

IN THE MATTER OF ARBITRATION

BEFORE

Alan R. Krebs, Arbitrator

BETWEEN

UNITED STATES POSTAL SERVICE
(Payette, Idaho)

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO
(Class Action Grievance)

Case E00C-4E-C 03165881

Closing Brief of the American Postal Workers Union, AFL-CIO, in the matter of the Improper Assignment of APWU Bargaining Unit Work to Non-Bargaining Supervisory/Managerial Employees.

Brian Dunn, National Business Agent
American Postal Workers Union, AFL-CIO
4114 NE 122nd Suite 200
Portland, OR 97230

Mr. Arbitrator,

The union submits the following closing brief for your consideration in this matter involving the improper assignment of APWU bargaining unit work to non-bargaining supervisory and managerial employees at the Payette, Idaho Post Office.

Stipulations

The parties agree the grievance is properly before the Arbitrator. There were no issues of arbitrability.

The parties failed to jointly stipulate to the precise issue to be determined, and therefore stipulated that a determination of the issue is to be made by the Arbitrator.

The parties agreed that post-hearing briefs would be submitted to the Arbitrator post-marked by Friday, June 13, 2008. The parties will send copies of their briefs to each other at the same time.

Issue

The APWU presented the issue as:

Did the Employer violate the National Agreement when it transferred certain bargaining unit work from the clerk employees to the Postmaster at the Payette office? If so, what shall be the remedy?

The Employer thought the issue should be much narrower:

Is it a violation of Article 1.6 for the Postmaster in Payette to handle window transactions, so long as he does not exceed the number of bargaining unit hours historically performed by postmasters in that office. (sic)

It goes without saying that the present dispute has been identified in very clear terms and the issue should, of course, reflect the dispute. The parties are in disagreement over whether the transfer of the relief window duties from the clerk craft to the Postmaster was conducted in accordance with the National Agreement. In our view, the Employer's proposed issue statement misses the mark; it does not reflect the dispute as understood by the parties and by the Arbitrator at the outset of the hearing.

Relevant Contractual Provisions

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

As stated at the outset of the hearing, the fact circumstances are not in dispute. Prior to the “Function 4 Review” conducted in May of 2003, the following represents the historical practice for the Payette, Idaho office:

- The postmaster performed approximately two hours of distribution work per day for a total of 10 hours per week.
- On occasion, when the window line would become excessive, the postmaster would assist the window clerk by performing some window duties in order to reduce the window line.
- As a matter of historical practice, the window relief duties have been scheduled and performed by the clerk craft.
- Window relief duties always have been a regularly scheduled, necessary, and predictable daily function assigned to the clerk craft.
- Prior to the week beginning May 3, 2003, the clerk craft staffing at the Payette office consisted of one full time regular (FTR) employee and three part time flexible (PTF) employees.
- Beginning the week of May 3, 2003, after the transfer of PTF clerk Billheimer, the clerk staffing consisted of one FTR and two PTF employees.

In May of 2003, the Employer conducted a “Function 4 Review” of the Payette Office. A report (Exhibit J-4) was completed soon after in which the review team noted on page two that the “Postmaster did not open during peak times, leaving only the regular on the window line, resulting in

waiting time of 7 to 8 minutes. The report recommended that the “Postmaster needs to make himself available for window back up.”

The report was followed by an “Exit Interview”, which is a required part of the process. The Postmaster responded to the Function 4 report in a letter dated May 16, 2003 (Exhibit J-5). Of particular note in this case is his response listed as “Item 4” (page 3). In this response, he writes:

“While not listed in the report, during the exit interview the Postmaster was required to provide lunch and break relief to the window clerk. This is something that has not historically done (sic) at the Payette office and I believe this instruction to be a violation of the national contract with the APWU (reference Arbitrator Garrett [AC NAT 5221]).”

The postmaster went on to explain that he would help out at the window on occasion when necessary. For example, if the “lobby appears unusually busy or the clerk has a customer that will take an unusual amount of time” or if he “felt there was a strong need or (he) was shorthanded” he would report to the window in order to “break down the line.”

Clearly, while the Postmaster would help the clerks if necessary, he only performed window work in *support* or *in addition* to clerk employees who were being utilized on the window; he never, as a matter of course, scheduled himself to work the window operation by himself or as being the sole employee working the window operation. In other words, at all times the window operation was open for business, a clerk employee was scheduled to perform the work. One clerk, usually the FTR, was scheduled to man the window for the entire day and another clerk would be scheduled to relieve for rest breaks and lunch periods. This manner of staffing is a

daily, routine, regular, and required part of the operational staffing complement. The necessity for window relief work does not change with time or with mail volume or automation; it is a static and reliable constant.

There is no dispute that assigning the Postmaster to the lunch and break relief duties constituted a change in the historical practice by the shift of this work from the bargaining unit to the Postmaster. Importantly, there is not a scintilla of evidence that the shift of work to the Postmaster was done out of operational necessity nor has there even been any assertion by the Employer that the shift in work was done for *any* particular reason at all.

On May 29th, the Postmaster received an e-mail (Exhibit J-6) from Chris Boettger, Budget/Financial Analyst, informing him that two “budget adjustments” for the Payette office had been completed. Specifically, he was informed that the LDC 45 (window services) budget had been reduced by 154 hours for the period covering AP-09 week 4 (May 10, 2003), through the end of the fiscal year (September 5, 2003)¹. Additionally, he was informed that the LDC 43 (distribution) budget was being reduced by 52 hours for the period covering AP-10 week 1 (May 17, 2003) through the end of the fiscal year (September 5, 2003).

The reduction in distribution hours was reported made due to “the implementation of AFSM 100 flat sorting in the Boise plant...” There were no reasons given for the reduction in the window operation budget.

¹ An Accounting Period (AP) is comprised of two pay periods, or four weeks. Generally, there are 13 pay periods in each fiscal year (FY). At the time this grievance was filed, the Postal Service fiscal years did not coincide with the calendar years. Exhibit J-7 shows work schedules for all four weeks of AP-09 and the first two weeks of AP-10.

The notice explains the reduction of distribution hours is based on a per-week projected reduction in the amount of flat pieces to be worked in the office. Over the 16 week period, the distribution budget was reduced by an average of 3.25 hours per week.

The parties have acknowledged that the Postmaster would perform two hours of distribution work per day, or ten hours per week. The reduction of budgeted distribution work hours either had to come from the amount of distribution performed by the Postmaster or the amount of distribution performed by the clerks.

The window operation in Payette is open Monday through Friday and for part of the day (3½ hours) on Saturday. A reduction of 154 hours applied over the course of the 17 week period results in an average reduction of a little over 9 hours per week. Averaged over the course of the 82 regular work days² for which the Postmaster is scheduled (Monday thru Friday, except for three holidays), leaves an average reduction of 1.88 hours per day (about one hour and 52 minutes).

Considering the regular window clerk is scheduled for a 1.5 hour lunch period and two rest breaks of 10 minutes per day (1.82 total hours, or one hour and 50 minutes), the reduction mirrors the amount of time required to supply the window relief, particularly when you add the necessary time for set up.

The evidence also shows that while the office had previously been staffed with one FTR and three PTF employees, one of those PTFs, Eloise

² This number is based on a 17 week period of five days per week, subtracting the three holidays.

Billheimer, transferred to another office and no longer worked at the Payette office from the week beginning May 3, 2003. While the Employer makes the argument the work hours for the PTF employees did not decrease after the shift of work, its reasoning is deceptive; it is akin to saying the closing of a GM plant had no effect on employees by using the logic that the laid off workers are no longer employees. The work hours for the clerk craft did in fact, decrease. In fact, according to their budgeted hours, the number of allowed work hours for the clerk craft bargaining unit decreased an average of more than 12.25 hours per week (3.25 hours from distribution, 9 hours from window). **The Employer eliminated 9 hours of window work per week by simply transferring them to the Postmaster.**

Of course, this is the crux of the dispute. For no apparent or stated reason, the Employer simply shifted work from the clerk craft to the Postmaster. In direct contravention of established principles, that shift of work hours eliminated clerk work hours by simply transferring them to the Postmaster, and it was done without any *“consideration to other possible means of reducing total work hours.”*

The APWU filed a timely grievance protesting the shift of the window relief work and in July of 2003 resolved a *portion* of the grievance. Specifically, according to the Step 2 decision (Exhibit J-3, page 10), the parties agreed to the following:

“With the understanding that the Postmaster may not increase the number of hours of bargaining unit work he performs, he is directed to compensate the appropriate craft employees at the appropriate rate of pay for his performance of bargaining unit work in excess of 2 hours/day or 10 hours/wk. In those instances

where the work, if performed by the craft employee would have been performed at the overtime rate of pay, such compensation will be at the overtime rate of pay.”

The remaining issue in dispute is whether or not the Employer had the right, under these circumstances, to shift the window relief work from the clerk craft to the Postmaster. The Employer has taken the position that, as long as the work fell within the historical time factor (2 hours), it was free to shift work from the craft to the Postmaster at will. The APWU, of course, disagrees.

Position of the Union

Like we stated in our opening statement, Article 1 of our National Agreement is our Work Preservation clause. From the recognition of the APWU bargaining units to the restrictions on who can perform our work, this article is the backbone of our bargaining and work rights.

As one could imagine, the Union has to put a great deal of importance on the application of Article 1 as is shown by our consistent and assertive defense of any attempt to weaken or breach this critical protection.

Disputes between the parties over the assignment of bargaining unit work in offices covered by Article 1 section 6.B are not new; these disputes reach back to the very first days of our relationship and are reflected in our history of arbitration and grievance settlement history. For the most part, however, the principles guiding resolution to these disputes have been finally laid out and understood.

While the Employer periodically attempts to find ways to usurp this protection when it suits them, those efforts have been limited primarily to Local initiatives like the instant case, and do not reflect a general or national disagreement. In fact, when the Employer, at the local level, attempted to submit this dispute for review at the national level, it was rejected. While that does not resolve the issue or this grievance outright, it does show there is no national dispute as to the standards at play here; they have been established at national level arbitration and by Step 4 settlement and are generally understood.

Arbitrator Garrett (AC-NAT-5221)

In 1978, Arbitrator Sylvester Garrett resolved an interpretive dispute on Article 1 Section 6 largely in favor of the APWU in his national level award.

The Arbitrator rejected both the Union's claim that the performance of bargaining unit work be capped by a set amount of time applied across the board and the Employer's assertion that it could alter the amount of work performed by a supervisor or manager by the alteration of a job description. He writes on page 37:

“It follows that in 1973 1-6-B was not intended to authorize revision of supervisory position descriptions (as they existed in 1973) to include performance of bargaining unit work” absent “changes in relevant conditions or operating methods in a given office.”

The Arbitrator went on to address the situation which existed in many of these small offices, where the supervisory position description already included performance of bargaining unit duties, but the work performed by supervisors had changed.

To that degree, on page 38 he wrote,

“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.”

Garrett continues on page 40,

“...And if supervisors in small offices had large amounts of idle time up to 1973, there still would be no reason to infer that the Unions should have understood that thereafter efficiency was to be accomplished primarily by transferring Clerk work to higher rated supervisors, rather than by embracing other techniques for reducing excess hours.

When Article I, Section 6 was negotiated no comparable collectively bargained protective policy existed with respect to maintaining the integrity of the supervisory work force. There is no way, therefore, that I-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 light of this analysis, it is clear that the USPS errs in claiming an unfettered license under I-6-B to assign Clerk duties to supervisors. Proper observance of the policy enunciated in Article I, Section 6 would require as a minimum that before such action is taken in any given office the USPS should also give full consideration to other reasonably available means of eliminating excess manpower. If, after

such a good faith review has been conducted, it nonetheless reasonably appears that Clerk hours must be reassigned to supervisors in any given small office, appropriate action then might be taken in the exercise of Management authority under Article III.”

Garrett went on to state that unless the parties could negotiate a global settlement to these issues, they would have to “proceed with a detailed analysis of the pending grievances”. This means of course that issues within offices would have to be resolved in accordance with the award by settlement or regional arbitration based on the specific fact circumstances of a particular office. The parties addressed Article 1.6.B disputes in this manner for a number of years.

While the employer sought to change position descriptions in order to allow an increasing amount of bargaining unit work to be performed, Garrett not only closed that loophole, he memorialized the enforceable principle that Article 1.6.B must be read in such a way as to protect the APWU bargaining unit from incursion from Postmasters with time on their hands. The preponderance of Regional awards dealing with 1.6.B have applied the principles of the Garrett award consistently: the performance of bargaining unit must be within the position description of the supervisor and if the disputed work had belonged to the bargaining unit, it is assumed to continue to belong to the bargaining unit.

Arbitrator Snow (AC N 6922)

In its opening statement, the Employer mentioned a national award by Arbitrator Snow (AC N 6922). In that award, Arbitrator Snow dealt with the issue of determining what was to be considered bargaining unit work. In a

nutshell, the Union had taken the position that work considered routine and was covered in a bargaining unit position description automatically belonged to the bargaining unit. While Snow ultimately did not agree with that premise, he did state, and the parties had no dispute, over the fact that distribution, delivery, and “selling stamps” clearly is “bargaining unit work” whether it is being performed by a supervisor or Postmaster does not change that fact.

Snow cites the Garrett award in his decision, enforcing the idea that the Employer is obligated to minimize or avoid substituting the performance of bargaining unit work by utilizing non-bargaining, higher level personnel. On page 24 of his award he writes:

“In other words, there were two ideas at work in the pre-contract negotiations for the 1973 agreement. One theme involved the policy against supervisors performing lower level work or work normally performed by bargaining unit employees. Another theme involved a mandate given management to increase employe efficiency. Arbitrator Garrett made clear that efficiency is not to be accomplished "solely at the expense of bargaining unit employees. (See, Union’s Exhibit No. 2, p. 39). In other words, management must advance its goal of efficiency without sacrificing bargaining unit positions or hours, to the extent possible. In other words, one purpose of the policy that restricted supervisory performance of lower level work was to protect bargaining unit employes from being made redundant.”

Step 4 Settlement Q90C-4Q-C 94011535

Operation reviews have been around a long time and while the specific names and acronyms change with the specific measurement systems

and programs used, the idea that a “review team” would visit an operation to assess efficiency practices is standard in virtually any industry. Of course, those review teams seldom take into consideration contractual obligations. So, without some diligence from the next higher level of management, the review recommendations inherently precede a conflict between the incorporation of the recommendations and the obligation of contractual adherence. From where we sit, it would seem obvious that the operational review recommendations would have to be filtered through some kind of *contractual* review before they are implemented. Of course, in reality, the effectiveness of such a review would be dependent upon the strength and emphasis an individual manager would place toward contract compliance. It is not surprising then, that the principles of Garrett often would take a back seat to the recommendations of an efficiency team or a manager looking to reduce work hours.

Because of that continuing conflict, the APWU initiated a national level dispute over the continuing problem of the transfer of certain duties from the bargaining unit to the Postmaster or a supervisor as a result of these reviews. In this case, the review process was termed the “Workload/Workhour Equalization Program Guidelines.”

The parties resolved the issue without the need for arbitration simply by acknowledging the principles established by Arbitrator Garrett. The parties agreed:

“Nothing in the newly issued Clerical Workload/Workhour Equalization Program shall be construed to waive

Management's obligations under Article 1.6 or any National Level Award interpreting Article 1.6.

The Postal Service acknowledges that in a 1978 arbitration award, Case No. AC-NAT-5221, Arbitrator Garrett set forth certain standards for evaluating whether or not management has the ability to shift bargaining unit work from craft employees to postmasters in Article 1.6.B offices.

As a result, no bargaining unit work will be shifted from craft employees to postmasters/supervisors solely as a result of a review using the Workload/Workhour Budget Equalization Guideline process.

Rather, if, after employing the Workload/Workhour Budget Equalization Review such an adjustment appears warranted, the considerations established in Arbitrator Garrett's decision will be reviewed and applied before any shift of bargaining unit work from craft employees to postmasters is effectuated. In particular, the conditions in the office must be in concert with the conditions specified in Arbitrator Garrett's decision in order for any such shift of work to be justified."

While the Employer used the "Function 4 Review" process rather than the Workload/Workhour Budget Equalization Review" process to shift the work at Payette, the parties' understanding and the memorialization of that understanding into a precedent-setting national level agreement does not change along with the particular work practices or staffing program de jour.

Arbitrator Das (Q98C-4Q- C 01238942)

In September of 2001, the Employer initiated a national dispute with regard to our assertion that the when a Postmaster performed bargaining unit work on a routine and regular basis, the work, on that

basis alone and without regard to the historical practice in the office, must be performed by the bargaining unit.

As is the case in the Payette office, many Postmaster job descriptions include the phrase, “May personally handle window transactions and perform distribution tasks as the workload requires.”

To the chagrin of the Employer, the Union had been successfully arguing that Postmasters could not perform work on a routine or regular basis because that would mean, at least presumptively, that s/he is performing our work beyond “what the workload requires.” Since the union’s position had become acknowledged policy for some local and District management officials as well as by arbitrators, the Service initiated the dispute.

The APWU not only disagreed with the Postal Service’s position, we took the position that since Garrett had decided the matter to the extent that any disputes over Article 1.6.B are properly resolved in regional arbitration.

The APWU raised the issue of both procedural and substantive arbitrability; or more correctly, we raised the issue of procedural and substantive viability as a national level appeal. We not only believed the issue to be improper for a national level dispute, we maintained the Postal Service followed an improper path to getting the issue to the national level in accordance with Article 15.

Obviously the Postal Service disagreed. In that arbitrability award, Das outlines the position of the Postal Service on page 16 and 17:

“As set out in its September 5, 2001 and April 30, 2002 statements, the Postal Service position was that: "the daily, regular or routine performance of non-supervisory tasks which have been historically performed by the postmaster or supervisor does not violate the Agreement." That statement of position could be read to encompass situations where a postmaster or supervisor continues to perform the same types of tasks, but increases the amount of bargaining unit work historically performed by the postmaster or supervisor at that office. At arbitration, however, the Postal Service made it clear that its position in this case, as stated in its post-hearing brief, is that:

‘... if the postmaster's standard position description lists bargaining unit work as one of his/her duties and the postmaster has historically performed these functions in the office, he/she is entitled to perform bargaining unit work for the same number of hours as performed in the past on a daily, regular or routine basis.’

**The Postal Service maintains this is the proper interpretation of Article 1.6.B as determined in the Garrett Award.”
(Emphasis’ added)**

Arbitrator Das went on to find in his ruling that the case was indeed arbitrable (if the APWU still disagreed with the Postal Service’s statement). He stated his award as follows:

“As set forth in the above Findings, the dispute in this case, as delineated at arbitration, is whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted in the 1978 Garrett Award (Case No. AC-NAT-5221), a supervisor at a small post office, whose position description includes performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the

supervisor. The Postal Service's position is that the performance of bargaining unit duties under these circumstances does not violate Article 1.6.B. As indicated in the Findings, I am somewhat unsure as to the Union's position on that issue. If the Union does not agree with the Postal Service's position, this dispute is arbitrable and should be scheduled for a hearing on the merits.”

We bring up the arbitrability case simply to demonstrate the parties understanding of the issue presented to Arbitrator Das, which goes directly to the understanding of the parties with regard to the issue presented in the instant case. As you can see, the parties had no dispute that the historical practice in an office would act as a basis for the work that would be considered necessary, or in some cases allowable, and importantly, the parties had no dispute (and have no dispute) that the historical practice included both the work performed and the amount of time spent performing that work.

Q98C-4Q-C 01238942, Merits

As stated, the APWU argued that the performance of bargaining unit work by a postmaster on a “routine and regular basis” violated the provisions of a position description which allowed only that a postmaster may, “personally handle window transactions and perform distribution tasks as the workload requires.” In addition, the Union argued that the USPS was hopelessly vague and that they had never defined what “daily, regular or routine” means. In addition, we argued the USPS did not explain which tasks it was addressing in their dispute or what history constitutes “historical” performance of bargaining unit work.

Essentially, the Union argued all 1.6.B grievances are “fact bound” and can only be resolved by application of the principles of the Garrett Award to the facts in a particular office.

The USPS contended that if postmasters historically performed bargaining unit work on a daily, regular and routine basis, they could continue to do so.

In agreement with the APWU position and in summarizing Garrett, Das reiterated,

“Garrett concluded that Article 1.6.B essentially was intended to restate and embody in the National Agreement a long established policy to avoid having supervisors perform lower level work, subject to specified exceptions”. (Page 23)

He went on to add,

“Garrett did not accept the Postal Service’s position that it was free to increase the amount of bargaining unit work performed by a postmaster or supervisor in a small office to achieve full and efficient use of supervisory work time, irrespective of the impact on hours worked by clerks.” (Page 23)

In addition, Das stated,

“He [Garrett] did not accept the notion that Article 1.6.B incorporated the Postal Service’s position that the postmaster is the ‘basic clerk’ who is supplemented by additional clerks only as required.” (Page 23)

While Das ultimately decided that the fact a supervisor or postmaster performed window or distribution tasks on a “routine and regular” basis does not, in and of itself, constitute a violation, he strengthened the

principle that bargaining unit work should not increasingly be performed by non-bargaining unit employees. In other words, the historical practice as to both the kind and amount of bargaining unit work performed by supervisors and postmasters in a given office forms a presumptive ceiling.

To that end, Arbitrator Das rules,

“The Garrett Award focuses on change, in particular on Postal Service action that increases the amount of bargaining unit work performed by supervisors, whether in response to changes in workload or to promote efficiency.”

The Das Award boiled down to its essence establishes that the historical way of doing things is the correct way of doing things. There is a presumption that bargaining unit work belongs to the bargaining unit and while there is also a general acceptance that a practice whereby a postmaster performs some window and/or distribution work can continue, the Employer does not have any inherent rights to increase or change that work.

Das writes instructively on page 25,

“In my view, Arbitrator Garrett's analysis necessarily starts from the pragmatic premise that existing position descriptions that include performance of bargaining unit duties encompass the work historically performed by the incumbent(s) of that position under the prevailing circumstances at a particular small office. In this sense, historical practice sets the baseline for what is ‘necessary’ at a particular office. Any substantial change, thereafter, has to meet the requirements Arbitrator Garrett spelled out.”

Das took great pains in his award to point out clearly that the issue presented to him was “**quite narrow**”, as follows:

“ . . . whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted by the 1978 Garrett Award . . . a supervisor at a small office, whose position description includes the performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor.” (Emphasis added)

Das stated the answer to this “narrow and abstract issue is ‘yes’.” The Arbitrator made it very clear; however, that answer was only yes “if there has been no reduction in bargaining unit employee hours.” We know very well that in our case, there was a reduction in bargaining unit hours, particularly with window service hours, but also with distribution hours.

Arbitrator Das also made it clear his awarded “yes” answer did not apply to “any increase in bargaining unit work performed by a supervisor, and a blanket answer cannot be provided for a situation where bargaining unit employee hours are reduced without a change in the amount of bargaining unit work done by a supervisor.” Das took great pains to deny permission to the Employer to only apply a reduction of total hours to the bargaining unit, without regard to a reduction of bargaining unit hour performed by a supervisor or Postmaster.

Especially important to our case was Arbitrator Das’ further instruction. He states,

“Moreover, such determinations as whether specific duties ‘historically’ have been performed by a supervisor are to be

made, to quote the Garrett Award, ‘in light of all relevant facts applicable to that particular installation’”.

If nothing else does it, this declaration by Arbitrator Das should dispose of the Employer’s rationale that it is free to transfer work from the bargaining unit to the Postmaster without regard to the specific duties historically performed. It is, frankly, hard to imagine a clearer instruction in contradiction of the Employer’s case.

Conclusion

As the parties have stated, there are no disputes over the fact circumstances involved. The Union asserts the transfer of work constitutes a violation of the National Agreement and the principles so clearly established not only by Arbitrator Garrett, Snow, and Das, but also by the parties themselves.

The Employer has no sweeping right to simply shift work at will. It is doubtful that even in the present case the Employer will make such an assertion. That is, however, exactly what has occurred in Payette.

In May of 2003 the Employer simply transferred approximately two hours of window work per day from the clerk craft bargaining unit to the Postmaster. Adding fuel to the fire, the Employer offered no reason or explanation and most certainly failed to apply any of the “considerations established in Arbitrator Garrett’s decision.”

In his testimony, the Postmaster was asked whether the relief window duties had been shifted from the clerk craft to the Postmaster. He replied “yes.”

The Postmaster was then asked whether that shift of relief window duties work from the clerk craft to the Postmaster was ordered as a result of the Function 4 review. He replied “yes.”

Those two answers detail the fact circumstances for this dispute. The work was shifted from the clerk craft to the Postmaster, and that shift was implemented as a result of a “Function 4 Review.” There simply is no other evidence or assertion that the transfer of work was a result of any other factor, nor is there any evidence or assertion that any of the factors discussed by Garrett, Snow, and Das were ever considered in making the transfer of work.

In its defense, the Employer makes the argument that when it comes to bargaining unit work being performed by a Postmaster, the historical practice only accounts for the amount of *time* spent performing bargaining unit work. Therefore, according to the Employer, as long as the Postmaster performs the work within a designated time period, it is free to assign any work it wants, with or without reason or explanation.

There are, of course, two fundamental problems with the Employer’s theory. First, the application of the theory would not result in a logical or reasonable end.

What the Employer is saying is that once that work is transferred based on the operational necessity of the Postmaster performing it for a period of time, the work and the reasoning for the transfer no longer matter. In other words, the Garrett/Das considerations are applied in order to grab the work, but are then deemed irrelevant once a practice is established. It is as if the Employer sees itself as having arbitrary rights akin to enabling it to act as an Amazon snake, seizing its prey and then over considerable time forcing it down inch by inch. Under the theory of the Employer, once a practice is established, the work performed is irrelevant and the principles by Garrett, Das, Snow, and the national parties are dismissed in favor of an arbitrary time factor.

If the Employer were correct, only the amount of measurable *time* spent by the Postmaster performing bargaining unit work is an enforceable element of the historical practice and, therefore, Article 1.6 offers no protection of work duties. The end result would be not only catastrophic for the bargaining unit, but also the application would not be based on operational necessity or reasoning. It would, literally, apply the Garrett/Das/Snow principles quite arbitrarily and capriciously.

The Employer, at the headquarters level, has taken great pains to make the case that the use of Postmasters in smaller offices are essentially based upon the needs of each operation. The “considerations established in Arbitrator Garrett’s decision” are all considerations of operational necessity.

For example, there could be a need in a small office for someone to help the clerk put up the box section for an hour in the morning. Instead of hiring another clerk, or utilizing another employee from 40 miles away, the

Postmaster has been historically performing that work. Based on the “considerations” established by Garrett, the circumstances may be allowable in that a reasonable argument could be made based on operational reasoning and necessity. Simply, there could be a bona fide operational need to have someone help with the box section, and it would not be possible to hire an employee to work only one hour per day, nor may it be feasible, under the circumstances, to have another clerk commute 80 miles per day in order to work one hour.

Taking another example, what if the Postmaster is very skilled at his paperwork, never takes a break or a lunch and drinks an excessive amount of coffee so he literally finishes his work in seven hours. Does the Employer then have the right to have him perform bargaining unit work for one hour of work from the bargaining unit to the Postmaster? Of course not; such performance of bargaining unit work fails to meet the “considerations” established by Garrett.

Would it be allowable for the Employer to simply have the Postmaster start performing bargaining unit work for one hour per day without any specific reason? Again, it would not. The performance of bargaining unit work by a Postmaster must be vetted against the principles established by Garrett, Das, Snow, and the national parties, based on good faith reasoning and operational necessity.

What if the historical practice of that office consisted of the Postmaster performing an hour of distribution, an hour of delivery, and an hour of maintenance work? Would the Postmaster, seizing upon the historical practice of performing three hours of bargaining unit work, be able to begin

performing three hours of delivery work, or three hours of distribution work at his whim? Or does the Employer's theory of a "time only" practice apply for each specific craft? If not craft, does it apply individually to each union, or wage level, or position title?

Finally, what happens in such an office, where the Postmaster was performing one hour of work in the box section, and the box section closes down and no longer is a part of that office? Is the Postmaster then able to arbitrarily start performing an hour of different work, possibly even taking an hour away from a full time assignment?

The performance of bargaining unit work by a Postmaster must be based upon proper, good faith application of the principles established. Those principles require bona fide operational consideration. It goes without saying that an operational consideration must include the work performed as well as the time the work is performed. The historical practice for the performance of that work is assumed to be based on these operational necessities and is, therefore, given the greatest amount of deference as the foundation for what is considered proper and allowable at an office.

If the Employer is allowed to turn all of this on its head by dismissing any operational consideration of the work performed, and only consider the time factor, the parties are surely in for a massive struggle all over again.

The second fundamental flaw in the Employer's argument is that it flies directly in contravention of not only the national arbitration awards, but also the position of the Employer at the national level.

Arbitrator Garrett was very specific that the historical practice includes the work performed. On page 38 he writes:

“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.” (Emphasis Added)

Garrett continues on page 40,

“...And if supervisors in small offices had large amounts of idle time up to 1973, there still would be no reason to infer that the Unions should have understood that thereafter efficiency was to be accomplished primarily by transferring Clerk work to higher rated supervisors, rather than by embracing other techniques for reducing excess hours.

When Article I, Section 6 was negotiated no comparable collectively bargained protective policy existed with respect to maintaining the integrity of the supervisory work force. There is no way, therefore, that I-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 light of this analysis, it is clear that the USPS errs in claiming an unfettered license under I-6-B to assign Clerk duties to supervisors. Proper observance of the policy enunciated in Article I, Section 6 would require as a minimum that before such action is taken in any given office the USPS should also give full consideration to other reasonably available means of eliminating excess manpower. If, after such a good faith review has been conducted, it nonetheless reasonably appears that Clerk hours must be reassigned to supervisors in any given small office, appropriate action then

might be taken in the exercise of Management authority under Article III.” (Emphasis Added)

Arbitrator Snow writes in case AC N 6922 (on page 24):

“In other words, there were two ideas at work in the pre-contract negotiations for the 1973 agreement. One theme involved the policy against supervisors performing lower level work or work normally performed by bargaining unit employes. Another theme involved a mandate given management to increase employe efficiency. Arbitrator Garrett made clear that efficiency is not to be accomplished "solely at the expense of bargaining unit employees. (See, Union’s Exhibit No. 2, p. 39). In other words, management must advance its goal of efficiency without sacrificing bargaining unit positions or hours, to the extent possible. In other words, one purpose of the policy that restricted supervisory performance of lower level work was to protect bargaining unit employes from being made redundant.” (Emphasis Added)

Step 4 Settlement Q90C-4Q-C 94011535 states:

“...As a result, no bargaining unit work will be shifted from craft employes to postmasters/supervisors solely as a result of a review using the Workload/Workhour Budget Equalization Guideline process...” (Emphasis Added)

Arbitrator Das in National Case Q98C-4Q- C 01238942 (Arbitrability) writes on page 16 and 17:

“As set out in its September 5, 2001 and April 30, 2002 statements, the Postal Service position was that: "the daily, regular or routine performance of non-supervisory tasks which have been historically performed by the postmaster or supervisor does not violate the Agreement." That statement of position could be read to encompass situations where a

postmaster or supervisor continues to perform the same types of tasks, but increases the amount of bargaining unit work historically performed by the postmaster or supervisor at that office. At arbitration, however, the Postal Service made it clear that its position in this case, as stated in its post-hearing brief, is that:

‘... if the postmaster's standard position description lists bargaining unit work as one of his/her duties and the postmaster has historically performed these functions in the office, he/she is entitled to perform bargaining unit work for the same number of hours as performed in the past on a daily, regular or routine basis.’” (Emphasis Added)

Again, Arbitrator Das Q98C-4Q- C 01238942 (Arbitrability) on page 22:

“As set forth in the above Findings, the dispute in this case, as delineated at arbitration, is whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted in the 1978 Garrett Award (Case No. AC-NAT-5221), a supervisor at a small post office, whose position description includes performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor...”(Emphasis Added)

Arbitrator Das in Case Q98C-4Q- C 01238942 (Merits), page 25:

“In my view, Arbitrator Garrett's analysis necessarily starts from the pragmatic premise that existing position descriptions that include performance of bargaining unit duties encompass the work historically performed by the incumbent(s) of that position under the prevailing circumstances at a particular small office. In this sense, historical practice sets the baseline for what is ‘necessary’ at

a particular office. Any substantial change, thereafter, has to meet the requirements Arbitrator Garrett spelled out.”
(Emphasis Added)

Arbitrator Das in Case Q98C-4Q- C 01238942 (Merits), writes on page 26:

“. . . whether consistent with the exception in Article 1.6.B of the National Agreement, as interpreted by the 1978 Garrett Award . . . a supervisor at a small office, whose position description includes the performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor.” (Emphasis added)

He writes further on page 26:

“This issue does not address any increase in bargaining unit work performed by a supervisor, and a blanket answer cannot be provided for a situation where bargaining unit employee hours are reduced without a change in the amount of bargaining unit work done by a supervisor.”

Finally, just so there can be no doubt, Arbitrator Das, again in case Q98C-4Q-C 01238942 (Merits), Page 26:

“Moreover, such determinations as whether specific duties ‘historically’ have been performed by a supervisor are to be made, to quote the Garrett Award, ‘in light of all relevant facts applicable to that particular installation’”.

I apologize for the redundancy of these citations, but the point is simply too important not to re-emphasize. The Employer’s attempt to expand its position so greatly has the potential for great mischief.

When the Employer transferred the relief window duties from the clerk craft to the Postmaster in Payette, it did so based on the arbitrary and capricious reasoning. It did not do so based upon the historical practice, the “considerations established by Garrett, nor for any discernible operational reason or necessity. Therefore, we respectfully request that you find the National Agreement was violated when the Employer transferred the relief window work at the Payette office from the bargaining unit to the Postmaster.

Remedy

The Union respectfully requests that the Arbitrator rule in such a manner as to make us whole, including but not limited to the immediate return of the relief window duties to the clerk craft, and compensation, at the appropriate rate, for all time the Postmaster at the Payette has been assigned and performed the relief window duties.

This remedy is the standard remedy for these violations as established by the parties in our Joint Contract Interpretation Manual (JCIM). Under Article 1 section 6 of the JCIM it states:

“Where bargaining unit work which would have been assigned to employees is performed by a supervisor and such work hours are not *de minimus*, the bargaining unit employee(s) whom would have been assigned the work, shall be paid for the time involved at the applicable rate.

We respectfully request that you enforce the parties agreed upon remedy for this violation.

Thank you for your consideration,

Brian Dunn, National Business Agent
American Postal Workers Union, AFL-CIO