



JURISDICTION
RI 399

USPS Brief

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 23, 1981

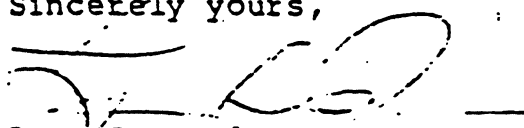
Howard G. Gamser, Esquire
Impartial Arbitrator
Suite 505
1140 Connecticut Avenue, N. W.
Washington, D. C. 20036

Re: Case No. AD-NAT-1311

Dear Mr. Gamser:

As previously agreed by the parties, I am mailing this date a copy of the brief of the United States Postal Service in the above matter. Copies are being simultaneously sent to Mr. Jordan, counsel for the APWU, and Mr. Ray, counsel for the Mail Handlers.

Sincerely yours,


Lynn D. Poole
Attorney
Office of Labor Law

cc: Daniel B. Jordan, Esquire
James S. Ray, Esquire

BEFORE HOWARD G. GAMSER
IMPARTIAL ARBITRATOR

In the Matter of:)

AMERICAN POSTAL WORKERS UNION)

- and -)

UNITED STATES POSTAL SERVICE)

- and -)

NATIONAL POST OFFICE MAIL HANDLERS,)
DIVISION OF THE LABORERS' INTERNATIONAL)
UNION OF NORTH AMERICA, AFL-CIO)

Case No. AD-NAT-1311

BRIEF OF THE UNITED STATES POSTAL SERVICE

I. Preliminary Statement

At issue in this arbitration is the correctness of thirteen primary craft designations for the performance of specific mail processing work assignments. These assignments were established in Regional Instruction 399, entitled Mail Processing Work Assignment Guidelines, and issued February 16, 1979, by the United States Postal Service. By agreement of the parties at the commencement of this proceeding, there is no dispute concerning the correctness of all other assignments in Regional Instruction 399 and the implementation criteria attached thereto (Tr. 155-157).^{1/} The thirteen items challenged by the American Postal Workers Union (APWU) are those raised in paragraph two of a letter from APWU

^{1/} "Tr." references are to the transcript of the hearings held between October 25, 1979, and February 6, 1981. "APWU Exh." refers to exhibits of the American Postal Workers Union; "PS Exh." to exhibits of the Postal Service; "MH Exh." to exhibits of the National Post Office Mail Handlers; and "J. Exh." are to the Joint Exhibits.

President Emmet Andrews to Assistant Postmaster General James Gildea, dated September 28, 1979 (APWU Exh. 21).^{2/} The rest of Regional Instruction 399 is "in place" as the status quo (Tr. 157).

During the proceedings, a question also arose concerning the interest in and position of the Postal Service in the outcome of the arbitration. It has been suggested that this arbitration was more in the nature of an inter-union scuffle, with the Postal Service more or less disinterested as to the eventual outcome. Nothing could be further from the truth.

The graveman of this case was brought by the APWU against the Postal Service. Even had the Mail Handlers Union not intervened, and agreed, albeit reluctantly in some instances, to all of the mail processing assignments, the Postal Service would still have defended the integrity of those assignments as within its authority as management to promulgate. But the interest of the Postal Service goes beyond merely affirmation of its right to manage its business in an efficient and effective manner, as important as that general proposition is to the Postal Service. As the testimony at the hearing amply demonstrated, and as we show further below, the Postal Service has invested literally years in slowly and painfully bringing both the APWU and the

^{2/} The parties agreed that the APWU dispute with the assignment of non-machinable outside parcel sortation, although unnumbered in Mr. Andrews' letter, would be considered item 13 for purposes of this arbitration.

Mail Handlers together in an effort to correct a problem which was of the utmost importance to all three principals. The Postal Service believes that the result, Regional Instruction 399, including the challenged portions, represents the correct and proper resolution of that problem, taking into account not only the concerns of the unions but the rights of management. Consequently, it is of the utmost importance to the Postal Service that all of its assignments in that Instruction be upheld.

II. Statement of the Issue Presented

Whether, in light of its rights under Article III of the collective bargaining agreement, the Postal Service was entitled to designate the Mail Handlers as the primary craft for the assignments challenged in this arbitration.

III. Statement of the Case

A. The Changes In Mail Processing In the Postal Service

Since 1970, two events, one statutory, the other practical, have combined to alter the way in which mail is processed in the Postal Service and the perceptions and goals of the Postal Service in processing that mail. The statutory event was the establishment of the United States Postal Service from the old Post Office Department. In setting up the Postal Service, Congress made it clear that it wished, as far as practicable, for the management of

the mails to be run as a business with efficiency and effectiveness of operations as a mandate. In debate on the House floor, Congressman Dulski, Chairman of the Post Office and Civil Service Committee, commented:

There is, and will continue to be, debate over what we should mean by postal reform. My own feeling is that the management responsible for operating the U. S. Postal Service - under whatever form - must have freedom of operation.

This is particularly necessary in the financing of postal operations at all levels. Further, management must have flexibility to make changes in its procedures, in order to deal with the volume of mail in the postal system today.

PS Exh. 2.

This theme of the need for the Postal Service to look to efficiency and economy in its operations was subsequently echoed in the Committee reports which accompanied postal reorganization.

The House of Representatives' report No. 91-1104 stated:

Top management must be given authority, consistent with its responsibilities, to provide an efficient and economical postal system. Postal management has been severely and unjustly hampered in its efforts to administer the Department in a businesslike way.

* * *

The Postal Service is a public service but there is no reason why it cannot be conducted in a businesslike way and every reason why it should be.

PS Exh. 3, pp. 5, 11-12.

The Senate report No. 91-912 agreed:

The committee sought, and in this bill believes that it has found, a means of reconciling the strong committee conviction that the post office, however restructured, must be, first of all, responsive to the historic public need for, and reliance upon, a secure, swift, dependable, and inexpensive communications system; and the obvious requirement that postal management must now be given the unfettered authority and freedom it has been denied for years to maintain and operate an efficient service.

* * *

The areas of "no control," tending to foster drift and inhibit innovation and imagination in the management of the Post Office even under the leadership of strong Postmasters General, can be overcome by four provisions of S. 3842: (1) continuity of top management, (2) the authority to control postal revenue, (3) the authority to control costs, and (4) the authority to acquire funds outside the budget to modernize the postal plant.

PS Exh. 4, pp. 2, 3.

The practical event has been the evolving, almost revolutionary change in mail processing in the last decade. Both prior to and subsequent to the Postal Reorganization Act, the outstanding characterization of the distribution clerk, and the one which justified his level 5 pay rate, was his knowledge of and use of schemes (Tr. 1284). These schemes were "officially published list[s] of elements of address and their distribution" used in the distribution of mail which the clerk was expected to memorize and upon which he was periodically examined (Tr. 1279; PS Exh. 9, para C.). Many assignments in mail processing were made to clerks because

) of that scheme knowledge (Tr. 801-802, 1285-1286, 2110, 2132, 2141, 2143-2144).

Beginning in the 1960's and accelerating into the decade of the 1970's, certain trends appeared in mail processing which greatly reduced the need for schemes and scheme knowledge by employees. These trends also reduced the overall skill level necessary to accomplish certain mail processing tasks. Chief among these trends was "the almost universal use of ZIP code" (Tr. 1274). With ZIP coded items, it is unnecessary for an employee to learn or memorize a scheme in order to distribute an item; instead he merely has to match the ZIP code on the item to a ZIP coded pouch, receptacle or pigeonhole (Tr. 860-861, 1279). Clerks are required to learn schemes, mail handlers are not (Tr. 800, 1284); but anyone can read a ZIP code (Tr. 862).

The application of the Fair Labor Standards Act to the Postal Service also reduced the need in the Postal Service for scheme knowledge. As scheme training became compensable (PS Exh. 9, para B), the Postal Service drastically reduced its dependence on scheme learning, in 1978 and subsequently, and reduced total numbers of schemes by up to 70% in some cases (Tr. 1275-1276). In addition, containerization and the introduction of the Bulk Mail System into the Postal Service in the last decade has introduced bulk handling and mechanization of mail by machines which have "lessened [Postal Service] dependence on the memory of a person or a scheme" (Tr. 1278).

The overall result of these and other trends, such as the rapid increase in the mechanization of mail processing by means of multipurpose letter sorting machines (MPLSM) (Tr. 1274) has simplified mail processing, lessened scheme dependence and lowered the skill necessary to do many mail processing assignments (Tr. 1278, 1288). There is little doubt that these trends will continue (Tr. 1277).

B. The Development of Regional Instruction 399 *

Disputes between the APWU and the Mail Handlers over the proper assignment of certain positions in mail processing have been ongoing for many years, even prior to the establishment of the United States Postal Service in 1970 (Tr. 1587-1588). Matters came to a head in 1975, when, during collective bargaining, national negotiations were suspended because of the Mail Handlers' insistence that something be done about the continuing jurisdictional disputes they had with the APWU (Tr. 1131-1132). A breakdown in negotiations occurred and was only resolved because the Postal Service and the unions agreed upon the Memorandum of Understanding on jurisdiction which established a Jurisdictional Committee to resolve such disputes (Tr. 1132-1133; Jt. Exh. 1, pp. 183-185).

After agreement in 1975 on a new contract, all the unions met with the Postal Service for the first meeting of the Jurisdictional Committee (Tr. 1134, 1590). At the commencement of that

meeting, these unions, including the APWU and the Mail Handlers presented their jurisdictional claims (Tr. 1590; M.H. Exhs. 3, 38). Because over 1,000 grievances were pending at that time between the Mail Handlers and Clerks (represented by the APWU) over work assignments in mail processing (Tr. 1136), it became clear that the main area of contention was between those two crafts. Consequently, in April 1976, the APWU, the Mail Handlers, and the Postal Service formed a subcommittee to deal with APWU-Mail Handler mail processing assignment questions. The parties then held approximately ten meetings but made no progress in resolving the conflicting jurisdictional claims (Tr. 1593-1596).

At or near the end of this series of meetings, the unions demanded for the first time that the Postal Service become part of the process of resolving the jurisdictional crisis, and the Postal Service agreed (Tr. 1141-1142, 1597). To that end, the Postal Service assembled in January of 1977 at Headquarters in Washington a team of knowledgeable Postal Service managers with extensive experience in the area of mail processing: William Campbell, a manager in the Southern Region of the Postal Service with almost twenty years of experience in mail processing (Tr. 1221-1222); Al Hines, the manager of the Worldway Postal facility in Los Angeles, California who had a background in industrial engineering and mail processing; and Obie Kipper, a tour superintendent in Minneapolis and a long time postal employee (Tr. 1223). This team was supplemented by the advise and counsel of several

headquarters individuals: Nicholas Barranca, a Procedures Specialist with mail processing experience in Baltimore (Tr. 1223); Ken Lynn, Director of the Office of Distribution Systems, who had also had mail processing experience both as a bargaining unit employee and manager in Tacoma and Seattle, Washington (Tr. 1224, 1389-1390); William Downes, a Labor Relations executive and specialist who was the Postal Service representative in the 1976 jurisdictional subcommittee (Tr. 1129-1130, 1133); and others (Tr. 1224-1225).

Mr. Campbell and his colleagues were told to develop a position that would be best for the Postal Service in the various areas of disputes between the unions. In developing this position, Mr. Campbell and his team were instructed to take into consideration various criteria. These included the six factors listed in the 1975 Memorandum of Understanding (Jt. Exh. 1, p. 184); past practice; certain previous arbitral decisions on the subject; and their own experience. Mr. Campbell and his associates also consulted various applicable Postal Service publications including the P-1 Handbook (bargaining unit position descriptions), the P-11 Handbook (for personnel practices), and the P-12 Handbook (qualification standards for all Postal Service positions), as well as test questions given both clerks and mail handlers (Tr. 1144-1145, 1225-1226). The overall goal of their efforts, the team was reminded, was to develop an efficient and cost effective way to resolve the jurisdictional morass between the unions while

creating the least amount of confusion in the field (Tr. 1225, 1231-1232, 1270-1271).

Mr. Campbell, Mr. Hines, and Mr. Kipper began by developing skill levels for each mail processing position in the Postal Service. Using Postal Service handbooks, their experience, legislative history and contacts with other knowledgeable field personnel (Tr. 1227-1229), Mr. Campbell and his team ranked those positions from highest to lowest skill level (APWU Exh. 73, pp. 4-10). After the development of the skill levels, the mail processing team made certain initial recommendations as to the position the Postal Service should take (Tr. 1352-1353; APWU Exh. 73).

Postal Service management, however, asked that another approach be tried (Tr. 1353). As "there is obviously different skill levels required to perform different tasks within an operation" (Tr. 1231), the mail processing team then decided to break down each of the mail processing operations in the post offices into their component functions. Then, weighing the skill level involved, productivity, past practice, the need for efficiency and economy in the Postal Service, the team recommended that a primary craft, either Clerk or Mail Handler, be assigned to each function in each operation (Tr. 1229, 1289-1295, 1354-1355). The recommendations as to craft were not obvious in every case (Tr. 1233), nor was the weight of each criteria such as past practice, skill level, cost and efficiency the same for every assignment (Tr. 1295, 1370-1371, 1375). The team recommen-

ed, in addition, that other crafts could be assigned as supplemental or secondary crafts if they had the skill to perform the work (Tr. 1146-1147, 1231, 1600). Mr. Campbell's team deliberately made their initial assignment recommendations as "primary craft" rather than simply to a "craft" to preserve needed flexibility in the Postal Service. As Mr. Campbell explained:

* Because knowing by working in the field that management has to have some flexibility in assigning work, and if we recommend that all work, regardless, in a post office be assigned to a craft to the complete exclusion of all other crafts we wouldn't have the necessary flexibility to perform the mail processing function.

Tr. 1231.

The team also recommended adoption of certain of the present implementation criteria to the Regional Instruction (Tr. 1232-1233).

Once the Postal Service had developed this approach, it presented the package to the unions separately for their comments and criticisms in November of 1977. That package (which did not at the time cover primary assignments in the Bulk Mail Centers) was quite similar in format to what eventually was published as the "post office" portion of Regional Instruction 399. However, this proposal contained some definitions and the supplementary craft column, both later deleted at the insistence of the unions (Tr. 1146-1148, 1153). Because of the acrimony between the unions which had marked the tri-partite meetings of the jurisdictional subcommittee in 1976, the Postal Service proposed, and the unions

agreed, to meet separately with each union to discuss any possible objections to the document (Tr. 1149-1150; 1601). The unions agreed to the approach taken by the Postal Service but had reservations about some of the primary craft assignments (Tr. 1150, 1601-1602). In a series of meetings and telephone conversations (Tr. 1150-1153), the Postal Service compromised on some areas requested by the unions (Tr. 1151, 1153) and rejected others (Tr. 1150-1151). Compromises were made by both unions on work they felt they might be able to claim (Tr. 1601-1602). For example, the Mail Handlers, while believing they had a good claim to SPR (now called IPP) distribution, dropped the claim (Tr. 1601-1603). By April of 1978, as a result of these meetings, the Postal Service presented both unions with a modified document, PS Exh. 1, which the Postal Service believed both unions would accept (Tr. 1154).

Unbeknown to the Postal Service, however, a stumbling block appeared to acceptance of PS Exh. 1. As testified to by Mr. Lonnie Johnson, Mail Handler President, both he and APWU President Emmet Andrews were willing to agree to the contents of PS Exh. 1 (Tr. 1663-1664). However, in a meeting between the two union Presidents, Mr. Andrews claimed that the Postal Service would make the issuance of PS Exh. 1 contingent upon agreement by the unions to a level 4 clerk position. Mr. Johnson was unwilling to agree to the jurisdictional package attached to a level 4 clerk concept and Mr. Andrews claimed to also reject such an ar-

) rangement (Tr. 1665). Consequently, PS Exh. 1 was not accepted (Tr. 1154).

About this time, negotiations commenced for the 1978-1981 collective bargaining agreement. In preparation for those negotiations, Postal Service Labor Relations executive Bill Downes asked Peter Jacobson to prepare a package of primary duty assignments for the Bulk Mail Centers using the format and concepts developed by Bill Campbell and his associates for the post office assignments (Tr. 1154-1155, 1496). A request for just such a package to supplement the post office primary assignments had been made by the Mail Handlers earlier (Tr. 1151-1152). Mr. Jacobson in turn contacted Truman Moore, the Director of the Office of Bulk Mail Processing (Tr. 1497-1498) whose personnel "were in effect the experts on how the BMC's were to be operated" (Tr. 1498). Mr. Jacobson gave Mr. Moore the post office "package" developed by Mr. Campbell, a copy of the National Agreement with particular reference to the Memorandum of Understanding on Jurisdiction, and asked Mr. Moore to make recommendations as to primary craft assignments in the Bulk Mail Centers. Mr. Moore was asked, in developing these assignments, to consider work practices, efficiency and the cost of doing business (Tr. 1498-1499). Subsequently, Mr. Jacobson received a document from Mr. Moore with his recommendations; they included the recommendation that where schemes were required for non-machinable outside (NMO) work, such work be assigned to clerks; non-scheme NMO work should be assigned to the Mail Handler craft (Tr. 1499).

As the 1978 collective bargaining negotiations continued, it became evident that jurisdictional disputes between the APWU and the Mail Handlers, which had not been resolved in April, would again be crucial. The Mail Handlers, for example, placed on the table a jurisdictional proposal that followed the format of PS Exh. 1 but added back "all of the work that [they] had given away in negotiations" with the Postal Service and the APWU in 1977-1978 (Tr. 1884). A subcommittee was formed to try to deal with the problem. It was comprised of William Downes for the Postal Service, James Wolff for the APWU, James Bratcher for the Mail Handlers, and a federal mediator (Tr. 1155-1156, 1884). Mr. Jacobson also attended for the Postal Service (Tr. 1501). At the first meeting of this subcommittee, approximately July 14 (Tr. 1178), Mr. Downes suggested, and the unions agreed, that an amended copy of PS Exh. 1, the April 1978 document that previously had been forwarded to the unions, be used as a basis for discussion of disputes involving assignment in the post offices (Tr. 1156). On July 17, 1978, the APWU submitted its own post office assignment proposal, similar to PS Exh. 1 but with many handwritten changes (Tr. 1157-1171; PS Exh. 8). Many of those changes requested in the APWU proposal were ultimately adopted by the Postal Service in Regional Instruction 399 (Tr. 1169-1170). In addition, APWU representative Wolff orally requested other changes in the post office package which were eventually incorporated into Regional Instruction 399 (Tr. 1180-1181, 1197).

On or about the same time as the parties were discussing the assignments in the post offices, Mr. Downes asked Mr. Jacobson to finalize a proposal for primary assignments at the Bulk Mail Centers to provide to the subcommittee. Mr. Jacobson began with Truman Moore's recommendations that he had received earlier, and he and Ms. Julie McCarthy, the General Manager of the Bulk Mail Center at Largo, Maryland "went through a step-by-step critique of the various recommended assignments and functions that Mr. Moore had" (Tr. 1501). Mr. Jacobson and Ms. McCarthy also called various Bulk Mail Centers around the country for advice (Tr. 1512).

In determining the primary assignment of NMO's, Mr. Jacobson and Ms. McCarthy weighed various considerations. As to the skill involved, they discovered that none of the work required scheme knowledge (Tr. 1510). Looking to past practice, craft assignments were not uniform. The first and largest Bulk Mail Center in New York had always used mail handlers as their NMO operators (Tr. 1455-1456, 1506) while other BMC's had used either mail handlers, clerks, or some combination of both (Tr. 1506-1507). On the other hand, mail handlers were involved in operations both preceding and subsequent to NMO distribution. NMO's were also heavy and dense objects more suitable to be lifted and moved by mail handlers, who were required to take strength and stamina tests. Finally, the post office proposed assignments in the platform operations assigned non-scheme parcels to the mail handlers (Tr. 1507-1508). In weighing all these factors, assignment of NMO distribution to

the Mail Handlers thus seemed more efficient and practical than to the Clerks (Tr. 1508). That NMO recommendation, along with other BMC primary assignments, was incorporated into a BMC proposal which was presented to the unions on July 16 for discussion (Tr. 1502-1503; PS Exh. 10). Hence, both portions of what eventually was published as Regional Instruction 399, the "post office package" and the "BMC package" were now on the table.

Despite the efforts of the Postal Service, however, the parties were unable to agree on either the post office or BMC jurisdictional proposals. As to the post office portion, Mr. Wolff for the APWU, while initially appearing receptive to agreement, later reversed direction and declared "that he was not aware of the emotionalism involved in this issue, [and] he felt that we should put off this discussion for six months or so after the negotiations . . ." (Tr. 1176). As to the Postal Service's BMC proposal, Mr. Wolff declined to discuss it because he was not familiar enough with BMC operations (Tr. 1505). There was no agreement in the subcommittee on any jurisdictional matters and the issue was sent back to the main table for resolution (Tr. 1628, 1885).

At the main table, Mail Handler President Johnson insisted, as he had in 1975, that there would be no contract without a resolution of his jurisdictional claims (Tr. 1632). APWU President Andrews stated that he had a contract and departed (Tr. 1632). Postal Service negotiators and Mail Handler negotiators remained

Memorandum of understanding

to work out an agreement that the Postal Service would issue a document on mail processing guidelines (Tr. 1635; APWU Exh. 1).

In August of 1978, the Postal Service did issue a revised copy of its mail processing guidelines to both unions which incorporated many of the changes demanded by the APWU during the July 1978 negotiations (Tr. 1181; APWU Exh. 2). The revised guidelines were also sent to Postal Service field personnel for comment (Tr. 1181, 1510-1511). The Postal Service issued a further revised copy to the unions in November 1978 (APWU Exh. 4) and published the guidelines as a Regional Instruction on February 16, 1979. The APWU raised various objections to the Instruction; consequently, three additional meetings were held and changes made to the Instruction to satisfy certain of those objections (Tr. 1182-1183; APWU Exh. 15).

IV. Relevant Provisions of the National Agreement^{3/}

Article III - Management Rights. The employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

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

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or

^{3/} Although the matters in this proceeding encompass time periods covering both the 1975 and 1978 agreements, the contract provision alluded to above is the same in both.

take other disciplinary action against such employees;

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

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

* * *

V. Argument

A. The Legal Framework

Due to the agreement of the parties at the opening of this arbitration, the legal posture of this proceeding is somewhat unique. The APWU is not contending that Regional Instruction 399 or its Implementing Criteria were improperly promulgated, and have no quarrel with most of the specifics of that document. Rather, the issue here is whether certain specific assignments to the Mail Handlers as the primary craft were proper. In other words, the arbitrator is confronted with a classic jurisdictional dispute between two unions, each of which has done the disputed work in the past, and both of which claim the right to the primary assignment of that work in the future.

During the many days of trial consumed by this arbitration, it became obvious that certain of the primary craft assignments claimed as incorrect by the APWU at the commencement of the case were not really challenged by that Union. As to those assignments, the APWU has simply not made out a prima facie case and allega-

tions relating to them should be dismissed without further comment. As to the really disputed assignments, the Postal Service submits that, both as a matter of law and as a matter of policy, they should stand.

As a matter of arbitral law, the Postal Service's rights to assign work generally were established in Article III of both the 1975 and 1978 collective bargaining agreements. The Postal Service recognizes, of course, that this general right of assignment cannot be stretched so far as to permit the arbitrary transfer of work historically accomplished by one craft to another craft. But Regional Instruction 399 does not purport to require such a transfer. First, the Regional Instruction does not set rigid lines of demarcation; the assignments are primary only, with the expectation that other crafts could be also called upon to do the work if and when circumstances required. Next, none of the disputed functions assigned to the Mail Handlers was in derogation of the historical facts or past practice. Finally, the Postal Service carefully considered all relevant criteria before deciding that in each primary assignment challenged, the Mail Handlers were the proper craft.

The decision of the Postal Service was not made in a vacuum, or unilaterally. If anything is evident from the massive record in this case, it is that the Regional Instruction issued February 16, 1979, was the product of negotiation and compromise between the Postal Service and the unions stretching back several years.

And while the APWU now disavows agreement on any of those portions of the Instruction still in dispute, the record is replete with instances of such agreement, both as to the Regional Instruction generally, and also as to many of those specific functions challenged in this arbitration. In addition, many of the specific objections raised by the APWU to the primary craft assignments are satisfied by the terms of the Regional Instruction.

Moreover, as a matter of practical policy the primary assignments in this case should be upheld. The record is clear that all parties desired a resolution of the uneven condition of work assignments in the field, and the unions demanded that the Postal Service take the laboring oar in creating a document to bring some semblance of order in mail processing. The final document cannot be disturbed without unraveling compromises made by all parties. We discuss all of these points in more detail below.

B. There Is No Legal Impediment To The Primary Craft Assignments Challenged In This Proceeding

By agreement of the parties at the commencement of the hearing, the arbitrator in this case has been requested to decide the propriety of certain primary craft assignments made by the Postal Service. The arbitrator's authority to render a decision arises not only from the parties' express stipulation (Tr. 155-157) but also from that provision of the contract's Memorandum of Understanding which states:

In the event that a dispute is not resolved by the Committee . . . any of the Unions claiming jurisdiction over the duties may . . . request that the dispute be arbitrated . . . (Jt. Exh. 1, p. 184).

However, neither the Memorandum nor the parties' stipulation sets forth any guidelines for the arbitrator as to how he is to resolve the matter.

The Memorandum does state certain facts which the Jurisdiction Committee is required to consider, among others, in resolving disputed assignments; and the Postal Service suggests that these criteria, by inference, can also form a starting point for the arbitrator in this case. These factors are as follows:

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.

The Memorandum of Understanding does not indicate what weight is to be given these various factors, but implies that they may be weighed differently, depending on the circumstances.

Another source of guidance for the arbitrator in this matter is the National Labor Relations Board, which is frequently called

) upon in 10(k) proceedings to determine jurisdictional disputes between unions. In the landmark Board decision in International Association of Machinists, 135 NLRB 1402 (1962), the Board established the following guidelines:

The Board will consider all relevant factors in determining who is entitled to the work in dispute, e.g., the skills and work involved, certifications by the Board, company and industry practice, agreements between unions and between employers and unions, awards of arbitrators, joint boards, and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer's business.

* * *

135 NLRB at 1410-1411.

This arbitrator has, in a previous proceeding, recognized the propriety of referring to the jurisdictional guidelines of the National Labor Relations Board. National Association of Letter Carriers, No. N-NAT-3061, pp. 19-20 (October 19, 1973) (Centralized Markup). Other arbitrators have also held that it is necessary to consider a wide variety of factors when faced with jurisdictional cases. Kansas City Power & Light Co., 71 LA 381, 387 (June 9, 1979) (Frank Elkouri, Chairman) (nature of operations involved, past practice, qualifications necessary to perform the work, job descriptions and bargaining history are all relevant considerations); Central Soya Co., 68 LA 864, 866 (May 17, 1977) (James R. Cox, Arbitrator) (valid business reasons, skills and right of management to remain efficient are among factors which can outweigh claim based on past practice).

The Postal Service submits that the factors it considered in reaching its decisions on the disputed primary assignments were reasonable and in accord with the above authorities, and fully support those decisions. The evidence can be summarized as follows:

1. Operation 010/020: The claim of the APWU as set forth in its Exhibit 21 was that none of the work with one exception in either Operation 010 or 020 should be awarded to the Mail Handler craft as the primary craft. The APWU claimed that the work should be joint (Tr. 594). However, as the evidence developed, it became evident that position was without a shred of support and totally frivolous. The testimony of Postal Service witness William Campbell, for example, established that none of the primary assignments positions awarded the mail handlers in Operation 010 or 020 was ~~beyond~~ their skill (Tr. 1289-1290). There was no evidence to suggest that it would be any less efficient to use mail handlers in these functions. The cost to the Postal Service would be less because of the lower level of the mail handler craft generally (Tr. 1271). Communications Workers of America, Local 1104, 146 NLRB 388, 391-392 (1964). Clerks would not be excluded from work in Operation 010 or 020; some of the functions in those operations had Clerks as the primary craft; and in others they could and would be used as supplementary craft when needed (Tr. 1187). Finally, the overwhelming record testimony and exhibits demonstrated that mail handlers traditionally have performed the disputed functions in 010 and 020 for many years.

See the general testimony of Mail Handler President Johnson, (Tr. 1652-1653) and Administrative Assistant James Bratcher (Tr. 1948-1949). See also Tr. 1236 (Atlanta); Tr. 1391-1392 (Tacoma, Seattle, Los Angeles, Louisville); Tr. 1522-1523 (Baltimore); Tr. 1870-1871, 1874 (Portland); Tr. 1913-1914 (Memphis); Tr. 1919 (Miami); Tr. 1947 (Oakland).

The contrary evidence introduced by the APWU to support its contention was thoroughly unconvincing. The main APWU witness as to this and other APWU claims was Mr. James Wolff, an adviser in the employ of the APWU who had resigned from the Postal Service in 1971 but had worked for the Mail Handlers as well between 1972-1974 (Tr. 628-629). At best, Mr. Wolff could only argue that the APWU was entitled to joint assignment with the Mail Handlers as to the disputed work (Tr. 594). But even that limited claim of his on behalf of the APWU was discredited by two disclosures later in the hearing. First, Mr. Wolff admitted he had told Postal Service and Mail Handler representatives that 010 and 020 was "basic mail handler work" (Tr. 637; see also Tr. 1179, 1648, 1883). In addition, and even more damaging was the revelation that, while in the employ of the Mail Handlers, Mr. Wolff took positions and gave opinions involving mail processing directly contrary to that which he presented at the hearing on behalf of the APWU (MH Exh. 5).

Thus, at the hearing Mr. Wolff, as APWU spokesman, alleged that clerks differed from mail handlers because clerks always

did single piece distribution (Tr. 474). Under that theory, a "single piece" of parcel post would belong to the Clerk craft. Mr. Wolff acknowledged that mail handlers did such things as "separations." He distinguished between separation and distribution by saying that separations occurred earlier in the mail processing "process" and were not as "fine" a breakdown as distribution which involved a single piece rather than a large number of parcels, letters, or packages (Tr. 393-394, 591, 592-593). While working for the Mail Handlers in 1974, however, Mr. Wolff's analysis took a quite different tack. In his report to the Mail Handlers, Mr. Wolfe viewed mail processing history as a distinction between scheme and non-scheme work. Scheme work Mr. Wolff called "distribution;" non-scheme work was "numerical separation" (MH Exh. 5, pp. 3-5). With the distinction based on scheme versus non-scheme, rather than the number of pieces distributed, parcel post became mail handler work (MH Exh. 5, p. 6).^{4/}

The Postal Service submits that, in light of Mr. Wolff's obviously contrary and inconsistent positions,^{5/} all of his testi-

^{4/} The report in question, MH Exh. 5, was prepared for the Mail Handlers by Mr. Wolff to assist them in the 1974-1975 jurisdiction arbitration which culminated in the "West Coast" Garrett award (Tr. 1649-1650; MH Exh. 5, p. 7). However, when asked earlier in the proceedings whether he had participated as a consultant in that case, Mr. Wolff had vigorously denied any involvement (Tr. 560). Neither Mr. Wolff nor any other APWU witness was called in the rebuttal phase of the APWU's case to deny the contents of MH Exh. 5 or the testimony of Mr. Johnson concerning its promulgation.

^{5/} Besides being discredited, Mr. Wolff was also shown to be less than a completely knowledgeable witness, even though he was

Footnote continued on page 26.

mony not consistent with Postal Service and Mail Handler testimony should be disregarded. He was a thoroughly discredited witness.

Other APWU witnesses did no more to advance the APWU cause on the issue of 010/020 than did Mr. Wolff. Peter Vogel, General President of the Houston, Texas Local, testified that, while clerks were used in Operation 010, that occurred primarily during peak periods (Tr. 698). Regional Instruction 399 not only does not prohibit the use of clerks during peak periods but actually would encourage it as a supplementary or secondary craft to be used as needed under the Implementing Instructions (Tr. 1187). Edward Taylor, from the Birmingham, Alabama Local admitted that 010 and 020 had been mail handler work in his post office since 1975 (Tr. 740).

In short, every relevant-factor which the Postal Service could and did consider established the correctness of the award of the disputed functions in Operations 010 and 020 to the Mail Handlers as the primary (although not exclusive) craft.

5/ Continued from page 25.

claimed to be an "expert." Among other things, he was incorrect as to the rate of processing letter mail (Tr. 1304). He testified he "believed" there was a 30/30 provision for LSM rotation (Tr. 239); it is non-existent (Tr. 1305). He was shown not knowledgeable about the Bulk Mail Centers (Tr. 1306, 1308-1309) which substantiated an admission he had made on this point in a subcommittee meeting in 1978 (Tr. 1505). He made mistakes in describing letter operations (Tr. 1307) and 010/020 operations (Tr. 1309-1310). He erred in his testimony on manual separation cases (Tr. 1311-1312). He was unaware of the means by which a post office can obtain a breakdown between the two categories of employees in mail processing (Tr. 1307).

2. Operation 050/055: Operation 050/055 was originally made part of the Regional Instruction on the insistence of the APWU (Tr. 1180, 1197). After it was inserted, the APWU took exception to some of the primary craft assignments. However, the APWU complaint with regard to the award of work to the Mail Handler craft in this operation was substantially reduced at the hearing despite the broad-based attack in President Andrews' September 28 letter (APWU Exh. 21). As now substantially modified, the APWU objection involves only post offices where primary mail is so reduced that allied functions (such as transporting, culling, loading ledges and sweeping) ought to be part of the distribution process which Regional Instruction 399 admittedly gives to the Clerks (Tr. 496-500).

Testimony by Mr. Downes of the Postal Service, however, established that in such circumstances, the work would be given to the Clerks. That is, where the allied functions are an integral part of the distribution function, the asterisk at the bottom of page three of the Regional Instruction requires that, for efficiency, the work be performed by the craft doing the distribution (Tr. 1188-1189). Consequently, there now exists no real disagreement between the APWU and Regional Instruction 399 in this operation.

When pressed to explain why, in light of the above, the APWU continued to object to this portion of Regional Instruction 399, the APWU was reduced to the contention that management would

be incapable of determining when work was integral to the distribution process and when not (Tr. 500). Such an argument is specious. Clearly, management is in the best position to determine when it would be most efficient to combine certain allied functions with distribution. Indeed that sort of judgment is management's responsibility under Article III on a post office-by-post office basis.

In any event, Postal Service testimony established the correctness of the assignment in this Operation. The types of auxiliary work given the mail handlers in this Operation is clearly within their skill; can be done as efficiently as by clerks except where it is an integral part of the distribution function. At that time, management will assign it to a supplementary craft, the Clerks. It is more cost efficient to use mail handlers than clerks. As for past practice contrary to the Regional Instruction, the Clerks introduced none.^{6/}

3. Operation 100: The gravamen of the objections of the APWU to the primary craft assignments in Operation 100 was that, as alleged by their expert witness James Wolff, it constituted single piece distribution, and thus belonged to the Clerk craft (Tr. 480). We have already commented earlier, however, that Mr. Wolff had possessed a singularly different opinion of the proper assignment

6/ What testimony there was on Operation 050/055 indicated that, where the Operation was a fairly large one, like an Air Mail Facility (AMF), clerks did distribution and mail handlers the allied labor. In small facilities, where it would not be efficient to use mail handlers, clerks did almost all of the work (Tr. 1238-1239, 1523). This past practice is consistent with the Regional Instruction.

of parcel post when employed by the Mail Handlers (MH Exh. 5; supra, p. 25). That contrary view, that is, that parcel post belonged to the Mail Handler craft and not the Clerks, at least when it was non-scheme, was also urged by Mr. Wolff to Mail Handler President Lonnie Johnson "on numerous occasions" (Tr. 1649). As noted above, supra, p. 25, n. 4, although given the opportunity in rebuttal, the APWU pointedly failed to recall Mr. Wolff to deny that he had taken such a position on parcel post when in the Mail Handlers' employ.

Mr. Wolff's 1974 view that non-scheme parcel post should be mail handler work is the correct one. There is nothing intrinsically difficult about reading a ZIP code or address in order to distribute a parcel, and mail handlers have that skill (Tr. 1291-1292). The Mail Handler key position description includes the words "simple distribution of parcel post" and the ~~word~~ "simple" can be equated with non-scheme (Tr. 608; MH Exh. 9a). It would obviously be more cost effective for the Postal Service to use mail handlers in this operation, and just as efficient.

As far as past practice is concerned, there is ample testimony in the record of both general observations and specific sites demonstrating that mail handlers have done non-scheme parcel post distribution in many post offices across the country for many years (Tr. 1653 (testimony of Lonnie Johnson); Tr. 1948 (testimony of James Bratcher)). See also, Tr. 1240-1241 (Atlanta), Tr. 1394-1395 (Seattle), Tr. 1395 (Los Angeles), Tr. 1396 (Louisville),

) Tr. 1462-1464 (New Jersey), Tr. 1689-1692 (New York City), Tr. 1712-1713 (Buffalo), Tr. 1722-1723 (Rochester), Tr. 1729-1730, 1768 (Utica), Tr. 1731-1732 (Albany), Tr. 1865-1867 (Portland)).

Even APWU witnesses supported the distinction between scheme parcel post for clerks and non-scheme for mail handlers. Thus, Mr. Wolff, the APWU "expert" admitted that he had recommended as the head of the Postal Service POMSIT team in the 1960's that a so-called "heavy 20" belt be installed in Atlanta. At that belt, mail handlers made the final distribution of single piece parcels (Tr. 441, 569-570, 679, 1240-1242). This "heavy 20" belt was also installed by POMSIT teams headed by Mr. Wolff in other post offices: Jacksonville, Baltimore, Kansas City, Dallas, Louisville, Hartford, and Newark (Tr. 1241-1242). Mr. Joseph Anthony, APWU witness from Pittsburgh, testified that parcel post had to be done by clerks "because there was scheme knowledge in it" (Tr. 888). This theme was echoed by APWU witness Thomas Wolfe from Portland (Tr. 2127). Mr. James Smith, another APWU witness from Atlanta, correlated clerk distribution with scheme distribution (Tr. 769). While it may be also true that a good deal of parcel post was originally worked by clerks, those assignments were made because of the original requirement of scheme knowledge for those distributions, not because, without a scheme requirement, the clerks were any more proficient at the assignments than some other craft.

In any event, the Postal Service, in making its primary assignment of non-scheme parcel post to the Mail Handlers, never asserted that past practice demonstrated an exclusivity for that craft in such an operation. Nor was the Postal Service required to make such a finding in this or any other function ultimately assigned to the Mail Handlers in Regional Instruction 399. As admitted by all parties, part of the need for a Regional Instruction was because of the uneven nature of actual work practice in the field. To satisfy its obligation to make a reasonable and non-arbitrary assignment, the Postal Service need only show that it has not transferred work from one craft which had not done the work, to another. It has not done so in this or any other operation in Regional Instruction 399. No craft was given a primary assignment which it had not performed in the past (Tr. 1491).

4. Labeling and Dispatching: Operations
105, 180/189, and 200

The objections of the APWU to the primary craft assignments in Operations 105, 180/189, and 200 all involve the same functions: the labeling and dispatching of sacks and pouches of mail (APWU Exh. 21). The thrust of the APWU rationale is that it should be given the assignment of labeling because it was also "responsible" for distribution (Tr. 613). The inference the APWU witness suggested was that, if a mail handler were allowed to insert a label, the sack might be misrouted and the clerk would be held "responsi-

le" for the error (Tr. 458-459). As for dispatching, the APWU offered no independent rationale for claiming that work.

The argument of the Clerks with regard to labeling is totally devoid of merit. The APWU offered no evidence that clerks would be disciplined if mail handlers improperly labeled sacks or pouches. The physical act involved is absurdly simple, as even APWU witness Wolff conceded: an employee inserts a label into the appropriate place on a sack or pouch, a label that comes from a label holder containing many such preprinted labels (Tr. 612, 688, 1246, 1899). Clearly, mail handlers have that skill; and if it is as efficient to perform the function with that craft, the cost would be less to the Postal Service. With mail handlers, however, as in the case of some other functions, Regional Instruction 399 provides that when labeling and dispatching are an integral part of the distribution function, they will be done by the craft doing the distribution, namely clerks, because that would be the most efficient way to accomplish that work (Tr. 1189-1190).

Insofar as past practice is concerned, the evidence demonstrated that mail handlers have both labeled and distributed sacks and pouches in the past in the 105, 180/189, 200 and other operations when it was the most efficient and effective way to get the job done (Tr. 1246-1247, 1321-1322 (Atlanta), Tr. 1399, 1400 (Tacoma, Seattle and Los Angeles), Tr. 1467-1468 (Hoboken, North Jersey and Meadows, N.J. facilities), Tr. 1524

(Baltimore)). Under all relevant criteria, therefore, the assignments of pouching and labeling to the Mail Handlers under the criteria set forth in Regional Instruction 399 should be upheld.

5. Operation 109 (Parcel Rewrap), Operation 168/169 (Box Section) and Missent Malfunction Chutes

It is appropriate to group these three operations together although at first blush they do not appear to have anything in common. In the nature of this case, however, they do possess a common link: a total failure on the part of the APWU to put into evidence anything concerning the alleged right of their members to the challenged work in these operations. At the close of the APWU case in chief, Postal Service counsel moved inter alia, that the Union's objections to primary craft assignments in certain operations in the Regional Instruction be dismissed because the APWU had failed to make a prima facie case (Tr. 1091-1093). The assignments in Operations 105, 168/169 and the missent malfunction chute (paras. 6, 7, and 12 of APWU Exh. 21) are the best examples of this failure of proof.^{7/}

Because of the Union's failure to make a prima facie case, the Postal Service is entitled to affirmance of its assignments

^{7/} It should be noticed that, with some minor changes of wording in Operations 168/169, the APWU proposal of July 17, 1978, which it supplied to the Postal Service does not seriously challenge the assignment of Mail Handlers in either Operations 109 or 168/169. PS Exh. 8, pp. 8, 10.

herein without the necessity of going forward to show the correctness of those assignments. Nonetheless, such supportive evidence does exist in the record. Thus, with regard to all of these operations, Postal Service testimony established that, in making its decision regarding them, Postal Service personnel considered such factors as the skills involved, efficiency, cost, and past practice (Tr. 1293, 1498).

With specific reference to Operation 109, the skill involved in that operation does not require scheme knowledge and can be done by Mail Handlers (Tr. 1719). In addition, there is a Standard Position Description for Mail Rewrappers which is in the Mail Handler craft (PS Exh. 6); and the past practice in the field shows this to be a Mail Handler position (Tr. 1466 (New York), Tr. 1524 (Baltimore), Tr. 1719 (Buffalo), Tr. 1927 (Chicago)). With regard to Operation 168/169 (Box Section), the mail handler assignments therein are subject to the caveat that their work may be given to the Clerks as the primary craft if it appears to be integral to the distribution function (Tr. 1190). Past practice supports this approach (Tr. 1528). As for missent/malfunction chutes, the assignment to the Mail Handlers is also consistent with the past practice introduced at the hearing (Tr. 1461-1462).

6. Operation 210/239: Platform Operation

The APWU objected to the primary craft assignment of manual sorting of outside parcels to the Mail Handler craft. In effect,

) they contest the assignment of functions 4, 6, and 8 in Operation 210/239 (APWU Exh. 21).

The assignment is proper. As explained by Mr. Campbell, mail handlers generally work the platforms or docks; hence, as a matter of efficiency, it made sense to make other platform assignments to them if they can do the work (Tr. 1295). The disputed assignments were within their skill level; it was less costly to assign the mail handlers the work; and as a matter of past practice, non-scheme separations of sacks, parcels, and outside parcels on the platform had been mail handler work (Tr. 1294-1295; also Tr. 1244 (Atlanta), Tr. 1398 (Seattle, Tacoma, Los Angeles), Tr. 1398-1399 (Louisville), Tr. 1469-1470 (North Jersey and Meadows, N.J.), Tr. 1870 (Portland)). Even APWU witness Wolff conceded that he had seen mail handlers accomplish the disputed work (Tr. 653). Under any criteria, consequently, the Postal Service correctly weighed the factors and designated the mail handlers as the primary craft in the disputed functions.

7. Ledge Loading and Sweeping

Ledge loading and sweeping is another of those areas of objection where the complaint of the APWU is more metaphysical than real. Like the disputes of Operation 050/055 and labeling of sacks and dispatching of pouches, the primary assignments in ledge loading and sweeping are qualified by an asterisk. As explained by USPS witness William Downes, that means that the tasks

of ledge loading and sweeping would only be assigned to the Mail Handlers so long as those tasks were not integral to distribution. Otherwise, it would be more efficient to assign those functions to whatever craft was performing distribution, usually the Clerks (Tr. 1190-1191).

This was the intention of the framers of the Regional Instruction. As testified to by Mr. Campbell:

A. All of the criteria -- the ledge-loading and sweeping appears in several of the distribution operations. All of the criteria that I've already testified to, efficiency, cost, were all considered in all of these operations. However, we also recommended -- and it was adopted at that time -- where ledge-loading and sweeping are considered an integral part of the operation that it be assigned to the craft performing the distribution, whatever craft that might be.

Q. What was the purpose of that recommendation?

A. To insure the efficiency of our mail processing. In many cases it's very inefficient to try to separate ledge-loading and sweeping from the basic distribution operation. In other cases, it's very efficient.

Tr. 1293-1294.

The actual work involved in sweeping and ledge loading is non-scheme and is within the Mail Handlers skill. The record also revealed ample evidence that mail handlers have been performing these functions for many years, particularly where they are not integral to distribution. Tr. 1244-1245 (Atlanta); Tr. 1408-1409 (Tacoma, Seattle and Los Angeles), Tr. 1470 (Hoboken, North Jersey and the Meadows, N.J. facilities), Tr. 1524-1526 (Baltimore), Tr. 1757 (Buffalo).

To justify its position that ledge loading and sweeping should be exclusively clerk work regardless of the operational circumstances, the APWU relies on two general arguments. Both of them were thoroughly rebuffed at the hearing.

First, paralleling his attack on the ability of management to ascertain the integral nature of work in Operation 050/055 (supra, p. 28), Mr. Wolff for the APWU insisted that, similarly, "there was no established way of determining whether" an operation was an integral part of a distribution function in ledge-loading and sweeping (Tr. 427). Mr. Wolff then introduced a study he had commissioned (APWU Exhs. 59A, 59B) whose very purpose, he testified, was to demonstrate precisely what he had just said was impossible: that is, that sweeping and ledge loading was an integral part of the distribution function in certain postal offices (Tr. 683,684).^{8/} Aside from this substantial conflict in his testimony, the Postal Service submits that Postal Service management in an individual post office is at least as capable of ascertaining when ledge loading and sweeping are integral to distribution as Mr. Wolff, who had not been employed in the

^{8/} The study itself failed to demonstrate anything significant. The "study," which Mr. Wolff characterized as "quick and dirty" (Tr. 489-490) had substantial methodological problems (Tr. 527-528, 530). In addition, it covered only two post offices (Tr. 519) and, even so, at that ignored many significant operations in those post offices (Tr. 533-534). Finally, as most of the loading and sweeping was by the employee distributors (Tr. 507, 516-518, 532-533), it is not surprising that the study revealed that those functions could be viewed as integral to the distribution function.

Postal Service for a decade and had not worked on the floor of a post office as an employee or supervisor since 1964 or 1965 (Tr. 615).

The other argument of the APWU, again put forth through an opinion by Mr. Wolff, was that clerks needed to sweep as a fatigue break, and hence this was more efficient (Tr. 424). Aside from the question of Mr. Wolff's believability generally, (supra, p. 25), Postal Service witnesses pointed out that clerks already have idle time built into their day for such things as personal breaks and fatigue (Tr. 1313); and that, if loading and sweeping is not part of the distribution function, it is not as efficient to have the clerk leave his case to do these tasks as it is to assign it to the Mail Handler craft (Tr. 1313-1314; 1408-1409).^{9/} In short, the record evidence supports the Regional Instruction assignments.

9/ The APWU also introduced as an exhibit a portion of the M-75 Handbook on Manual Letter Mail Distribution (APWU Exh. 58). With regard to ledge loading, the handbook recommends loading by clerks when it is the most efficient way to do the work (Section 152.1); it recommends mail handlers load ledges when it is necessary to use clerks to distribute the mail (Section 153.2). As for sweeping, the handbook notes sweeping by clerks is not efficient where continuous use can be made of allied (mail handler) labor (Section 171.2a). None of these statements are contrary to the philosophy of the Regional Instruction that the most efficient method of ledge loading and sweeping determines which craft receives the primary assignment. Indeed, the handbook echoes this policy.

8. Non-Machinable Outsides

Non-machinable outsides have been described as packages or objects too bulky, too heavy, and too awkward to be processed over a machine (Tr. 1455; PS Exhs. 12-14). These objects are now distributed in Bulk Mail Centers; prior to the BMC's coming on line, they were handled in various post offices (Tr. 1456-1457). They are now distributed without the need for any scheme knowledge (PS Exhs. 12-14).

The only serious challenge by the APWU to the entire BMC assignments set forth in the Regional Instruction has been in the area of non-machinable outsides, or NMO's (APWU Exh. 21, para. 13).^{10/} At one point, Mr. Wolff for the APWU suggested that NMO's were parcels and therefore should be given to the clerks (Tr. 449). But the evidence at the hearing conclusively demonstrated the absurdity of that position.

As carefully explicated by Postal Service witness Peter Jacobson, the genesis of the award of NMO sortation to the Mail Handlers was a recommendation by Mr. Truman Moore, the Postal Service Director of the Office of Bulk Mail Processing. Mr. Moore suggested that, after considering efficiency, cost, and present work practices, non-machinable outsides requiring no scheme knowledge should be assigned to the Mail Handlers as the

^{10/} As indicated earlier, the APWU also raised an objection to the assignment of mail handlers on missent-malfunction chutes, but failed to put on any evidence to support their objection (supra, pp. 33-34).

primary craft (Tr. 1498-1499). Mr. Jacobson took this recommendation, and, himself considering such things as cost, effectiveness, efficiency, and the need for strength and stamina to do the work, recommended that the work be awarded to the Mail Handlers (Tr. 1507-1508). One point stressed by Mr. Jacobson was that the Mail Handlers' primary assignments make sense from a "work-flow concept":

. . . one of the considerations was that Mail Handlers brought the mail to this operation and Mail Handlers took it away. It lent credence to the thought that, you know, maybe Mail Handlers, if practical, should be in between also so you wouldn't have any disruption in the flow. Basically we were looking to avoid featherbedding or inefficient work practices. Tr. 1507.

See, Graphic Arts Union, 246 NLRB No. 155, 103 LRRM 1025, 1028 (1979) (award of work to one of two competing unions would disrupt work flow of employer). This was one area where past practice was definitely mixed (Tr. 1506-1507).

There is no question that non-scheme NMO sortation can be and has been done by mail handlers in various post offices and BMC's across the country (Tr. 1455-1461 (NY BMC, Meadows, NJ, Hoboken and Jersey City); Tr. 1696-1697 (New York City); Tr. 1728-1729 (Rochester); Tr. 1863 (Portland); Tr. 1908-1909 (Houston); Tr. 1914-1915 (St. Paul)). Because there is no longer any scheme requirement for NMO's, there is no need to assign Clerks, rather than Mail Handlers, in this operation. It is an inherent right of management to be able to use less skilled employees when em-

ployees of higher skill, like clerks, are no longer needed to perform the job. McDonnell Aircraft Corporation, 21 LA 424, 427 (Joseph M. Klamon, Chairman) (October 26, 1953). Management's assignment in this area should be upheld.

C. None of the Objections Raised Or Suggested By the APWU Bar The Primary Craft Assignment Herein

1. The Garrett Award

Early in the arbitration, the APWU introduced into the record a copy of a decision by Arbitrator Sylvester Garrett in the so-called "West Coast cases," AW-NAT-5753, et seq. April 2, 1975. (APWU Exh. 48). Although the APWU did not elucidate the reason for placing this document into the record, the Postal Service anticipates that the Union will claim some relevance to this case of the Garrett award.

An examination of the circumstances of this case, and, in addition, a close examination of the Garrett award itself, reveals that it in no way bears upon this proceeding. In that decision, Arbitrator Garrett stated that the Postal Service did not err in refusing to alter work assignments from the clerks to the Mail Handler craft despite a bilateral agreement with the Mail Handlers which seemed to suggest that such alteration was required. Arbitrator Garrett concluded that:

Article I, Section I [of the National Agreement] bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change

in conditions affecting the nature of such regular work assignments) except in conformity with Article VII.

(APWU Exh. 48, p. 48).

However, that conclusion, even if correct when rendered, does not and should not control here.

In the first place, to the extent the APWU may now assert that the Garrett decision requires no change be made in craft assignments, the short answer is that the APWU has waived that argument in this case. Shortly after the commencement of the proceeding, the parties agreed, for purposes of this arbitration, to allow Arbitrator Gamser to determine the propriety of certain primary craft assignments made by the Postal Service and concurred in by the Mail Handlers but not the APWU. All parties have presented their cases on that assumption. The APWU agreed not to challenge the propriety of the issuance of the Regional Instruction and all other primary assignments not specifically identified in APWU Exh. 21 (Tr. 156-157). The natural corollary of that agreement, implicit if not explicit, is that the APWU cannot now argue that the hands of the arbitrator are bound by a previous arbitral decision which froze assignments based upon what they were when Article I, Section I first appeared in 1971.

Moreover, the Garrett award has no force as precedent if it is read as not permitting changes in mail processing assignments. Shortly after that decision, the APWU, Mail Handlers, and Postal

) Service agreed to a Memorandum of Understanding on Jurisdiction in 1975 negotiations. Rather than the static and contradictory situation from post office to post office which resulted from the Garrett decision, the agreement to the Memorandum illustrates that the Postal Service and its unions wished to be able to resolve the question of what craft would be given assignments in mail processing nationwide (Tr. 1131-1133, 1589). It was assumed that there would be alterations in jurisdictional assignments. Consequently, the parties to the Garrett award have modified that decision to the extent that it is read as forbidding changes in mail processing assignments. The parties have modified that decision as well by their actions from 1975-1978 in trying to resolve the jurisdictional issue. The dispute in this case has never been over the method or approach used in making the nationwide primary craft assignments (Tr. 1148, 1598-1599; PS Exh. 8); it is solely over the specific assignments themselves.

In any event, the specific language of the Garrett decision, even if currently viable, does not by its terms apply herein. In the words of the Arbitrator, his factual circumstances evidenced
that work assignments simply were transferred
from one craft to another

That has not occurred in this case. There has been no transfer of assignments as occurred in the "West Coast" cases where clerks were simply removed from positions they had occupied and mail handlers placed in their stead. That is a crucial distinction. The evidence submitted on every disputed assignment shows that

in each case the work at issue has been done by mail handlers as well as clerks; and indeed in most instances the evidence presented showed that the preponderance of the assignments were mail handler assignments. With that historical evidence, the Postal Service was not precluded from continuing to "[improve] the efficiency of its operations, even if a realignment of duties among various crafts may result." USPS and NALC, NC-NAT-1576 (Sylvester Garrett, Arbitrator) (PS Exh. 5, p. 22). Further differences between this proceeding and the "West Coast" cases are that the assignments in the Regional Instruction are primary assignments only, not exclusive; no employee is to be displaced except through attrition; and no jurisdictional lines of demarcation have been established.

Arbitrator Garrett also qualified his award by observing that it would not apply if there were changed conditions. Such changed conditions have been amply documented. As explained by Mr. Campbell, the recent mail processing changes in the need for and use of scheme training, many of which post-date the facts in the "West Coast" case (PS Exh. 9), have radically altered the manner in which mail is processed. They have significantly reduced the requirement that clerks alone must be assigned certain tasks. This has presented the Postal Service the opportunity to evaluate other factors to determine if the work should be assigned to another primary craft. As was stated by Arbitrator Joseph C. McKenna:

Generally exclusivity is based on craft skills and/or safety requirements. For example, an understanding that only electricians will do electrical work does not mean that no one but an electrician can operate an electrical switch, change a light bulb or plug in an electric heater. It does mean that no one but an electrician can wire a switch or light socket or put a new plug on an electric cord. The distinction is made at the point where the craft knowledge of electricity or electronics is required. Where such knowledge is not required, the work may be done by others.

Bliss & Loughlin Industries, Inc., 64 LA 146, 154-155 (December 19, 1974). ^{11/}

2. The Relevence of Early Postal History

Shortly after the opening of this case, the APWU inserted into the record voluminous copies of early legislative history, Post Office documents, and other historical records going as far back as half a century (APWU Exhs. 24-52). ^{12/} These documents

^{11/} Nor can the APWU claim support from any of the Postal Service documents related to the Garret proceeding (e.g., APWU Exhs. 49A-49C). To the extent that anything therein can be construed as viewing matters in a different posture in 1974, the short answer is that in 1974 the Postal Service was asked to take a position on three assignments in three post offices. In 1977, both unions which had been involved in the "West Coast" cases asked the Postal Service to re-think the entire matter, and take a national position involving all post offices. The Postal Service did so, carefully weighing all relevant factors, and, after consultation and compromise with both unions, issued a national policy, Regional Instruction 399.

^{12/} One of the ironies in this arbitration can be found in the reaction of counsel for the APWU to a relatively recent (1975) document offered into evidence at the later stages of the proceeding by the Mail Handlers. While not objecting to the document, APWU counsel deprecated its relevance with the observation that "it's so ancient" (Tr. 1592). One wonders, therefore, how to characterize APWU Exhs. 24-52.

were proffered with little or no explanation as to their relevance.^{13/}
The omission was prophetic. These documents have little or no relevance. The APWU also spent some considerable time through the testimony of Mr. Wolff establishing early Postal Service history, at least in his experience. This too is interesting as history; but not of significance in this case.

The APWU documentation and Mr. Wolff's reminiscences of his early years in the Post Office Department are not significant precisely because so much has changed since those documents were promulgated and Mr. Wolff left the workroom floor in 1964 or 1965. In the early years, as Mr. Wolff himself acknowledged, there were very few mail handlers at all; and they weren't even called mail handlers, but laborers (Tr. 229; APWU Exhs. 24, 26). Gradually, mail processing and mail processors changed. However, as testified to in great detail by Mr. Campbell, the real explosion in changes in mail processing occurred in the 1970's: new machines, new techniques, new processes of moving the mail that has simplified, standardized and altered mail processing (Tr. 1273-1279). The Congressional mandate to the Postal Service gave emphasis to efficiency and lower cost as goals to be achieved (PS Exhs. 2-4). Assuming, arguendo, that in the early Post Office Department, with its dearth of mail handlers and emphasis on scheme knowledge for clerks (e.g., APWU Exh. 24, p. 2; see also, APWU Exh. 35, pp.

^{13/} In admitting these documents, the Arbitrator noted that, to the extent no APWU witness explained the documents, they would have to speak for themselves or "we'll all be puzzled by what [they are]" (Tr. 187).

8-9) clerks were assigned to certain of the positions here in dispute, the evidence demonstrates that changed circumstances resulted, over the years, in changed assignments.

It is well established that changed methodology and circumstances can support a changed jurisdictional assignment to one craft even if another craft was given that assignment in the past.

[Nothing in the contract] assures to the bargaining unit or any classification in it the ownership of work for all time to come, regardless of changed circumstances expectable with the passage of time. A labor agreement is not a trust indenture. It does not freeze the status quo.

Joy Manufacturing Co., 48 LA 563, 565 (David C. Altrock, Arbitrator) (April 17, 1967). Such is clearly the case here.

-Conceding that there has been a significant change in mail processing (Tr. 214-217), the APWU has sought to minimize its significance. Thus, at one point in his presentation, Mr. Wolff attempted to draw an "analogy" between distribution in Fort Worth where he worked in 1936 and distribution today. He first alleged that he had been told that the Postal Service receives about 5 percent un-zipped first-class mail. He then testified that "pure scheme distribution in the Fort Worth Post Office was limited to about 5% of the outgoing mail" He concluded that ". . . we have [today] that hard residue again of about 5 percent that requires general scheme knowledge for distribution" (Tr. 232). The obvious impression Mr. Wolff wished to leave was that nothing of substance had changed very much in the Postal Service in the last 45 years.

As explained by Postal Service witness, Kenneth Lynn, Mr. Wolff's "analogy" is totally unsound. In the first place, Mr. Wolff attempted to equate the scheme distribution on outgoing mail in his Fort Worth Post Office in 1936 with overall scheme use today. What Mr. Wolff neglected to include in his "example" was that a post office has both of what are called outgoing and incoming mail (Tr. 1403-1404). Therefore, even assuming that in Fort Worth the outgoing mail required little scheme knowledge, Mr. Lynn testified that almost all incoming mail requires scheme knowledge even today (Tr. 1405). It is therefore totally misleading to portray 1936 Fort Worth outgoing mail scheme knowledge as the total scheme knowledge necessary to distribute mail in Fort Worth in 1936. In addition, even the outgoing scheme knowledge required in Fort Worth can hardly be considered typical of the country: 40 percent of the outgoing mail in Tacoma and Seattle required scheme knowledge in 1968-1973. The net result, as further explicated by Mr. Lynn, was that post offices in his experience had better than half of their mail moved by schemes in the later 1960's and early 1970's (Tr. 1406-1407). Mr. Campbell testified that both incoming and outgoing schemes have now both been dramatically cut due to FLSA requirements (Tr. 1276).

There are other difficulties with the "historical" data. One document, APWU Ex. 36, which looks on its face like an official report made to the United States Senate, appears, upon analysis, to have been prepared solely by clerk personnel (Tr. 1895-1896). Another document is a ten year old brief (APWU Ex. 42). Most,

if not all of the documents in this group were admittedly culled from the Garrett "West Coast" arbitrations to be dumped without further ado into this record, many with their previous exhibit numbers still affixed (Tr. 159). The Mail Handlers predictably have inserted their own contrary historical documents into the record (e.g., MH Exhs. 15-20, 25, 29-33). And as far as Mr. Wolff's testimony is concerned, it was repeatedly shown to be inaccurate, uninformed, or contradicted.

..It would be of little practical use to further analyze the historical curios and recollections of Postal Service past that the APWU has provided. One could speculate endlessly on what Congress meant in 1943 or 1955 or try to explain why certain language appears in certain documents. What is important is that statutory and operational changes justify the nationwide primary assignments in this case; and that the past practice that is relevant is the actual past practice in the disputed assignments as set forth by Postal Service and Mail Handler witnesses.

3. The Impact of Regional Instruction 399.

Another overall objection to the provisions of the Regional Instruction by the APWU was its claim that it would have a devastating adverse impact upon the Clerk craft.^{14/} Although the APWU

^{14/} The APWU raised the same contention in a Complaint For Preliminary Injunctive Relief filed in U. S. District Court on August 17, 1979 (MH Exh. 1). The complaint was never prosecuted and was subsequently dismissed November 28, 1979.

tried mightily to prove this contention throughout the hearing, it completely failed to do so.

The primary device used by the APWU to attempt to demonstrate its claimed adverse impact was another "quick and dirty" study (Tr. 286; APWU Exhs. 56, 71, and 72) supervised by Mr. Wolff but actually conducted by others who worked for him, namely Mr. Ben Spencer and certain of his associates. The purpose of the study was supposedly to show that clerk hours had decreased in certain post offices as result of the promulgation of Regional Instruction 399 (Tr. 976).

From the beginning the study was suspect. It was replete with mathematical and other errors (Tr. 374-381, 382-384, 1046; PS Exh. 11). It did not show assignments, only hours worked (Tr. 1059-1060). It covered only Operations 010 and 020 in a limited number of post offices (Tr. 1022, 1042). Casual employees were left out of the first set of data (APWU Exh. 56) but included in the second (APWU Exhs. 71-72) and this would change the ratio of clerks hours to mail handlers hours in APWU Exh. 56 (Tr. 1022-1031, 1058, 1070-1073). The survey did not take into account possible effect of mail flow prior to a holiday (Tr. 1032-1033, 1048-1050). The survey failed to consider changes in mail processing in an individual post office which could have been responsible for the percentage of clerk and mail handlers hours in Operations 010 and 020 as reflected in APWU Exhs. 71-72 (Tr. 1037-1040).

Most startling, however, was the repudiation by Mr. Spencer on cross-examination of the purported reason for APWU Exhs. 56, 71 and 72 being offered in the first place. APWU counsel had proffered APWU Exhs. 71 and 72 on the theory that they showed a loss of clerk hours due to the effect of Regional Instruction 399 (Tr. 976). However, when asked, Mr. Spencer, who was the APWU witness on the surveys, testified:

If I had wanted to isolate out 399 I would certainly have had to gone into a lot more detail. Yes. I had not -- this wasn't one of my objectives to isolate the effect of 399 in Operations 010 and 020.

He concluded that APWU Exhs. 71 and 72 "does not purport to show the effect of 399 . . ." (Tr. 1043). In short, whatever the purpose of the survey, it was not designed to show adverse impact on the Clerk craft.

Aside from the failure of the APWU to demonstrate any substantial adverse impact on their craft from the implementation of the Regional Instruction, there was also substantial evidence in the record to show that the Mail Handler craft would experience as much or more work loss than the Clerks as a result of 399.^{15/} Mr. Campbell testified that there were many areas in which, while he and his teams were aware of justifiable Mail

15/ It certainly cannot be inferred that because the APWU initiated this proceeding that that craft "stands to lose" more than the Mail Handlers. The Mail Handlers testified that they simply wished to end the jurisdictional uncertainty and were willing to trade some of their claims for stability (Tr. 1601-1602).

Handler claims, they determined after analysis to recommend the work as primary clerk work (Tr. 1234-1235, 1271-1272). Mail Handler witnesses Johnson and Bratcher listed numerous areas in the present Regional Instruction where they believed Mail Handlers would eventually, after attrition, lose work they had previously performed (Tr. 1601-1602, 1641, 1890-1895). Documents submitted to the Postal Service from various post offices as requested by the implementing instruction to 399 confirm that eventually, through attrition, many clerks will be placed in operations formerly occupied by mail handlers (APWU Exhs. 78, 79; PS Exhs. 16-20).

The APWU totally failed to substantiate the lurid allegations of adverse impact that it suggested at the outset of this proceeding. On the contrary, both clerks and mail handlers will, through attrition, lose some work in certain post offices to which they were assigned prior to Regional Instruction 399, to the extent that the other craft is now designated the primary (although not the exclusive) craft. That is not a reason to hold invalid the disputed assignments; indeed it is a natural and anticipated outgrowth of the process of rationalizing and standardizing primary assignments in the field that both parties desired when they asked the Postal Service to "take a position."

4. The Significance of the Unchallenged Primary Craft Assignments

During his testimony, Mr. Wolff alluded to other, non-challenged primary assignments made to the Clerks in the Regional

Instruction even though those assignments were non-scheme (Tr. 405-406, 430). On the basis of that testimony, the APWU is apparently prepared to argue that, because Clerks had been awarded non-scheme work, the challenged non-scheme assignments to the Mail Handlers are in error.

Such an argument would be a complete non-sequitur. There is nothing in the record that assignments were made to the Mail Handlers solely because they were non-scheme. On the contrary, Postal Service witness Campbell testified that many criteria or factors were considered in the award of each primary craft assignment, of which the skill needed, which would include scheme knowledge, was but one component. He also testified that no factor was considered determinative, and the weight given each factor could vary. Indeed, the only instances where scheme knowledge may have been determinative was in primary assignments favorable to the Clerks (Tr. 1234-1235). Moreover, there was no evidence adduced by the APWU concerning how the various criteria were evaluated by the Postal Service in making the unchallenged assignments mentioned by Mr. Wolff. In sum, the fact of other, non-controversial assignments is not probative of the correctness of the assignments at issue in this case.

5. The Effect of Regional Instruction 399 In Small Offices

A final fear voiced by Mr. Wolff concerning the Regional Instruction was his apprehension that it could not be understood in small post offices. Mr. Wolff's allegation was that the

terminology in the Instruction and its guidelines would be unknown in those offices because they have no workload reporting system (Tr. 220-222).

Mr. Wolff's concern is unjustified. Of course, to the extent that a Postal Service document would encounter interpretation problems, rectification of any such difficulty is the responsibility of management. However, as explained by Mr. Campbell, any such action by the Postal Service is unnecessary. As Mr. Campbell explained:

A. The numbering system in MOD One might be unknown, but the terminology is known throughout the Postal Service, transporting [empty] equipment, loading ledges, distributing letter mail, that terminology, that kind of terminology, is known throughout the Postal Service, MOD One, MOD Two, and smaller than MOD One and MOD Two.

Q. What would be your opinion, therefore, with regard to the ability of a small office to understand Regional Instruction 399?

A. I'd have no problem with a smaller office understanding it. Tr. 1299.

D. The Actions of the APWU Cast Doubt Upon The Bona-Fides of Its Objections to the Primary Assignments Herein

During the course of the hearing, testimony and documentary evidence introduced into the record demonstrated that the APWU had, on more than one occasion, agreed with all or many of the primary craft assignments it now disputes. This evidence casts

considerable doubt upon the seriousness of the APWU's position in this case.

Illustrative of this point is the undisputed and uncontradicted testimony of Mail Handler President Lonnie Johnson concerning a meeting he had with APWU President Emmet Andrews. Prior to the 1978 negotiations, as described in the Statement of Facts, the Postal Service believed that it had a package on jurisdiction acceptable to both unions (Tr. 1154; PS Exh. 1). The unions ultimately rejected that proposal, Mr. Johnson testified, not because they disagreed with the assignments in the proposal, but because of an outside issue - the level 4 clerk (Tr. 1663-1665). Thus, the objections which the Clerks now raise to primary assignments in the Instruction did not exist as to PS Exh. 1 although the primary assignments are virtually the same.

Another example: in July 1978, the APWU submitted a proposal to the Mail Handlers and the Postal Service during subcommittee meetings (Tr. 1156-1157; PS Exh. 8). An examination of that proposal shows that, in July 1978, the APWU apparently had no objection to various functions that they now dispute.^{16/} For example, while APWU Exh. 21, President Andrews' letter, rejects

^{16/} At the hearing, the APWU objected to PS Exh. 8 suggesting that it was merely a working paper and could not be properly characterized as an APWU proposal (Tr. 1197). The arbitrator, in admitting the exhibit, invited the APWU to put on a witness to rebut the Postal Service's view of the document as testified to by its witness William Downes (Tr. 1167-1168). It is significant that Mr. Wolff, the obvious witness to rebut the Postal Service testimony, was not called to testify. Postal Service testimony on this issue consequently was unchallenged.

Mail Handler primary craft assignments in all but functions 6 and 7 (Mark II facer canceler) of Operation 010, the APWU proposal in July 1978 agreed that what became functions 1-3, 6-9, and 12 in Regional Instruction 399 could be exclusively assigned to the Mail Handlers as the primary craft (PS Exh. 8, pp. 1-2). Mr. Andrews' September 28 letter absolutely rejects any primary craft assignments to the Mail Handlers in Operation 020; in July 1978, Mr. Wolff, on behalf of the APWU, was at least willing to agree that function No. 1 was mail handler work (PS Exh. 8, p. 2). In Operation 105, Mr. Wolff's 1978 proposal accepts the pulling and dispatching of sacks to the Mail Handlers, contrary to APWU Exh. 21 (PS Exh. 8, p. 7). Operation 109 in the APWU proposal is identical to the final assignments in the Regional Instruction (PS Exh. 8, p. 8). In Operation 168/169, most of what appears as Mail Handler work in the Regional Instruction also appears in Mr. Wolff's proposal (PS Exh. 8, p. 10). In Operation 200, the APWU did not object to dispatching by mail handlers (PS Exh. 8, p. 11). In Operation 210/239, the APWU apparently had no objection to non-scheme sorting and separation of sacks, pouches, or outside parcels, (PS Exh. 8, p. 12) contrary to the position they took at the hearing. And, despite the total ban requested by the APWU at the hearing on mail handler ledge loading and sweeping, the APWU apparently had no difficulties with the assignment of that primary function to the Mail Handlers in their 1978 proposal. See PS Exh. 8, pp. 2-3, 4, 5, 6, 9, 10. In short, it

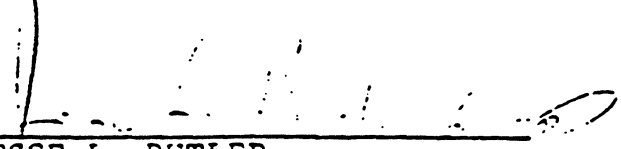
appears likely that much of what the APWU has attacked in this proceeding are spurious "red-herrings," throwaways added to bolster their case and puff up the impression that they really have substantial objections to the Regional Instruction. Add to all of the above the uncontradicted admission of APWU witness Wolff on more than one occasion that 010 and 020 were Mail Handler work (Tr. 637, 1179, 1648, 1883), with Mr. Wolff's advice to the Mail Handlers that they were entitled to parcel post (Tr. 1649; MH Exh. 5), and substantial questions arise as to the good faith of many of the positions on the disputed assignments taken by the APWU in this proceeding. At least, the earlier positions of the APWU and its witness Wolff suggest that its contention of claims to certain of the assignments in this case is patently suspect.

VI. Conclusion


An examination of the testimony and evidence submitted in this proceeding can lead to only one conclusion: that the Regional Instruction properly designates the Mail Handler craft as the primary craft for those assignments challenged by the APWU. Not only has the APWU, the moving party, failed to sustain its burden of proof, but the Postal Service has shown by the evidence the

correctness of the assignments. That being the case, the objections to the Instruction raised by the APWU must be dismissed.

Respectfully submitted,



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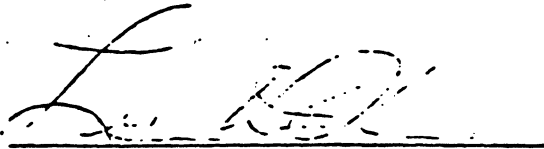
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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 1981, a copy of the foregoing Brief of the United States Postal Service was mailed to the following counsel of record:

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