

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
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 between)
)
 UNITED STATES POSTAL SERVICE)
)
 and)
)
 AMERICAN POSTAL WORKERS)
 UNION, AFL-CIO)

Grievant: Class Action
Post Office: West Fargo, ND
USPS Case: I94C-4I-C 97122019

BEFORE: John Remington, Arbitrator

APPEARANCES:

For the USPS: Patricia Larson

Labor Relations Specialist

For the Union: Lyle Krueth

National Business Agent

Place of Hearing: West Fargo, ND

Date of Hearing: January 7, 2000

Date of Award: March 22, 2000

Relevant Contract Provisions: Article 1, Section 6. B

Contract Year: 1994-98

Type of Grievance: Contract Interpretation

Award Summary

THE EMPLOYER VIOLATED THE NATIONAL AGREEMENT WHEN IT ALLOWED THE SUPERVISOR OF CUSTOMER SERVICE TO PERFORM BARGAINING UNIT WORK. THE EMPLOYER SHALL CONTINUE TO DESIST FROM PERFORMING BARGAINING UNIT WORK. PTF CLERKS BLACK-GAUKLER AND HANRATTY SHALL BE COMPENSATED A TOTAL OF 520 HOURS PAY IN REMEDY.


John Remington

THE PROCEEDINGS

The above captioned parties, having been unable to resolve a grievance concerning the performance of bargaining unit work by Customer Service Supervisor Larry Graves from 1997 through 1999, selected Arbitrator John Remington from their Regular Regional Panel to hear and decide the matter in a final and binding determination. Accordingly, a hearing was held on January 7, 2000 in West Fargo, North Dakota at which time the parties were represented and fully heard. The parties presented oral testimony and documentary evidence. At the completion of the hearing the advocates waived oral closing arguments and instead elected to file post hearing briefs which they did subsequently file.

THE ISSUE

DID THE EMPLOYER VIOLATE ARTICLE 6.1.B OF THE NATIONAL AGREEMENT WHEN IT ALLOWED THE SUPERVISOR OF CUSTOMER SERVICE TO PERFORM BARGAINING UNIT WORK AND, IF SO, WHAT SHALL THE REMEDY BE?

It is at once evident that the crucial issue in this dispute is revealed by the manner in which the respective parties attempted to frame the issue. While the Employer suggests that the issue is a question of whether or not Graves' "intermittent" performance of bargaining unit work violates the National Agreement, the Union counters that the issue involves Graves' performance of bargaining unit work "on a daily, regular and routine basis in lieu of available and qualified bargaining unit employees." Whether the work in question was "regular" or "intermittent" is a question of fact for determination by the Arbitrator.

PERTINENT CONTRACT LANGUAGE AND REGULATIONS

ARTICLE 1 UNION RECOGNITION

Section 6. Performance of Bargaining Unit Work

A. Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

- 1. in an emergency;**
- 2. for the purpose of training or instruction of employees;**
- 3. to assure the proper operation of equipment;**
- 4. to protect the safety of employees; or**
- 5. to protect the property of the USPS.**

B. In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6.A. 1 through 5 above or when the duties are included in the supervisor's position description.

BACKGROUND

The United Postal Service, hereinafter referred to as the "EMPLOYER," operates a postal installation in West Fargo, North Dakota. Clerk craft employees at this facility are represented by the American Postal Workers Union and its Area Local, hereinafter referred to as the "UNION." Union Steward Jeremy Cahill initiated this "Class Action" through the filing of a local grievance in July of 1997. This grievance alleges that:

Supervisor of Customer Service of the West Fargo Post Office, Larry Graves, boxes mail to the box section from 5:30 a.m. until boxing is completed, usually 7:30 a.m. Larry performs this work 5-6 days per week every day. This performance of work has been demonstrated in numerous arbitration decisions as well as memoranda between the parties to be in violation of Article 1.6.B.

In remedy, Cahill requested that the Employer "cease and desist performance of clerk craft work, reimburse craft for hour lost; and create additional full-time position." The grievance was heard at Step 1 on July 31, 1997 and not being resolved there was advanced to Step 2. However, the record reflects that the Employer did not respond at Step 2 and that no meeting was held. The grievance reached Step 3 on October 29, 1997 and, due to the incomplete record, it was remanded to Step 2 for a full development of the

facts. Following remand, the Step 2 meeting was held on December 5, 1997. Cahill, Graves and Postmaster Ed Johnson were all in attendance. According to the Step 3 Appeal,

Graves admitted that, at the time the grievance was initiated, the PTF clerk hours had been reduced. Prior to the reduction in hours, supervisor Graves stated that the PTF clerks were working at least 40 hours per week. He stated that they now work approximately 26-32 hours per week. The reason given for the reduction of the PTF hours was for budgetary concerns. Apparently, the West Fargo Post Office was using more clerk hours to accomplish its distribution than the Dakotas District had budgeted them for. The supervisor admitted that he has continued to perform box distribution for approximately two (2) hours per day.

The grievance was denied at Step 3 on February 2, 1998. The denial states, in relevant part,

Management contends that it is necessary for the supervisor to get involved with assisting in the casing of box mail in order to make the box mail section cut-off of 7:30 a.m. All available clerks are on duty at this time and working simultaneously. The PTF that would be scheduled to work in the afternoon is not on duty at this time, and to make that clerk otherwise available, management would be extending the tour of duty beyond (12) twelve hours, which the union has challenged as being in violation of the ELM. The practice of the supervisor assisting in this duty goes back at least eight (8) years. There is no loss of available hours because of this practice as asserted by the union. It was the conversion of a PTF to full-time status that caused a reduction in PTF hours.

The matter was thereafter submitted to arbitration in accordance with the provisions of the National Agreement. There being no dispute concerning procedural or substantive arbitrability, this matter is properly before the Arbitrator for final and binding determination.

CONTENTIONS OF THE PARTIES

The Union takes the position that the regular and routine performance of mail distribution by a supervisor is clearly the performance of bargaining unit work as prohibited by Article 1, Section 6.B of the National Agreement. The Union contends that there is no dispute that Graves significantly reduced the hours of Part-Time-Flexible (PTF) Clerks Black-Gaukler and Hanratty during the summer of 1997; that during this period and continuing until the summer of 1999, he performed box mail distribution for approximately two hours each day; and that he was motivated make the above changes by budgetary considerations. The Union maintains that the language of Article 1.6.B clearly restricts Management from doing bargaining unit work and that none of the express exceptions set forth in Section 6 are applicable here. In this connection, the Union argues that distributing box section mail and other bargaining unit work performed by Graves are not included in the Supervisor, Customer Services job description. Accordingly, Graves is prohibited from performing such work because Section 6.B is clearly exclusionary. While Item#12 of this job description permits supervisors to "perform certain non-supervisory tasks in order to meet established service standards," this does not include the distribution of mail.

The Employer contends that the work performed by the supervisor, while admittedly bargaining unit work, is included within Graves' position description. It argues that the clear and longstanding past practice of the West Fargo Post Office has been for a supervisor to assist in boxing mail; and that there was no loss of hours to PTF's because of this practice. Rather, the Employer argues, the change in hours was due to the creation of a new, Full-Time Regular position in July of 1997, and the need to reduce budgeted hours for clerks. In this connection, the Employer notes that PTF clerks are not guaranteed forty hours per week. The Employer further contends that the performance of bargaining unit work by Graves was intermittent and necessitated by the need to make a 7:30 a.m. commitment time to box customers. It maintains that the work in dispute was performed by the supervisor in order to meet committed service standards, on a de minimis basis, and in adherence to the position description not inconsistent with Article 1.6 of the National Agreement.

DISCUSSION, OPINION AND AWARD

There is little dispute concerning the facts of this matter. For example, it is undisputed that the West Fargo Post office has under 100 employees and as such is subject to the provisions of Article 1.6.B. Further, it is undisputed that Supervisor Graves performed bargaining unit work boxing mail at least two hours per day from June or July of 1997 through the summer of 1999 when he reduced this activity. There is also no dispute that when Graves began boxing mail upon his arrival in the West Fargo facility, he merely continued the practice of his predecessor. Indeed, it is neither unusual nor a violation of Article 1.6.B for a Postmaster or a supervisor in a small post office to perform some amounts of work that, in a larger station, would clearly be deemed bargaining unit work. Given the large number of post offices where the Postmaster is the only full-time employee, there can be little doubt that both parties negotiated Article 1.6 with the understanding that supervisors would of necessity perform some bargaining unit work in small stations. However, as an installation grows in size and complexity and experiences a significant increase in mail volume, it would be expected that supervisors would perform fewer bargaining unit tasks and increasingly have their time allocated to supervisory and administrative tasks. As the National Agreement contemplates, when an installation has grown to the point where it has 100 employees, supervisors are permitted to perform only non-bargaining unit work except as set forth in Article 1.6.A, *supra*. This is not to suggest that there is no restriction on the amount or type of bargaining unit work that may be performed in installations of less than 100 employees.

What is clearly in dispute here is revealed by the above attempt of the parties to frame the issue before the Arbitrator. While the Employer contends that the work performed by Graves was intermittent, the Union maintains that it was performed on a "daily, regular and routine basis in lieu of available and qualified bargaining unit employees." *If Graves had indeed boxed mail on an intermittent basis and only done so to assist clerks to meet the commitment time, his actions could well have been deemed a permissible exception within the meaning of Article 1.6. However, given Graves' credible and straightforward testimony that he boxed mail for approximately two hours each day, six days a week, together with the equally credible testimony of Black-Gaukler, Hanratty and Neuschwander that "it was a given" that Graves would do the box section, it*

is difficult to understand the Employer's choice of the word intermittent. The term intermittent suggests that Graves' boxing of mail was occasional and not continuous. On the contrary, the record clearly reveals that it was his practice to do the boxing on a daily basis and that he had assumed the primary responsibility for this task. Accordingly, the Arbitrator is compelled to find that Graves' performed bargaining work on a regular and routine basis from at least July of 1997 to August of 1999. He further finds that Graves discontinued this regular and routine performance of bargaining unit work in August of 1999 and has only performed the boxing of mail on an intermittent basis to assist clerks since that time.

Based on the record of the hearing, there can be little doubt concerning the circumstances that led Graves to assume bargaining unit work at the West Fargo Post Office. He had personally observed another supervisor boxing mail when he visited the installation in 1995, and was assured by Postmaster Johnson that such work was permissible when he became the Supervisor of Customer Service in West Fargo in May of 1997. Indeed, Johnson, who has worked at the West Fargo Post Office since 1958, has performed substantial bargaining unit work himself in the past. However, Johnson admitted on cross examination that the mail volume has increased substantially since he became West Fargo Postmaster in 1980, and that West Fargo "is the fastest growing community in North Dakota." Obviously things have changed at the installation since Johnson routinely boxed and cased mail as a supervisor. Graves was also clearly under direction to reduce clerk hours and increase carrier hours. While such a course of action was no doubt budget neutral, it effectively meant that someone else would have to pick up the increased clerk craft workload. Apparently there was no one else but Graves who, by his own testimony, worked 50+ hour weeks from 1997 to 1999.

As hereinabove noted, there is a general prohibition and effective limitation on the amount of bargaining unit work that may be performed by supervisory personnel in installations of less than 100 employees. Arbitrator Sylvester Garrett (AC-NAT-5221) describes this restriction in a national level interpretive award issued on February 6, 1978. In interpreting the meaning of Article 1, Section 6.B, a section which has remained unchanged in the National Agreement since this award was issued, Garrett held that Section 1.6.B does not permit the Employer to substitute supervisors for bargaining unit

personnel freely, even on a full time basis. To embrace such an interpretation, Garrett wrote, "would be to read 1-6-B as if written in a vacuum rather than in the context of an on-going collective bargaining relationship." Garrett goes on to note that even prior to the bargaining of the first USPS-APWU contract, the "stated policy of the Post Office Department long had been to avoid having supervisors perform lower level work, subject to specified exceptions." Later, on page 38 of his award, Garrett provides guidance in circumstances similar to those experienced in the instant case. Although he describes a situation where an applicable supervisory position description includes bargaining unit duties and the amount of bargaining unit work is increased at the expense of clerk hours, this situation is analogous to the instant case where the workload increased and the supervisor expanded his hours to accommodate this increase and, at the same time, decreased clerk hours. While it is true that Graves' job description provides no reference to boxing, casing or distributing mail, it is clear from the record that supervisors have, at least minimally, performed this work in the past at the West Fargo station. The Arbitrator here notes that many Regional Arbitrators have issued awards consistent with the principles enunciated by Garrett. However, he deems it unproductive to cite each and every applicable award.

Garrett continues his relevant analysis of Article 1.6 when he states that:

1-6-B necessarily implies an obligation to act in good faith, rather than arbitrarily taking advantage of this exception to increase the performance of bargaining unit work by supervisors. Thus 1-6-B grants no authority to substitute a supervisor for a bargaining unit employee unless (1) such action can be justified by some change in relevant conditions or operating methods affecting the office or (2) otherwise results from good faith action by Management in the exercise of its authority under Article III.

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There is no way, therefore, that 1-6-B reasonably could be read to grant an unlimited license to eliminate Clerk hours by transferring Clerk work to supervisors without also giving consideration to other possible means of reducing total work hours.

In this case, the change in relevant conditions should have resulted in the supervisor reducing the amount of bargaining unit work that he performed. Indeed, Postmaster

Johnson testified that he attempted to obtain authorization for additional positions but had been unable to do so. There can be no doubt that all work, both bargaining unit and non-bargaining unit, has increased in recent years at the West Fargo station. At the time Graves arrived in May of 1997, there were three (3) PTF clerks each working approximately forty (40) hours per week. In July of 1997 one of these PTF clerks (Neuschwander) was given a Full-Time Regular position. She thereafter continued to work a full forty-hour week on a regular basis. Any increase in her work hours was negligible. However, the other PTF clerks (Black-Gaukler and Hanratty) had their hours cut to approximately 30 per week. Their hours continued at this lower level until 1999 when Graves stopped boxing mail on a regular basis. Given these circumstances, there can be little doubt that Graves either increased the amount of bargaining unit work he was doing in 1977 or continued to do bargaining unit work at the same level despite the fact that he had a full complement of supervisory and administrative work to perform. He undoubtedly did this for budgetary reasons and not because his position description included the work. However, in either case he was in violation of the broad prohibition in the National Agreement of supervisors performing bargaining unit work. There is no difference between a supervisor who increases his bargaining unit work and one who increases his total workload so he can continue to perform the same amount of bargaining unit work and thereby deny assignments to available and qualified bargaining unit members.

The Arbitrator has made a particularly detailed review and analysis of the entire record in this matter, and he has carefully weighed and considered the cogent arguments advanced by the respective advocates in their post hearing briefs. Having done so, he is satisfied that the crucial issues which arose in these proceedings have been addressed, above, and that certain other matters raised by the parties or through the submission of other arbitration awards must be deemed immaterial, irrelevant, or side issues at the very most and therefore have not been afforded any significant treatment, if at all. For example: the award of Arbitrator Carlton Snow (A-C-N-6922, 1990); the award of Arbitrator Gerald Cohen (C4C-4M-D 33178, 1987); the awards of certain other Regional Arbitrators; whether or not Black-Gaukler and/or Hanratty were able to obtain hours at other installations; whether or not Neuschwander ever filed a maximization grievance;

the consequences of failing to meet the 7:30 a.m. box commitment time; whether or not the Union presented PTF work schedules at the hearing; whatever James Hellquist and Robert Shoop may or may not have known or testified to concerning the Garrett Award, and so forth.

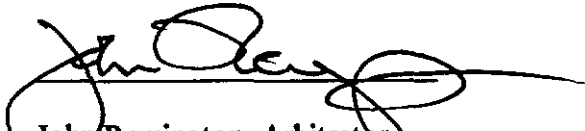
Having considered the above review and analysis, together with the findings and observations hereinabove made, the Arbitrator has determined, and so he finds and concludes, that with the specific facts of the subject grievance, and within the meaning of the parties' collective bargaining agreement, the evidence is sufficient to reach a finding that the Employer violated the National Agreement when it allowed Customer Service Supervisor Larry Graves to perform bargaining unit work at the West Fargo Post Office from 1997 to 1999. Accordingly, an award will issue, as follows:

AWARD

THE EMPLOYER VIOLATED THE NATIONAL AGREEMENT WHEN IT ALLOWED THE SUPERVISOR OF CUSTOMER SERVICE TO PERFORM BARGAINING UNIT WORK. THE CLASS ACTION GRIEVANCE CONTESTING THIS PRACTICE MUST BE, AND IS HEREBY, SUSTAINED.

REMEDY

THE EMPLOYER SHALL COMPENSATE PTF CLERKS BLACK-GAUKLER AND HANRATTY A TOTAL OF 520 HOURS PAY (260 HOURS EACH) AT THE APPROPRIATE RATES OF PAY AS SET FORTH IN THE 1994-98 NATIONAL AGREEMENT.



John Remington, Arbitrator

March 22, 2000

St. Paul, MN