THE POSTAL SERVICE AND THE NLRA

Labor relations in the Postal Service is governed by Chapter 12 of the Postal Reorganization Act of 1970 (hereafter "PRA"), 39 U.S.C. 1201 et seq. Prior to passage of the PRA, the wages and benefits of postal employees were set by Congress and the only influence that postal unions could exert was as legislative lobbyists. Private-sector collective bargaining was the product of legislation following on the historic Postal Strike of 1970, which lasted from March 18 to March 25, 1970. At its peak, the strike involved over 200,000 employees. The strike effectively shut down the postal service and precipitated a declaration of a national emergency by President Nixon, who called on the military to help move the mail.[1]

The negotiations which ended the strike culminated a Memorandum of Agreement between the postal unions and the Nixon Administration on April 16, 1970, which recited that "the parties have jointly developed, through the collective bargaining process, proposed legislation" to restructure of the Post Office Department, and for wage raises and improvements in working conditions. It also called for "collective bargaining over all aspects of wages, hours and working conditions including grievance procedures, and in general, all matters that are subject to collective bargaining in the private sector," but continuing the "[b]an on federal employee strikes [with] binding arbitration" of contract disputes. In addition, the "National Labor Relations Board [was] to supervise representation elections and enforce unfair labor practices." H.Rep. 91-1104, 91st Cong. 2d Sess. 57-59 (May 19, 1970). President Nixon's April 16, 1970, Message to Congress transmitted the agreed-upon legislation. Id. at 51. The law which is now the PRA, Public Law 91-375, was ultimately adopted on August 12, 1970.

PRA Section 201 creates the United States Postal Service "as an independent establishment of the executive branch of the Government of the United States ...." However, the

Postal Service is exempt from a wide variety of laws applicable to other federal agencies, including civil service laws.[2] Postal employees are "in the postal career service, which [is] part of the civil service ...." 39 U.S.C. 1001(b). Section 1001(e)[3] recites the Postal Services right to manage "consistent with section 1003[4] and chapter 12 of this title and applicable laws, regulations, and collective bargaining agreements ...."[5] This broad scope of bargaining contrasts with the bargaining rights of other federal employees, who are not permitted to negotiate over prescribed management rights, 5 U.S.C. 7106, or other subjects such as any other matter specifically provided for by statute. 5 U.S.C. 7103(a)(14).

An oddity in the PRA is the requirement that the Postal Service "provide a program for consultation with recognized organization of supervisory or other managerial personnel who are not subject to collective-bargaining agreements." Id. § 1004(b).[6] In addition, the PRA preserves the rights of employees under the Veterans Preference Act to priority in hiring and retention, and to appeal adverse actions to the Merit Systems Protection Board without regard to negotiated grievance procedures.[7] Id. § 1005(a)(2). The PRA also preserves the pre-existing rights of employees to participate in the federal civil service retirement system (id. § 1005(d)) and to health[8] and life insurance under federal statutes unless the parties agree to negotiate substitute systems which "on the whole [cannot be] less favorable to ... employees than fringe benefits in effect" before the PRA. Id. § 1005(f).

Section 1202 gives the NLRB the duty to decide appropriate bargaining units in the Postal Service.[9] Section 1003 requires the Postal Service to recognize the union selected by employees as their exclusive representative. The right of exclusive recognition entails a duty of fair representation, which is enforced as if it were in the private sector. See Bowen v. U.S. Postal Service, 459 U.S. 212 (1983). Section 1004 provides for NLRB-supervised elections.

Curiously, there is no explicit provision giving the NLRB jurisdiction over unfair labor practices. Rather, Section 1209(a) generally makes the NLRA applicable to all employee-management relations "to the extent not inconsistent with the provisions of this title." There are indeed several areas in which the PRA is inconsistent with the NLRA. The principal ones are that an agency shop is prohibited (id. § 1209(a)) and postal employees may not strike. Id. § 410(b)(1) (incorporating 5 U.S.C. 7311).[10]

Bargaining is intended to result in agreements which must "be effective for not less than 2 years." Id. § 1206(a). The PRA permits but does not require a grievance and arbitration procedure. Id. § 1206(b).[11]

Fact-finding and binding interest arbitration substitute for the right to strike.[12] Section 1207 is quite detailed in the steps and timetable for dispute resolution, but Section 1206(c) permits the parties to alter the provisions by agreement. The statutory standard for wages and benefits is "comparability to the compensation and benefits paid for comparable work in the private sector of the economy." Id. § 1003(a). In recent years major interest arbitrations have taken place in 1984 and 1990, and the principal postal unions are currently without a collective bargaining agreement. Needless to say, application of the statutory comparability standard in actual practice has not been an easy task.

Section 1209(b) subjects postal unions to the same regulation under the Landrum-Griffin Act as their private sector counterparts.

ENDNOTES

1 See generally J. Walsh & G. Mangum, Labor Struggle in the Post Office (1992).

2 Section 410(b) goes on to list the laws which are applicable. One such statute is the Privacy Act, 5 U.S.C. 552a. The inclusion of the Privacy Act spawned a good deal of litigation when the Postal Service cited it in defense of its obligations to provide bargaining and grievance information to postal unions. The Board and courts have unanimously rejected this defense because the Postal Service lists disclosure to unions as a "routine use" under the Privacy Act. See, e.g., U.S. Postal Service, 289 NLRB (1988), enf'd, 888 F.2d 1568 (11th Cir. 1989). Of course Postal employees retain their first Amendment Rights and can sue to remedy violations, even in the face of adverse arbitration awards. See APWU v. U.S. Postal Service, 830 F.2d 294 (D.C. Cir. 1987).

3 Contrary to popular belief, the Postal Service is not a government-owned corporation. Such a corporation was recommended by the President's Commission on Postal Organization (known as the Kappel Commission after its chairman), which made a comprehensive study of the Post Office Department and formed the basis of earlier efforts at postal reform. However, Congress rejected this proposal. See H. Rep. 91-1104, 91st Cong. 2d Sess. 6 (May 19, 1970).

4 Section 1003 creates the comparability standard governing compensation and benefits, and requires the postal service to "extend opportunity to the disadvantaged and the handicapped."

5 The NLRB is rather consistent in refusing to find special "governmental" exceptions to the applicatin of private sector law to postal labor relations. For example, the Board applies the same Weingarten principles to employees interrogated by postal inspectors (who are federal law enforcement officers with jurisdiction to investigate crimes by postal employees as well as other matters). See, e.g., NLRB v. U.S. Postal Service, 288 NLRB 864 (1988); U.S. Postal Service, 303 NLRB 463 (1991), enf'd, 969 F.2d 1064 (D.C. Cir. 1992).

Sometimes there is some difficulty meshing the federal and private sector principles. For example, postal employees are covered under the provisions governing federal agencies under Section 717 of Title VII other anti-discrimination statutes. An issue arose as to the validity under the NLRA of settlements with individual employees arrived at without the union's participation in the EEO conciliation process. The NLRB held that Section 9(a) required the union's presence, notwithstanding arguably contrary EEOC regulations. See U.S. Postal Service, 281 NLRB 1015 and 281 NLRB 1031 (1986). (These orders were vacated by the court of appeals after the APWU and Postal Service later reached a non-Board settlement.)

6 These supervisory and management organizations also have statutory dues checkoff rights. 39 U.S.C. 1205(a).

7 However, under the collective bargaining agreements with the major postal unions, so-called "preference eligibles" are required to a make pre-arbitration election of forum.

8 Under the FEHBA, organizations, including postal unions, may sponsor health benefit plans open to all federal and postal employees. An interesting case under the NLRA developed when the National Association of Letter Carriers expelled a member and, under its plan, membership was required in order to participate. The NLRB held that this was not a violation of the Act because the FEHBA permitted the former member to move to another plan. National Ass'n of Letter Carriers, 240 NLRB 519 (1979).

9 An uncodified section of the PRA (Pub. L. 91-375 § 10) required the Postal Service to continue to recognize the existing postal unions with national recognition in established craft units under the prior Executive Order and to negotiate initial agreements with them. In 1971, four of these unions and an independent union merged to form the American Postal Workers Union, AFL-CIO. The other principal unions are the National Association of Letter Carriers, AFL-CIO, the National Rural Letter Carriers Association, and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North American, AFL-CIO. The APWU represents postal clerks, maintenance employees, motor vehicle operators and mechanics, and special delivery messengers; the NALC represents city letter carriers; the NRLCA represents rural letter carriers; and the Mail Handlers represents mail handlers. Currently there are about 600,000 represented employees in the Postal Service's mail processing facilities. There are also a number of other non-mail processing bargaining units in the Postal Service. Another few units are not organized.

The initial recognition and bargaining in nationwide bargaining units has continued, despite the Postal Service's efforts to change the bargaining pattern. In 1981, the NLRB dismissed an RM petition filed by the Postal Service in an attempt to create more comprehensive bargaining unit. U.S. Postal Service, 256 NLRB 502 (1981). Similarly, the efforts of groups to force area bargaininig have also failed. In U.S. Postal Service, 208 NLRB 948 (1974), the Board reviewed the history of recognition and bargaining and, in dismissing several petitions, held that any unit smaller than a postal district or sectional center would be dismissed.

10 Another example of the priority of the PRA is that the specific language in Section 1205(a) making dues checkoff authorizations irrevocable for not over one year supercedes NLRB law requiring unions immediately to discontinue checkoff after employees resign from the union. See, e.g., NLRB v. U.S. Postal Service, 833 F.2d 1196 (6th Cir. 1987).

11 There has always been a grievance-arbitration procedure, but if there were none, the statute activates the adverse action appeals process applicable to the rest of the federal government. 39 U.S.C. 1005(a)(1). Although PRA Section 1001(b) guarantees employees "a fair hearing on adverse actions, with representatives of their own choosing," this right is satisfied by the union's representation in the grievance procedure and does not create additional individual rights. See Malone v. U.S. Postal Service, 526 F.2d 1099 (6th Cir. 1975).

12 The PRA varies somewhat the NLRA Section 8(d) notice provision. 39 U.S.C. 1207(a).