promote, transfer, assign, and retain employees in positions within the Postal Service, and that there is nothing in the National Agreement which limits that right in situations of planned complement reduction.

Article 12 encompasses same-craft and/or cross-craft involuntary reassignments (to same or other installations) in eight excessing situations that govern involuntary reassignments, and which provide certain protections and rights to impacted bargaining unit employees.¹ For example, when an installation is discontinued (Article 12.5.C.1), bargaining unit employees are

¹ See Article 7, 12 and 13 – Cross Craft and Office Size MOU

involuntary reassigned with their seniority to vacant bargaining-unit positions in the same or lower level in the same craft or occupational group in installations within 100 miles, and if no bargaining-unit positions are available beyond 100 miles.² In this excessing situation, it would be inappropriate to reassign a non-bargaining-unit employee to the bargaining unit in any installation within a designated area where vacant bargaining unit positions are being withheld and/or captured to be filled by reassigned/relocated bargaining-unit employees. Moreover, in the event that the discontinued installation is reestablished again, impacted employees are entitled to retreat rights to vacant bargaining-unit positions in the reestablished installation in the level and craft/occupational group held at the time the installation was discontinued. It would also be inappropriate to reassign non-bargaining-unit employees to bargaining-unit positions in a level, craft or occupational group from which impacted bargaining employees were reassigned and have retreat rights.

When an independent installation is consolidated with another postal installation (Article 12.5.C.2), bargaining-unit employees are involuntarily reassigned to the continuing installation without loss of seniority in the same craft or occupational group. If there is an excess of employees, such employees are subject to the provisions for involuntary reassignment to other installations. In this excessing situation, it would be inappropriate to reassign a non-bargaining-unit employee to the bargaining unit in any installation within a designated area where vacant bargaining-unit positions are being withheld and/or captured to be filled by reassigned/relocated bargaining-unit employees. In the event that the consolidated installation becomes an independent installation again, impacted employees are entitled to retreat rights to vacant bargaining-unit positions in the reestablished installation in the level and craft/occupational group held at the time the installation was discontinued. It would also be inappropriate to reassign non-bargaining-unit employees to bargaining-unit positions in a level, craft or occupational group from which impacted bargaining employees were reassigned and have retreat rights.

When a classified station or classified branch is transferred to the jurisdiction of another installation or made an independent installation (Article 12.5.C.3), full-time bargaining-unit employees have the option of remaining with the classified station or classified branch or remain with the installation from which the classified station or classified branch is being transferred. In the event it becomes necessary to involuntarily reassign bargaining-unit employees to the classified station or classified branch, employees involuntarily reassigned have retreat rights to vacant bargaining-unit positions in a level and craft or occupational group in the installation from which transferred. In this excessing situation, it would be inappropriate to

² If there are no positions available in the same craft, employees are involuntarily reassigned to other crafts or occupational groups at the same or lower level with either seniority "one day junior to the junior employee in the same level and craft/occupation in the installation to which assigned or the seniority the employee had in the craft from which reassigned, whichever is lesser.

There are occasions when the Postal Service has withheld vacant bargaining unit positions in installations as far as 400 or 500 miles from a losing installation, until a sufficient number of bargaining unit positions are captured to accommodate impacted bargaining unit employees.

reassign non-bargaining-unit employees to bargaining-unit positions in a level, craft or occupational group from which impacted bargaining employees were reassigned and have retreat rights.

When reassignment within an installation of employees excess to the needs of a section occurs (Article 12.5.C.4), bargaining-unit employees are involuntary reassigned outside the section but within the same craft or occupational group. Impacted employees retain the right to retreat to the section from which involuntary reassigned. In this excessing situation, it would be inappropriate to reassign a non-bargaining-unit employee to a bargaining-unit position to which impacted bargaining employees have retreat rights within the installation in the section and level, craft or occupational group from which reassigned.

When the number of bargaining-unit employees has to be reduced within an installation or craft (Article 12.5.C.5), bargaining-unit employees are involuntary reassigned to other crafts in the same installation in the same or lower level with either seniority "one day junior to the junior employee in the same level and craft/occupation in the installation to which assigned or the seniority the employee had in the craft from which reassigned, whichever is lesser."³ In the event further reduction of bargaining-unit employees are necessary, employees are involuntary reassigned with their seniority to vacant bargaining unit positions in the same or lower level in APWU crafts in installations within 100 miles or beyond. If further reduction is necessary, employees are involuntary reassigned to other crafts or occupational groups at the same or lower level (see Footnote #1). Senior employees in the same craft or occupational group in the losing installation are entitled to volunteer to be reassigned to the gaining installation and take the seniority of the senior employees subject to involuntary reassignment, but with no retreat rights. In addition, impacted full-time employees have the option of changing to either part-time flexible or part-time regular in the same craft or occupational group in lieu of involuntary reassignment. In this excessing situation, it would be inappropriate for the Postal Service to reassign non-bargaining-unit employees to bargaining-unit positions in any installation or craft subject to the reduction of bargaining-unit employees; any installation within a designated area where vacant bargaining-unit positions are being withheld and/or captured to be filled by reassigned/relocated bargaining-unit employees; and to any bargaining-unit positions at an installation for which bargaining-unit employees was involuntary reassigned from and has retreat rights or other contractual rights under the National Agreement.

When the operations at a centralized mail processing and/or delivery installation result in an excess of full-time bargaining unit clerks (Article 12.5.C.6), employees who are excess in a losing installation are subject to involuntary reassignment provisions for reassignment to other installations. When the centralized installation is a new one, senior clerks who applied from the losing installation are entitled to be reassigned to the new installation after reassignment of senior clerks, and thereafter when there remain an excess of clerks, such clerks are subject to involuntary reassignment within the installation. Part-time flexibles are reassigned in accordance with the excessing provisions for part-time flexibles. In this excessing

³ Impacted bargaining unit employee must return at first opportunity to the craft from which reassigned.

situation, it would be inappropriate for the Postal Service to reassign non-bargaining-unit employees to bargaining-unit positions in any installation and the craft subject to the reduction of bargaining-unit employees; any installation within a designated area where vacant bargaining-unit positions are being withheld and/or captured to be filled by reassigned/relocated bargaining-unit employees; and to any bargaining-unit positions at an installation for which a bargaining-unit employee was involuntary reassigned from and has retreat rights or other contractual rights under the National Agreement.

When a vehicle maintenance facility is established to replace an auxiliary garage or vehicle maintenance in a perimeter office, impacted bargaining-unit motor vehicle craft employees are entitled to bargaining-unit positions in the gaining installation/new maintenance facility, not to exceed the number of excess employees in the losing installation (Article 12.5.C.7). In addition, when vehicle operations are changed by transfer from one installation to another, impacted bargaining-unit motor-vehicle-craft employees are entitled to bargaining-unit positions in the gaining installation, not to exceed the number of excess employees in the losing installation. In this excessing situation, it would be inappropriate for the Postal Service to reassign non-bargaining-unit employees to bargaining unit positions in any installation and the craft subject to the reduction of bargaining-unit employees or to the gaining installation, and in which a bargaining-unit-employee has retreat rights or other contractual rights under the National Agreement.

When there are an excess of part-time flexible employees in an installation and such bargaining unit employees are involuntary reassigned (Article 12.5.C.8), they are reassigned to either the same or another craft in the same or another installation. Senior part-time flexible employees in the same craft or occupational group in the same installation may elect to be reassigned under certain conditions. In addition, impacted employees involuntary reassigned to another craft in the same installation must be return to the vacancies as they occur within the craft and level from which reassigned. Impacted employees also have retreat rights. In this excessing situation, it would be inappropriate for the Postal Service to reassign non-bargaining-unit employees to part-time-flexible bargaining-unit positions in any installation or craft subject to the reduction of bargaining-unit employees; any installation within a designated area where part-time flexible vacant bargaining-unit positions have been designated to be filled by reassigned/relocated bargaining-unit employees; and to any bargaining-unit positions at an installation for which bargaining-unit employees were involuntary reassigned from and have retreat rights or other contractual rights under the National Agreement.

It is the APWU's position that when the Postal Service plans to reduce the number of bargaining-unit employees in an installation or craft, and bargaining-unit positions are being withheld for placement of reassigned/relocated bargaining-unit employees in accordance with applicable provisions of Article 12, the Postal Service may not reassign non-bargaining-unit employees to bargaining-unit positions in (1) any installation or craft subject to the reduction of bargaining-unit employees; (2) any installation within a designated area where vacant bargaining-unit positions are being withheld and/or captured to be filled by reassigned/relocated bargaining-unit employees; and (3) any bargaining-unit positions at an

installation for which bargaining-unit employees were involuntary reassigned from and have retreat rights or other contractual rights under the National Agreement. The Postal Service's action to the contrary are a violation of, but not limited to, Article 5, 12, 19 and respective craft articles of the National Agreement, and other related provisions of the collective bargaining agreement, including previous national-level arbitration awards.

In addition, non-bargaining-unit employees do not have any claim to bargaining-unit positions, and the National Agreement does not permit non-bargaining-unit employees to compete with bargaining-unit employee for bargaining-unit positions.

The APWU contends that APWU bargaining-unit employees in an installation or affected craft that is being subject to involuntary reassignment (excessing) pursuant to Article 12 are entitled upon request to be placed on a preferred listing for priority consideration for transfers⁴ out of their impacted installation in accordance with the MOU on Transfer Opportunities to Minimize Excessing, provided such vacant bargaining-unit positions are not in an installation within a designated area where vacant bargaining-unit positions are being withheld and/or captured pursuant to Article 12. Therefore, it is the APWU's position that the Postal Service may not reassign non-bargaining-unit employees to bargaining-unit positions in which APWU bargaining-unit employees are entitled to a transfer in accordance with the MOU on Transfer Opportunities to Minimize Excessing.

It is the APWU's position that the Postal Service has a contractual obligation to the Union and its bargaining-unit employees covered by the collective bargaining agreement, which provides certain protection and contractual rights accruing to individual employees who may be involuntarily reassigned and senior volunteers under the terms of Article 12 and related provisions of the collective bargaining agreement. Moreover, the Postal Service has a contractual obligation, but not limited to, when involuntarily reassigning bargaining unit employees to other installations, to make designations to available vacant bargaining-unit positions in installations to the closest distance from the losing installation, in order to minimize the dislocation and inconvenience to impacted bargaining unit employees.

However, it would be appropriate for the Postal Service, consistent with applicable provisions of the parties' collective bargaining agreement, to reassign a non-bargaining employee to a bargaining-unit position in (1) an installation that is not being subject to a planned reduction of bargaining-unit employees; (2) an installation that is not within a designated area where vacant bargaining-unit positions are being withheld and/or captured to accommodate impacted reassigned/relocated bargaining-unit employees; and (3) where there is no bargaining-unit employees with retreat rights or other contractual rights to bargaining-unit positions.

⁴APWU bargaining-unit employees are entitled to priority consideration to APWU craft bargaining-unit positions, and selections by installations accepting transfer requests is on a seniority basis using craft installation seniority from the losing installation.

Re: USPS # Q06C4QC009280137
September 2, 2009
Page 6

Sincerely,


Greg Bell, Director
Industrial Relations

APWU #: HQTG200911
USPS #: Q06C4QC009280137

Dispute Date: 6/30/2009
Contract Articles: 12; Principles of Seniority,
Posting and Reassignment

cc: Industrial Relations

GB /LB



September 2, 2009

Mr. Greg Bell
Director, Industrial Relations
American Postal Workers Union
(APWU), AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Sent By Fax & Certified Mail
Fax: (202) 371-0992
Certified Mail Tracking #:
7099 3400 0009 0836 6987

Re: Q06C-4Q-C09280137/ HQTG200911
Washington, DC 20260-4100

Dear Greg:

On July 28, we discussed the above-captioned case at the fourth step of our grievance/arbitration procedures. In accordance with Articles 15.2.Step4.a and 15.4.D, this constitutes the Postal Service's understanding of the issues involved and our response to those issues.

THE INTERPRETATIVE ISSUE PRESENTED:

Whether Article 12 of the National Agreement prohibits the reassignment of non-bargaining unit employees to the bargaining unit when there is a planned reduction of employees within an installation or craft.

BACKGROUND:

By letter dated October 5, 1992, the APWU initiated a similar Step 4 dispute, Case Number H0C-NA-C 38. The issue presented was "whether there is a violation of the National Agreement when the Postal Service reassigns non-bargaining unit employees to the bargaining unit when there is a planned reduction of employees within the installation or craft." This dispute proceeded to national level arbitration. In her award dated June 24, 2009 and received on July 2, Arbitrator Linda S. Byars dismissed the grievance. She held, in part: "Absent evidence that the Parties discussed the Grievance as a violation of Article 12, the Grievance is not an interpretive issue, and the issue as proposed by the APWU at arbitration is not properly before the Arbitrator."

By letter dated July 1, the APWU initiated the instant dispute.

EXCERPTS FROM THE 2006 NATIONAL AGREEMENT¹:

Article 3, Management Rights, states in part:

¹ See also Joint Contract Interpretation Manual, June 2007.

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

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

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

Article 12, Section 2 Principles of Seniority states:

A. Except as specifically provided in this Article, the principles of seniority are established in the craft Articles of this Agreement.

B. An employee who left the bargaining unit on or after November 20, 1994, and returns to the same craft and installation:

[1] will begin a new period of seniority if the employee returns from a position outside of the Postal Service; or

[2] will begin a new period of seniority if the employee returns from a non-bargaining unit position within the Postal Service, unless the employee returns within 1 year from the date the employee left the unit.

C. An employee who left the bargaining unit before July 21, 1973, and returns to the same craft shall have seniority as specified in the 1971-1973 National Agreement.

D. An employee who left the bargaining unit during the period from July 21, 1973, to November 19, 1994, and returns to the same craft has seniority as provided in the 1990-1994 National Agreement.

E. Except as provided in the Motor Vehicle craft, an employee who left the craft and/or installation and returns to the same craft and/or installation will begin a new period of seniority unless the employee returns within 1 year from the date the employee left the craft and/or installation.

F. The seniority for employees returning, within one year, under B.2. above shall be established after reassignment as the seniority the employee had when he/she left minus seniority credit for service outside the bargaining unit, craft, and/or installation.

Article 12, Section 4. Principles of Reassignments states, in part:

Section A. A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service. Reassignments will be made in accordance with this Section and the provisions of Section 5 below.

Section D. In order to minimize the impact on employees in the regular work force, the Employer agrees to separate, to the extent possible, casual employees working in the

affected craft and installation prior to excessing any regular employee in that craft out of the installation. The junior full-time employee who is being excessed has the option of reverting to part-time flexible status in his/her craft, or of being reassigned to the gaining installation.

Article 12, Section 5B. Principles and Requirements, states, in part:

1. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

Article 12, Section 5.C.5. Reductions in the Number of Employees in an Installation Other than by Attrition, states, in part:

- a. *Reassignments within installation. When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:*

(2) Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals;

(3) Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours;...

POSITION OF THE PARTIES:

It is the APWU's position that the Postal Service may not reassign non-bargaining unit employees to the bargaining unit when there is a planned reduction of employees within the installations or craft. The APWU believes that at the point it receives notification under Article 12 of the Postal Service's plans to [1] reduce the number of bargaining unit employees in an installation or craft; and [2] withhold vacant bargaining unit duty assignments for placement of reassigned or relocated bargaining unit employees, the Postal Service is barred from reassigning non-bargaining unit employees to bargaining unit positions in the losing installation where the reduction took place or to any installation where bargaining unit duty assignments are being withheld. The APWU further opines that non-bargaining unit employees similarly may not be reassigned to a bargaining unit position at an installation where an employee was involuntarily reassigned and has retreat rights.

The Postal Service disagrees. A Step 4 dispute is reserved for those issues between the parties "as to the interpretation of this [National] Agreement." (See Article 15.4.D) The union points to the provisions of Article 12 in support of its contentions cited above. However, this issue does not involve a matter of contract interpretation about the meaning of Article 12 provisions, but rather a matter of fact application of whether a particular reassignment was consistent with the unambiguous provisions of Article 12. Therefore, it is the Postal Service's position that there is no interpretive issue presented in this case. (See for example, Snow Award in Case No. H0C-3W-C 4833; and Mittenthal Case No. H1T-4H-C 28439)

Notwithstanding the procedural issue, on the merits, it is the Postal Service's position that the plain reading of both Articles 3 and 12 of the National Agreement does not preclude the reassignment of non-bargaining unit employees into bargaining unit positions during planned Article 12 reductions. As reprinted above, in part, Article 3 exclusively and unambiguously gives the Postal Service the right to hire, assign, transfer, retain, suspend and demote its employees consistent with the provisions of the National Agreement. There is no explicit proscription in Article 12 that bars the reassignment of non-bargaining unit employees back to the bargaining unit. As such, there is no reason to alter management's Article 3 rights. (See for example, Das Award in Case No. C90C-1C-C 93018526)


Moreover, once the non-bargaining unit employee is reassigned back to the bargaining unit, then that reassigned employee is a bargaining unit employee. Employees' rights and management's obligations under Article 12 are applicable and are not altered with such reassignment.

In addition, in the Postal Service's view, the expressed provisions of Article 12, Section 2, anticipates the reassignment of non-bargaining unit employees to the bargaining unit. This section sets forth the seniority standing of non-bargaining unit employees who return to the bargaining unit. By including this section in Article 12, it clearly demonstrates that the parties' anticipated and intended the reassignment of non-bargaining unit employees to the bargaining unit. This section also does not exclude applicability during planned complement reductions. Had that been the parties' intent, this would be one place in Article 12 to express that exclusion. However, the contract is silent on the restriction that the union is seeking. Had this exclusion been the intent of the parties, the negotiations' table is the appropriate forum for adding this restriction and not in rights arbitration.

For the foregoing reasons, coupled with past practice, negotiations history, case law, handbooks and manuals, and a reading of the National Agreement, the Postal Service's interpretation is fully supported.

Time limits for exchanging Step 4, 15-day position statements were extended to September 2, by mutual consent.

Sincerely,



Mary Hércules
Labor Relations Specialist
Contract Administration (APWU)



American Postal Workers Union, AFL-CIO

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Initiate National Dispute

July 1, 2009

Sent Via Facsimile and First Class Mail

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No. HQTG200911, Reassignment of non-bargaining unit employees to the bargaining unit when there is a planned reduction of employees within the installations or craft pursuant to Article 12.

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Section 2 and 4 of the Collective Bargaining Agreement, the American Postal Workers Union is initiating a Step 4 dispute concerning the conditions and circumstances in which the Postal Service may not reassign non-bargaining unit employees to the bargaining unit when there is a planned reduction of employees within the installations or craft.

The issues and facts involved in this dispute are as follows:

It is the Postal Service position that Article 3 gives it the right to hire, promote, transfer, assign, and retain employees in positions within the Postal Service, and that there is nothing in the National Agreement which limits that right in situations of planned complement reduction.


Contrary to the assertion made by the Postal Service, management rights are subject to the provisions of the National Agreement and applicable laws and regulations. It is the APWU position that when the Postal Service notifies the Union of its plans to reduce the number of bargaining unit employees in an installation or craft; and vacant bargaining unit duty assignments are being withheld for placement of reassigned or relocated bargaining unit employees in accordance with applicable provisions of Article 12 – the Postal Service may not reassign non-bargaining unit employees back to the bargaining unit in the losing installation where the reduction took place or to any installation where vacant

bargaining unit duty assignments are being withheld to be filled by reassigned and/or relocated bargaining unit employees. In addition, non-bargaining unit employees may not be reassigned to a bargaining unit position at an installation for which a bargaining unit employee was involuntary reassigned from and has retreat rights.

In other words, once the Postal Service notifies the Union of its plans to reduce the number of bargaining unit employees in an installation or craft, and/or that bargaining unit's duty assignments are going to be withheld to accommodate impacted bargaining unit employees pursuant to Article 12 of the National Agreement, it is the APWU's position that the Postal Service may not reassign non-bargaining unit employees back to the bargaining unit in (1) any installation subject to the reduction of bargaining unit employees within the installation or craft; (2) any installation within a designated area where bargaining unit positions are being withheld and/or captured to accommodate impacted bargaining unit employees; and (3) any craft position where bargaining unit employees have retreat rights.

Article 15 of the collective bargaining agreement provides that within thirty (30) days after the initiation of a dispute the parties shall meet in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. It is requested that you or your designee contact my office at 202-842-4273 to discuss this dispute at a mutually agreed upon date and time.

Sincerely,


Greg Bell, Director
Industrial Relations

GB/bw

APWU #: HQTG200911

Dispute Date: 6/30/2009

Case Officer: Greg Bell

Contract Article(s): 3, 12

cc Resident Officers
File