

FREDERICK P. KESSLER
ARBITRATOR
NORTHLAND DISTRICT

In the Matter of the Arbitration
Between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS
UNION, AFL-CIO

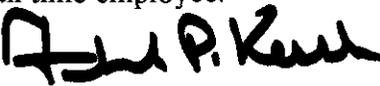
Class Action
Case No. I98C-4I-C 01083073

APPEARANCES

For the Postal Service:	Nels Truelson, Labor Relations Specialist
For the Union:	John Akey, National Business Agent
PLACE OF HEARING	Wahpeton, ND
DATE OF HEARING	July 25, 2001
DATE OF AWARD	August 10, 2001
RELEVANT CONTRACT PROVISION	Article 7
CONTRACT YEAR	1998-2000
TYPE OF GRIEVANCE	Maximization

Award Summary

The Postal Service must convert one of the seven Part-time Flexible Clerk positions into a Full-time Regular position. The work assignments of the Wahpeton Clerks can be organized so that their will be one additional full time employee.


Frederick P. Kessler

Statement of Facts

The Wahpeton Postal facility, part of the Fargo Post Office, employs two Full-time Regular Clerks and seven Part-time Flexible Clerks. One full-time clerk works the window from 9:30 a.m. until 4:00 p.m. The other Full-time Regular clerk starts at 3:30 a.m., as the clerk-in-charge until 7:30 a.m., then the clerk opens the window and remains there until 11:30. The tour of duty ends at noon. Neither of the Full-time Regular clerks is required to work on Saturdays.

All but one of the Part-time Flexible clerks start work at 3:30 a.m., or shortly thereafter. The morning mail arrives in Wahpeton at 3:15 a.m. Three dispatches of mail are sent out between 5:20 and 6:30 a.m. The box mail is finished at 7:30 a.m. The bulk of the work of the part-time employees occurs early in the day.

On November 23, 2000, the Postal Service informed the Union that it was "withholding" the creation of any new positions in Wahpeton until the impact of the new AFSM 100 Flat Sorting Machine could be evaluated. The workload for clerks in Wahpeton was reduced in December when the AFSM 100 was put into operation in Fargo. On January 14, 2001, the Union filed a grievance charging that the Postal Service was violating Article 7, Section 3.B. of the Labor Agreement.

Article 7, Section 3 B provides as follows:

B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations, however, nothing in this paragraph B shall detract from the USPS's ability to use the awarded full-time/part-time ratio as provided for in paragraph 3.A. above.

The grievance argues that there is sufficient workload to justify converting two of the PTF positions into FTR positions. Back pay is requested from fourteen days prior to the filing of the grievance. At the hearing, the Union argued for only one FTR position.

The Postal Service has denied the grievance. It argues that the staffing statistics were based partly on time in which the facility was under the withholding order from November 1999, through January 2001. The Postal Service also contends that clerks are need primarily during the early morning hours. There is insufficient work throughout the day in the facility to justify the creation of a full time position.

Article 12, Section 5, of the Labor Agreement relates to seniority, Posting and reassignment. It provides as follows:

Section 5. Reassignments

A. Basic principles and Reassignments

When it is proposed to:

4. Reassign within an installation employees excess to the needs of a section of that installation;
5. Reduce the number of regular work force employees of an installation other than by attrition;

...such actions shall be subject to the following principles and requirements.

B. Principles and Requirements

1. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.
2. The Vice President, Area Operations, shall give full consideration to withholding sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned. When positions are withheld, local management will periodically review the continuing need for withholding such positions and discuss with the union the results of such review.

When their hours were strung together, (including lunch breaks) the evidence showed that consistently, almost on a daily basis, two PTFs, worked for more than eight consecutive hours. During much of the time, there was sufficient time for eight-hour shifts by more than one employee.

Decision

This dispute is a conflict between the desire of the Postal Service to maximize its efficiency and the desire of the Union to guarantee job stability and certainty for its members. Efficiency is enhanced by flexibility in work hours. Stability and certainty for workers is enhanced by the regular assignment of fixed full-time work hours.

Some flexibility is necessary to allow the Postal Service to effectively deliver the mail to the general public in a timely manner and thus competitively with other mail and postal services. Mail arrives at the facility at different times during the morning. It must all be sorted so that the carriers on their daily routes can deliver it. Consequently most of the work in the facility must be done early in the day. The response to this need was the creation of the part-time flexible clerk positions that are at issue here.

Stability and job security are enhanced when full-time jobs are created. Regular hours, predictable days off, and holiday assignments are clearly preferred in comparison to part-time work and irregular hours. For those reasons, Article 7, B. 3 was included in the Labor Agreement.

One method used by the Postal Service to contribute to workforce stability is to withhold filing positions during times of technological or workload changes. Such changes took place in Wahpeton during the time giving rise to this dispute. Vacant positions may be held open until the Postal Service can be sure that no current employee's job has been eliminated. Withholding a position can conflict with efforts to maximize full-time positions, as is the case here. Some arbitrators have held that withholding is more important than maximization. In case H7N-3D-C 22267, involving both the APWU and the Association of Letter Carriers, Arbitrator Richard Mittenthal wrote:

The prior discussion shows that the maximization requirement of Article 7, Section 3B must defer to the withholding obligation of Article 12, Section 5. Maximization, in other words, does not demand the immediate filling of every full-time carrier vacancies when Management is at the very same time obliged by Article 12, Section 5 to withhold those vacancies in order to protect clerks who are soon to be displaced because of some technological or operational change.

That view was supported by Arbitrator J. Fred Holly, in United States Post Office and National Association of Letter Carriers, N-S-116, who wrote as follows:

The acceptance of the Union's contention that the maximization clause necessitates the immediate filling of a vacated full-time position would render the position withholding clause meaningless. It must be presumed that the parties intended to give meaning and substance to Article XII, B, 2 of their Agreement. Obviously, their intent was to give Management the right to withhold sufficient full-time regular and part-time flexible positions within the area for employees who may be involuntarily reassigned. They agreed to this withholding because of their stated desire to minimize dislocation and inconvenience to employees.

Holly continued:

The maximization clause must be implemented in the smaller post offices within a reasonable period following the effective date of the Agreement. This was the apparent intent of the parties even though they placed no specific time constraints on maximization in the smaller post offices. This necessitates a determination of whether the withholding in this instance was reasonable.

Arbitrator Howard G. Gamser, in Case No. NC-E-16340, commented on Holly's decision. He held that there must be a balancing between the maximization requirement of Section 7, B.3. and the withholding of jobs because of technical change. He wrote as follows:

In effect, Arbitrator Holly applied a rule of reason, based upon the facts and circumstances then existing to sustain the Postal Service's right, in that case, to withhold the vacated full-time carrier position in anticipation of the need to absorb a displaced full-time clerk craft rather than immediately award the vacancy to the grieving part-time flexee member of the carrier craft. Arbitrator Holly did not find that the USPS had absolute discretion to determine in each instance when or if it would promote a part-time employee to a vacant full-time position or withhold that position to meet some future contingency.

The Postal Service withheld creating any Full-time Regular position in Wahpeton for over one year. The normal transition period for measuring the impact of technological change is ninety days. There is no question that the Flat Mail Sorter 100 did reduce some of the hours that employees worked in Wahpeton. Withholding any new positions for one year because of technological reasons is too long. For maximization purposes, the first 90 days after the installation of the Flat Mail Sorter should not be considered, but the remainder of the period can be examined.

The fact that 80% of the clerks in Wahpeton were Part-time Flexible employees raises some questions in the mind of this arbitrator. The Article 7, Section 3 requirement, that 80% of the clerks must be Full-time Regular employees in larger facilities is not applicable in Wahpeton. The large percentage of employees working part-time is almost the exact opposite of the large office staffing pattern required in the Labor Agreement. It emphasizes flexibility disproportionately, at the expense of stability.

Tracking the hours worked by only one employee is not the only way to calculate conversion of a part-time employee to a full-time position. The Postal Service can combine the hours of two or more Part-time flexible employees to determine if there is enough work for one Full-time Regular. In Case 87C-3W-15991, involving Port Richey, Florida, Arbitrator Louis V. Baldwin wrote:

I am constrained to conclude that that Section 3, B requires conversion anytime it can be demonstrated that a full-time position can be accommodated. That is, when sufficient hours of work exist to permit one employee to work 40 hours a week in the same assignment, in lieu of two or more employees working part-time in order to cover the 40 hours. Any other interpretation would for all practical purposes result in writing Section 3, B. out of the 87/90 National Agreement.

Arbitrator Edmund W. Schedler, in Case S1C 3Q C 29121, and Case S4C 3N C 42574, wrote:

Section 3 B is a broad statement of policy. In that statement of policy, the Employer has agreed that management "shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations. That statement carries the implication that management will not adopt procedures to frustrate maximizing the number of full-time employees.

We must follow the rule of reason as well. A reasonable time to evaluate the Flat Mail Sorter 100 should be between 90 and 120 days. The new equipment did reduce the manpower need in Wahpeton by between three and one-half and seven person hours. That reduction persuades the arbitrator that it was not necessary to convert two positions. The withholding was appropriate, but must be limited to a reasonable period of time.

The Union has shown that one Full-time regular position should be created. When the work hours of several of the part-time flexible employees are strung together, it is clear to this arbitrator that one new Full-time Regular position should be created.

Award

The Postal Service shall create one additional Full-time Regular position in the Wahpeton Postal facility within 60 days of this decision.

Dated this 28th day of August, 2001
at Milwaukee, Wisconsin.

FREDERICK P. KESSLER
Arbitrator