

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration )  
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 between )  
 )  
 UNITED STATES POSTAL SERVICE )  
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 and )  
 )  
 AMERICAN POSTAL WORKERS )  
 UNION, AFL-CIO )  
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Grievant: Class Action  
Post Office: Fargo, ND  
USPS Case: I98C-4I-C 00037066

BEFORE: John Remington, Arbitrator

APPEARANCES:

For the USPS: Ken Glassburner

Labor Relations Specialist

For the Union: John Durham

President, Fargo Area Local

Place of Hearing: Fargo, ND

Date of Hearing: October 26, 2000

Date of Award: November 24, 2000

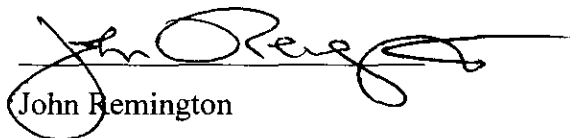
Relevant Contract Provisions: Article 8; Local Memorandum of Understanding

Contract Year: 1998

Type of Grievance: Contract Interpretation

**Award Summary**

THE EMPLOYER VIOLATED THE NATIONAL AGREEMENT AND THE LOCAL MEMORANDA OF UNDERSTANDING WHEN IT FAILED TO OFFER OVERTIME TO FULL-TIME REGULAR EMPLOYEES ON THE OVERTIME DESIRED LIST FOR WORK PERFORMED ON NOVEMBER 9 AND 10, 1999.

  
John Remington

## **THE PROCEEDINGS**

The above captioned parties, having been unable to resolve a grievance over the assignment of holiday overtime work, 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 October 26, 2000 in Fargo, North Dakota at which time the parties were represented and fully heard. Oral testimony and documentary evidence were presented and the parties made oral closing arguments on the record.

### **THE ISSUE**

DID THE EMPLOYER VIOLATE THE NATIONAL AGREEMENT AND THE LOCAL MEMORANDA OF UNDERSTANDING WHEN IT ASSIGNED HOLIDAY OVERTIME WORK TO PART-TIME FLEXIBLE EMPLOYEES RATHER THAN OFFERING THIS OVERTIME TO FULL-TIME REGULAR EMPLOYEES ON THE OVERTIME DESIRED LIST AND, IF SO, WHAT SHALL THE REMEDY BE?

Further, the Union stipulated that had the PTFs been scheduled for up to twelve hours on each of the days in question, no grievance would have arisen.

### **PERTINENT CONTRACT**

#### **ARTICLE 8 HOURS OF WORK**

##### **Section 5. Overtime Assignments**

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

- A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

- B. Lists will be established by craft, section, or tour in accordance with Article 30, Local Implementation.
- C. 1.a. When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis. B. Those absent or on leave shall be passed over.

**ARTICLE 11  
HOLIDAYS**

**Section 6. Holiday Schedule**

A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.

**FARGO LOCAL MEMORANDA OF  
UNDERSTANDING**

ARTICLE VIII- SCHEDULING EMPLOYEEES FOR  
HOLIDAYS AND DAYS DESIGNATED AS HOLIDAYS

The following priorities are to be followed:

1. Casuals, even if overtime is necessary
2. Part-time flexibles, even if overtime is necessary
3. Full-time and part-time regular employees who have volunteered to work on the holiday or their designated holiday when such day is part of their regular work schedule. These employees will be assigned by seniority.
4. All other full-time and part-time regular volunteers. These employees will be assigned by seniority.
5. Full-time and part-time regulars who have not volunteered and who will be working on what would otherwise be their non-scheduled work day. These employees would be assigned by juniority,
6. All other full-time and part-time regulars who have not volunteered. These employees would be assigned by juniority.

**FARGO AREA LOCAL APWU MEMORANDUM OF  
UNDERSTANDING  
TRANSITIONAL EMPLOYEES**

## OVERTIME

Addendum for scheduling of overtime when overtime is necessary, the following pecking order will be utilized.

1. Full-time regular employees from the overtime desired list, on a rotating basis, by seniority.
2. Full-time regular employee[s], not on the overtime desired list, who are on the clock, may volunteer by seniority.
3. Part-time flexible and part-time regular volunteers by seniority.
4. Transitional employees, volunteers by seniority.
5. Transitional employees, non-volunteers by juniority.
6. Part-time flexible and part-time regular employees who do not volunteer, by juniority.
7. Full-time regular employees who do not volunteer, by juniority on a rotating basis.

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## HOLIDAY SCHEDULE

Addendum to Local Memorandum of Understanding, Article VIII. The phrase—Transitional Employees, even if overtime is necessary—shall be inserted between numbers 4 (all other full-time...) and 5 (full-time and part-time...)

## **BACKGROUND**

The United Postal Service, hereinafter referred to as the “EMPLOYER,” operates a general mail facility in Fargo, North Dakota. Clerk craft employees of this facility are represented by the American Postal Workers Union and its Area Local #88, hereinafter referred to as the “UNION.” The facts surrounding this matter are essentially undisputed. The instant grievance arose when local management assigned Part-Time Flexible employees to work overtime on November 9 and 10, 1999, the dates immediately preceding the Veterans’ Day Holiday. Local President and Tour III Steward, John Durham challenged this action through the filing of a local grievance on November 18, 1999. The grievance asserted a violation of Article 8 of the National Agreement and the “Local Overtime Pecking Order and alleged that:

A violation of our local overtime pecking order occurred on November 9 and 10, 1999 when PTFs were scheduled for

overtime ahead of FTR employees on the OTDL (Overtime Desired List).

The holiday schedule for the week on Veterans' Day was posted on 11/2/99. Shortly after posting, an error was discovered. The number of scheduled hours for the PTFs on the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> were mistakenly left off. After reminding management of a verbal Step 1 settlement agreement that was reached in December of 1998, management corrected the holiday schedule to reflect the actual hours scheduled. This corrected posting scheduled all PTFs on Tour III to work 8 hours on 9<sup>th</sup> and 10<sup>th</sup>, and 12 hours on the 11<sup>th</sup>.

At approximately 10:30 p.m. on Tuesday, November 9<sup>th</sup>, six PTFs were suddenly scheduled for overtime, working 0000-0200. The same occurred on Wednesday, November 10<sup>th</sup>, scheduling 11 PTFs for overtime, working 0000-0200. This violates our local pecking order, as well as Fargo's long-standing practice of utilizing OTDL if additional employees are needed after the holiday schedule is posted.

In remedy this grievance requested that "all affected and displaced employees on the OTDL be made whole," and that local management adhere to the "past practice of utilizing the OTDL" if overtime was needed.

Processing and Distribution Manager Steven Dockter denied the grievance at Step 1 on November 23, and at Step 2 on December 9, 1999. Significantly, the Step 2 denial notes that:

The Service's position is that the Union is confused in reading two Articles of the National Agreement as one. Categorically, Article 8 and Article 11 do not mix. They cannot be considered as one in that Article 8 is for overtime scheduling only! Article 11 is for holiday scheduling only!

This denial goes on to argue that the LMOU also establishes a "pecking order" for scheduling holiday work and requires that casuals and PTFs be scheduled first, "even if overtime is required." The denial further maintains that the Employer has no obligation to schedule starting and ending times for PTFs and has done so only as a courtesy to employees. In its Step 2 "Additions/Corrections," the Union notes that it is "grieving the fact that PTFs were worked more hours than they were scheduled for, not the scheduling

of PTFs.” It goes on to explain that once a holiday schedule is posted, any additional work hours should be scheduled from the Overtime Desired List.

The grievance was accordingly appealed to Step 3 where, on January 21, 2000 it was remanded to Step 2 with instructions to the parties to discuss the following:

1. application of the LMOU pecking order for Holiday scheduling, which applies in this case;
2. application of Article 8, which applied after the Holiday Schedule has been posted;
3. who should be paid and what those employees should be paid.

Dockter and Union Representative Dana Klassen accordingly met on February 15, 2000 but were unable to come to full agreement. Specifically, Dockter wrote that management had no obligation to provide a schedule for PTF's and Casuals even though both parties agreed that Casuals and PTFs were to be scheduled first. They also agreed that the Overtime Desired List should be utilized if additional hours were needed, but Dockter maintained that none were needed since the Employer was entitled to schedule PTFs for up to twelve (12) hours. Since all PTFs had been paid and no one was displaced, it was the Employer's position that no one was entitled to overtime pay. The grievance was thereupon returned to Step 3 on June 21, 2000 where the parties were unable to reach agreement. The Union appealed the matter to arbitration on August 2, 2000, and it is properly before the Arbitrator for final and binding resolution.

### **CONTENTIONS OF THE PARTIES**

The Union takes the position that while PTFs may be scheduled for overtime during the holidays and days designated as holidays, once the holiday schedule is posted any additional overtime hours needed must be scheduled by appropriate use of the local overtime pecking order set forth in the Local Memoranda of Understanding. It argues that although the original schedule had no posted hours, this schedule was changed due to the intercession of the Union and hours were posted. Accordingly, the PTFs were clearly not scheduled for overtime until after the holiday schedule was posted, and utilizing PTFs for overtime in this manner violated the pecking order set forth in the LMOU. The Union further takes the position that the grievance was virtually settled at Step 3 when the

parties agreed that the LMOU pecking order for holiday scheduling was applicable and that Article 8 applies after the holiday schedule has been posted. The Union therefore urges that the grievance be sustained.

The Employer takes the position that Article VIII of the LMOU is controlling and requires the Employer to first schedule Casuals and Part-Time Flexibles for holiday work. In this connection it argues that these employees can be scheduled from four to twelve hours of work without restriction. Since it told the PTFs that they might well be required to work more than the hours posted, it was authorized by Article VIII to work them more than the posted hours. The Employer maintains that there is no contractual requirement and no agreement with the Union to post hours of work, particularly end times, for PTFs. Further, the Employer has no restriction on working PTFs in an overtime situation. Finally, the Employer contends that the Step 3 remand does not support the position of the Union and that the Union has not met its burden of proving that a contractual violation occurred.

#### **DISCUSSION, OPINION AND AWARD**

This grievance involves a question of contract interpretation and the Union, as the moving party, shoulders the burden of proof. It attempts to do so by first establishing that local management had previously agreed to post the hours of work for PTFs scheduled for holidays. Union President John Durham testified, as supported by a Step 1 Steward Statement that he authored (Joint Exhibit #4) on November 24, 1999, that he had reached an agreement with Operations Manager Larry Fiala in December of 1998 that hours for PTFs would be posted when they were scheduled for holidays. Durham asserted that Steward Bernie Cruz reminded Fiala of this agreement when no hours were posted for PTFs in connection with the instant grievance in November of 1999. Durham's testimony in this regard was corroborated by Fiala's own testimony at the hearing. Further, Fiala agreed that the resolution applied only to holiday scheduling of PTFs. While there appears to be no clear contractual language in either the National Agreement or the LMOU to require the posting of scheduled holiday hours for PTFs, it is evident from the record of the hearing that Fiala and Durham reached an accord to resolve a grievance over this issue in 1998. The fact that this resolution was informal and that no

written grievance was ever filed is immaterial. The National Agreement unambiguously favors the informal settlement of grievances and the enforcement of such settlements by the parties. The Arbitrator must therefore find that local management agreed to post scheduled holiday hours for PTFs in settlement of a grievance; that the Union relied on and sought to enforce this settlement; and that the Employer's agreement to post hours for PTFs scheduled for the Veterans' Day Holiday period in 1999 was reached in consideration of this prior settlement.

It would appear that the proper interpretation of the contractual language in dispute here is contained in the reasoning of the Step 2 denial, supra. In his response Processing Distribution Manager Dockter correctly notes that Article 8 and Article 11 "do not mix." Article 8 of the National Agreement applies only to overtime scheduling and Article 11 to holiday scheduling. However, the same holds true for Article 8 of the LMOU and the "pecking order" contained in the LMOU. They cannot be combined. Indeed, in a relevant arbitration award concerning the overtime pecking order established in the Fargo LMOU, Arbitrator John C. Fletcher found in September of 1999 that the overtime pecking order contained in the Fargo LMOU "is not inconsistent and in conflict with the National Agreement" and does not create an unreasonable burden on local management. The overtime pecking order is the procedure to be utilized by management in offering overtime when, in management's judgment, overtime is necessary. It is not the procedure to be utilized in scheduling employees for holiday work. The procedure for holiday scheduling is clearly set forth in Article VIII of the LMOU.

There can be no question but, as Arbitrator Mittenthal wrote in a relevant award in 1983 (H8C-5D-C-14577) interpreting Articles 8 and 11 of the National Agreement, that the purpose of the holiday scheduling provision is to require, where possible, that full-time regular employees be given their holiday off. They can only be scheduled to work on a holiday when the list of available casuals and part-time flexibles has been exhausted. Indeed, the Union stipulated that the part-time flexible employees could have been scheduled for up to twelve hours and no grievance would have arisen. However, the part-time flexible employees were not scheduled for twelve hours. After the schedule was made, management discovered that additional hours would be required to complete the work. Overtime was necessary. At this point the overtime pecking order should have



been applied. The Fargo LMOU provides that full-time regulars on the overtime desired list have the first priority for overtime work. This is true whether or not the overtime occurs on a holiday. The language of the LMOU makes no exception for holiday overtime. In essence, under the LMOU overtime is overtime. Accordingly, the first employees to be offered overtime are “full-time regular employees from the overtime desired list, on a rotating basis, by seniority.”

The language of the LMOU is clear and unambiguous with respect to the scheduling of employees for holidays. Full-time regulars are the last to be scheduled for such days. However, when unscheduled overtime is necessary, these same employees, if they are on the overtime desired list, have the first priority whether or not the overtime occurs on a holiday.

Brief final comment is warranted with regard to the Union’s argument that the instant grievance was essentially settled at Step 3 of the grievance procedure when the respective advocates agreed that the LMOU pecking order was, in fact, applicable. It would appear from the record that this was the case, and that local management reneged on this settlement when the matter was remanded to Step 2. This conduct can hardly be deemed an attempt to settle the matter in good faith.

The Arbitrator has made a thorough review and analysis of the entire record in this matter and he has given close attention to the cogent closing arguments advanced by the respective parties at the hearing. Further, he has determined that the crucial issues that arose in this matter have been addressed above, and that certain other issues raised in these proceedings 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 1981 award of Arbitrator Cohen (C8C-4M-C 14957) since no local agreement was at issue in that matter; whether or not there is a past practice regarding the scheduling of part-time flexible employees; 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 agreement, the Union has established, by a preponderance of the evidence, that the Employer violated the LMOU when it failed to offer overtime to full-

time regular employees in connection with the November 1999 Veterans' Day Holiday. Accordingly, an award will issue, as follows:

**AWARD**

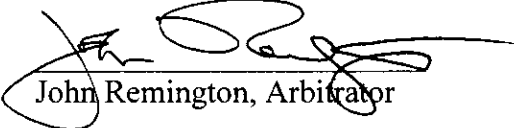
THE EMPLOYER VIOLATED THE NATIONAL AGREEMENT AND LOCAL MEMORANDUM OF UNDERSTANDING WHEN IT ASSIGNED OVERTIME WORK TO PART-TIME FLEXIBLE EMPLOYEES WITHOUT FIRST OFFERING THIS WORK TO FULL-TIME REGULAR EMPLOYEES ON THE OVERTIME DESIRED LIST. THE GRIEVANCE MUST BE, AND IS HEREBY, SUSTAINED.

**REMEDY**

IMPROPERLY BYPASSED EMPLOYEES ON THE OVERTIME DESIRED LIST SHALL BE PAID FOR AN EQUAL NUMBAER OF HOURS AT THE OVERTIME RATE FOR THE OPPORTUNITY MISSED. THESE EMPLOYEES INCLUDE:

11/9/99- Tim Haaland, Terry Nelson, Mike Wahl, Mary Wellman, Gary Lamb and Richard Olson.

11/10/99- Sherri Hilleson, Dorrie Deringer, Al Alvarez, John Durham, Mike Paulson, Cathy Vandrovec, Roger Eli, Ross Nelson, Anna Sharp, Pam Stephenson, and Dennis Pfau

  
John Remington, Arbitrator

November 24, 2000

St. Paul, MN