

APWU

CORRECTED COPY

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Appeal to Arbitration, National Dispute

February 25, 2009

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-331-0992 (Fax)

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

National Executive Board

William Burris
President

Cliff Guffey
Executive Vice President

Ferry R. Stapleton
Secretary-Treasurer

Greg Bell
Director, Industrial Relations

James "Jim" McCarthy
Director, Clera Division

Sтивен G. Раймер
Director, Maintenance Division

Robert C. Bob Pritchard
Director, MVS Division

Bill Minley
Director, Support Services Division

Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

Elizabeth "Liz" Powell
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Re: Q94C-4Q-C 96096823 (I90C-1I-C 86014614 Appealed August 13, 1996) and
Q94C-4Q-C 96096822 (B90C-1B-C 94059109 Appealed January 3, 1996)

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,


Greg Bell, Director
Industrial Relations

USPS #: Q94C4QC96096823
APWU #: HQTC19962

Case Officer: Cliff Guffey
Step 4 Appeal Date: 6/28/2004
Contract Article(s): 7, Employee
Complements: Maximization:

cc: Resident Officers
Industrial Relations

GB/bw



CORRECTED COPY

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

February 23, 2009

William Burrus
President
(202) 842-4246

Doug Tulino, Vice President
Labor Relations
US Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

National Executive Board
William Burrus
President

Re: Q94C-4Q-C 96096823 (I90C-II-C 86014614 Appealed August 13, 1996) and
Q94C-4Q-C 96096822 (B90C-1B-C 94059109 Appealed January 3, 1996)

Cliff Guffey
Executive Vice President

Dear Mr. Tulino:

Terry R. Stapleton
Secretary-Treasurer

In accordance with Article 15.2 (Step 4) of the National Agreement, I am writing to provide you with a statement of the APWU's understanding of the issue involved in this case and the facts giving rise to the dispute.

Greg Bell
Director, Industrial Relations

James "Jim" McCarthy
Director, Clerk Division

The dispute arises because the Postal Service believes that some categories of employees can be utilized to defeat maximization and the creation of full time assignments.

Steven G. Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Bill Manley
Director, Support Services Division

The APWU disagrees for the following reason:

Sharyn M. Stone
Coordinator, Central Region

Article 7.3.B provides in relevant part: "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" It is the position of the American Postal Workers Union, AFL-CIO, that:

Mike Gallagher
Coordinator, Eastern Region

Elizabeth "Liz" Powell
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

1. A duty assignment is understood to be a set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty. See Article 37.1.B & Article 38.2.C, Article 39.1.C.5, and Article 41.A.
2. The two clauses of Article 7.3.B, the first about maximization of full-time duty assignments ("The Employer shall maximize the number of full-time duty assignments") and the second about minimizing the number of part-time employees without fixed schedules ("minimize the number of part-time employees who have no fixed work schedules in all postal installations") are to be read in the disjunctive as separate and distinct obligations of the Postal Service. The Postal Service's maximization obligation under the first clause of Article



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- 7.3.B is not limited to consideration of the work hours of part-time flexible employees.
3. The first clause of Article 7.3.B concerning maximization obliges the Postal Service to combine the work hours (which are not already part of an existing duty assignment) of all categories of non-full-time employees (i.e., part-time regular, part-time flexible, transitional, and casual employees) to establish full-time duty assignments. Furthermore, because overtime is not part of full-time duty assignments, the Postal Service must also combine regularly scheduled overtime hours of full-time employees with the work hours of non-full-time employees to establish full-time duty assignments.
 4. The full-time duty assignments resulting from combining the work hours of non-full-time employees must be posted for bid in accordance with the bidding provisions of the National Agreement.
 5. That the Postal Service has employed part-time regular, part-time flexible, transitional, and casual employees in accordance with the National Agreement does not mean that these non-full-time employees may be utilized in such a way that their work hours need not be counted in determining whether there exists a full-time duty assignment which the Postal Service must post for bid. The Postal Service's right to employ these non-full-time employees does not override its obligation to maximize full-time duty assignments under Article 7.3.B.
 6. Article 7.3.C is one way, but only one of many ways, for the Postal Service to maximize full-time duty assignments. The Postal Service's maximization obligation under the first clause of Article 7.3.B is not limited to the fact situation described in Article 7.3.C.
 7. Whether in any particular situation there exists a full-time duty assignment which the Postal Service is required to establish under Article 7.3.B is a matter of local factual circumstances.

The Postal Service's issue statement is: "Does the combination of PTF, TE and casual hours worked eight hours within nine on a daily basis over a six month period warrant the creation of additional full-time positions?" This issue statement misstates the position of the APWU. In the Union's view, the issue is: "Is the Postal Service obliged by Article 7.3.B to combine all regularly scheduled work hours (which are not already part of an existing duty

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assignment) of all categories of non-full-time employees (e.g., part-time regular, part-time flexible, transitional, and casual employees) and scheduled overtime hours of full-time employees to establish full-time duty assignments, and post them for bid?”

Sincerely,



Cliff Guffey
Executive
Vice President

CG/RR
opeiu#2, afl-cio

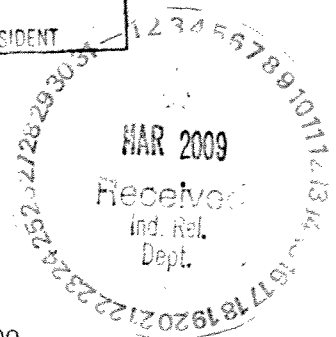
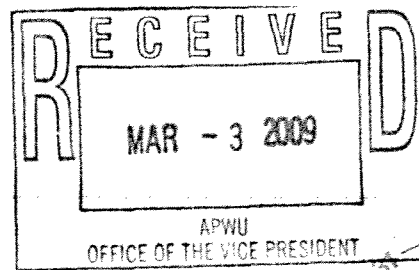


February 24, 2009

Mr. Cliff Guffey
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Certified Mail Number:
7099 3400 0009 0506 1588

RE: Q94C-4Q-C 96096822¹
Q94C-4Q-C 96096823²
Washington, DC 20260-4100



On several occasions, the latest date being February 12, we met to discuss the above-captioned grievances at the fourth step of our grievance/arbitration procedures. In accordance with Articles 15.2.Step4 and 15.4.D of the 2006 National Agreement, this letter sets forth the Postal Service's understanding of the issues involved and the facts giving rise to the interpretive dispute.

Issue:

Whether Articles 7.3 and 37 of the 1994 National Agreement³ and the various Maximization Memoranda of Understanding (MOU) require the Postal Service to create a full time duty assignment for each eight-hour block (within nine/ten hours) worked by either a casual employee or transitional employee (TE) or combination of hours worked by casual employees and TEs, for five days a week over a six month period.

Background:

On January 3, 1996, the American Postal Workers Union (APWU) appealed local grievance B90C-1B-C 94059109⁴ to national level arbitration, from a Step 4 appeal under the pre-1998 Article 15 procedures. Similarly, on August 13, 1996, the APWU appealed local grievance I90C-1C-C 96014614⁵ to national level arbitration from a Step 4 appeal under the pre-1998 Article 15 procedures. In accordance with the Memorandum of Understanding (MOU) dated June 3, 2004, both grievances were remanded back to the local parties. Consistent with paragraph 5 of the MOU and the post-1998 provisions of Article 15, the Postal Service initiated the above-referenced national interpretive disputes on or about June 22, 2004.

Article 7.3.B of the 1994 National Agreement states:

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' ability to use the awarded full-time/part-time ratio as provided for in paragraph 3.A above.

Article 7.3.C of the 1994 National Agreement states:

¹ Issue applies to casual employees and transitional employees.

² Issue applies to transitional employees only.

³ The 1994 National Agreement was in effect when this issue first arose. Unless otherwise indicated, all contract citations will be cited from this Agreement.

⁴ Note that the local grievance that led to the national dispute was subsequently withdrawn on November 29, 2006.

⁵ Note that the local grievance that led to the national dispute was subsequently withdrawn on April 13, 2005.

A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

Article 37.1.B of the 1994 National Agreement states:

Duty Assignment. A set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty.

Article 37.1.C of the 1994 National Agreement states:

Preferred Duty Assignment. Any duty assignment considered preferred by a full-time employee or a part-time regular employee.

Position of the Parties:

It is the APWU's position that when casual employees and transitional employees (TEs) work eight hours (within nine/ten), for five days a week, over a six month period, the Postal Service is required to create an additional full-time duty assignment, which must be posted in accordance with Article 37 of the National Agreement.

The Postal Service disagrees. It is the Postal Service's position that there is no contractual requirement to count or combine hours worked by casual employees and TEs under the maximization clauses of Article 7. The category of employees called "transitional employees" was established for the purpose of easing the transition to an automated environment. (See the June 12, 1991 Mittenthal Panel Interest Arbitration Award) By Memorandum of Understanding (MOU) dated December 4, 1991, the parties initially established terms and conditions for hiring and utilizing TEs. These terms and conditions were later modified by MOUs dated February 2, 1993 and November 2, 1993, respectively. Each of these MOUs and the provisions of Article 7 of the National Agreement recognize, affirm, and reinforce the concept of TEs as place holders during the transition to automation⁶. None of these terms and conditions requires the Postal Service to count TE work hours towards maximization. For example, as noted in the Mittenthal Panel Interest Award:

The USPS has also proposed an additional category of employees called the transitional employee. The need for the transitional employee is to accommodate the change to an automated mail processing system. This category of employee will be used to allow the USPS to maintain its service standards and lessen the impact on career employees during the transition period. The transitional employee, who would be non-career, would be hired to fill anticipated impacted positions and to fill vacant withheld positions. (p. 13)

The Panel has determined that a non-career bargaining unit employee classification shall be employed to fill anticipated impacted positions as a result of automation. (p.41)

Counting or combining the hours worked by TEs toward maximization would be inconsistent with these concepts.

⁶ Per the 2001 Goldberg Interest Arbitration Award, non-Remote Encoding Center (REC) TEs were phased out no later than December 31, 2005.

Furthermore, Item 6.b of the MOU Re: Transitional Employees dated December 3, 1991, reinforces the Postal Service's position in that the parties agreed to exempt hours spent by part-time flexible employees assigned to vacancies that are being held to cushion the impact of automation. It states, in part:

Part-time flexible employees hours worked in withheld/held pending reversion vacancies will not be considered when determining whether the criteria has been met for conversion to full-time pursuant to any maximization obligations the employer may have...

Second, the APWU has also failed to provide support for its assertion that the maximization provisions of Article 7.3 of the National Agreement require the inclusion of casual employees' and TEs' work hours. Casuals by definition are part of the supplemental work force, not part of the bargaining unit. Additionally, in explicit terms, the MOU dated December 4, 1991, established a new Article 7.1.C section to include the TE classification. The MOU also expressly excludes TEs from all other sections of Article 7. These contractual limitations were unchanged by subsequent TE MOUs. As such, the APWU's application of Articles 7.3.B and 3.C principles to casuals and TEs is unfounded. Rather, those contractual provisions address situations involving part-time flexible employees and not casual employees or TEs. As such, the fact that casual employees and TEs may have worked forty hours in a given week, or a series of weeks, fails to establish a basis for a violation of Article 7.3. If it were the intent of the parties to include casual employees' and TEs' work hours towards the maximization of the number of full-time employees or duty assignments, the parties certainly could have and would have explicitly included this provision, as they did with part-time flexible employees.


Third, it is also the Postal Service's position that the APWU cannot establish a violation of Article 37.1.B or 1C. These sections are not applicable to casual employees or TEs. As outlined above, these sections merely provide definitions of the terms "duty assignment" and "preferred duty assignment⁷." No other independent rights or responsibilities are created in these provisions, nor do these sections contain the negotiated conditions for maximization. In the Postal Service's view, the APWU's reliance on Article 37 instead of Article 7 is misplaced and an implicit acknowledgment that there is no maximization requirement relating to TE and casual work hours.

Last, past practice, negotiations history, case law, handbooks and manuals, and a reading of the National Agreement support management's interpretation.

For the foregoing reasons, the Postal Service concludes that Articles 7.3 and 37 of the 1994 National Agreement and the various Maximization Memoranda of Understanding (MOU) do not require the Postal Service to create a full-time duty assignment for each eight-hour block (within nine/ten hours) that is worked by either a casual employee or transitional employee (TE) or a combination of casual and TE work hours, for five days a week over a six month period.

Time limits for the exchange of Step 4 position statements were extended by mutual consent.

Sincerely,


Mary Hércules
Labor Relations Specialist
Contract Administration (APWU)

⁷ The definition of "preferred duty assignment" was removed in the 2006 National Agreement.