

## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

### Article 15 - 15 Day Statement of Issues and Facts

March 5, 2008

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 Burrus  
President

Cliff "C.J." Guffey  
Executive Vice President

Terry R. Stapleton  
Secretary-Treasurer

Greg Bell  
Industrial Relations Director

James "Jim" McCarthy  
Director, Clerk Division

Steven G. "Steve" Raymer  
Director, Maintenance Division

Robert C. "Bob" Pritchard  
Director, MVS 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: APWU No.HQTT20082 , USPS No. Q06T4QC08083300, Cert.  
No. 70071490000084267014

Dear Mr. Tulino:

The meeting on the above referenced dispute was held between the parties on in accordance with Article 15 of the Collective Bargaining Agreement. Article 15, Section 2 (Step 4) provides that if the parties fail to reach an agreement, then within fifteen days of their meeting each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to the dispute.

The following is the APWU's statement of issues and facts concerning this dispute. Q06T-4Q-C-08083300 - SMPs Loading Software for CSBCS

The Union initiated a dispute at the national level in accordance with the provisions of Article 15, Section 2 and 4, of the Collective Bargaining Agreement. Article 15 Section 2.Step 4(a) requires the Postal Service to meet promptly, but in no event later than thirty (30) days, with the Union after a dispute is initiated. The purpose of this meeting is to define the precise issues involved, develop all necessary facts and reach agreement In addition, the employer's and the Union's representatives have full authority to in whole or in part to resolve the dispute. In addition, at the conclusion of the 30 day period, if no agreement is reached, each party shall provide the other with a statement of its understanding of the issues involved, and the facts giving rise to the interpretive dispute. As of this date, the Postal Service has not meet with the Union thereby denying the Union it's contractual right to define the issue, develop all necessary facts and reach agreement. It is the Union's position that the Postal Service's actions equates to bad faith bargaining.

It is the Union's position that the Postal Service received the Union's

dispute on January 29, 2008 and was required to contact the Union no later than February 29, 2008 to begin discussion of the dispute. Due to its silence, it is prohibited from entering any evidence and/or testimony and/or documents regarding their position in any further proceeding in which this grievance is the subject. National Arbitrator Shyam Das in case H0C-NA-C-21, which also involved a dispute that had been initiated at Step 4, ruled that a party may not raise new issues at arbitration, he then precluded the Postal Service from raising new argument. Since the Postal Service has failed to articulate any issue, any issue it raised would be new, thus it would be prohibited.

It is the Union's position that although the Postal Service prejudiced its rights Article 15.2.Step 4(a), that had such a meeting occurred the following issues would have been entered into the record by the Union. It is also the Union's position that given the Postal Service's silence that the Union's rights were not prejudiced and the Union may enter additional evidence and testimony at any time between now and the up to and including the arbitration hearing.

The issue in case is whether the Postal Service violated the National Agreement by assigning non-maintenance employees to perform maintenance tasks related to the installation of software for the Carrier Sequence Bar Code Sorter (CSBCS) in SMO-001-08?

In Software Modification Order, SMO-001-08 - Carrier Sequence Bar Code Sorter System Version 5.10, the Postal Service assigned duties and responsibilities that are exclusive to the Maintenance Craft bargaining unit to Senior Mail Processors (Clerk Craft) or an Operations Support Specialist (OSS).

It is the Union's position that file maintenance, such as upgrading software to mail processing equipment, such as the Carrier Sequencer, is not a duty of a Senior Mail Processor software to mail processing equipment is a duty of a Senior Mail Processor or an Operations Support Specialist. Step 4 agreements have been reached in which the Electronics Technician is the appropriate bargaining unit and Craft to perform this type of work.

The SMO, beginning on page 30 and ending on page 41, describes the software maintenance tasks that will be performed by the SMP. The following is a synopsis of the maintenance tasks these non-maintenance employees will be performing:

- Setup of sort plans after the basic configuration and setup has been completed by an Electronic Technician.
- Downloads and installs sort plans
- Installation for the CSBCS Runtime Software Version 5.10 and Wide Field Vision
- (WFOV) software v 6.1 or higher and CSB CS software 5.00 with WFOV Ethernet.
- CSBCS Version 5.10 is 8 NEW INSTALL but relies on some system settings from the v 5.00 installation.
- Prior to installing software on the CSBCS verify operation by using the SORT test deck (NSN 3915-03-000-5959) to verify mail processing and machine functionality.

- Install v 5.10 software
- After the software has been installed, check the configuration and verify CSBCS operation by using the SORT test deck to verify mail processing and machine functionality.
- Test the communication.
- Verify the Current Sorter Operation
- Load sor tplan from the LOAD SORTPLAN menu and select DPS.
- Verify machine throughput is at least 36000 and the GAR is at least 99% in the report. If this is the case, proceed with the installation. If t he machine does not meet this minimum standard, maintenance must be performed before proceeding with the installation.
- Calibrate the Wide Field of Vision camera
- Verify sorter operation by loading sortplan and run the sort test deck for three (3) passes
- Verify communication with SPC

It the APWU's position that the work in dispute is part of the current Level 10 Electronics Technician and Level 11 Electronics Technician Standard Position Descriptions. Item 1 of the Duties and Responsibility of the current Level 11 Electronics Technician states, "Performs the testing, diagnosis, maintenance, and revision work requiring knowledge of solid state electronics." Also Item 7 reads, "Programs scheme and/or scheme changes into memory units as requested by management." In addition, the Functional Purpose of the current level 10 Electronic Technician reads:

"Independently performs the full range of diagnostic, preventive, maintenance, alignment and calibration and overhaul tasks, on both hardware and software on a variety of mail processing equipment . . ."

In addition Items 1 and 6 of the current level 11 ET Standard Position Description state:

1. Performs complex testing, diagnosis, maintenance, alignments and calibration, overhaul and revision of electronically operated or controlled equipment or systems; may be required to perform maintenance of associated electromechanical equipment and systems.

6. Participates in the installation, removal, modification, assembly, and/or disassembly of systems and requirements.

Furthermore the parties have agreed at the headquarters level in case A94T-1A-C-97010097 that file maintenance (installing, updating or maintenance of application software) on mail processing equipment is assigned to and performed by Maintenance Craft bargaining unit employees of the Electronics Technician, PS-09.

It is the APWU's position that the assignment of the above tasks is a violation of Articles 1 and 7. Article 1 Section 6 states in part:

- 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

The Postal Service has never claimed that any of the exceptions cited in Article 1 Section 6 were in effect. As such it can make no such claim can be made this date that the work assignments fell within the restrictive language of Article 1 Section 6A of the Agreement.

It is the Union's position that the scope of work is within the position description of the Electronics Technician as the CSBCS is mail processing equipment. Current level 10 Electronics Technicians perform the full range of maintenance on mail processing equipment. Arbitrator Irwin Dean, Jr. in case E7T-2F-C-23727 states on page 12 of his award:

"In this case, it is difficult to discern a legitimate management need which is served by having sort scheme changes entered by supervisory personnel. Both parties acknowledge that scheme change entries are simple, undemanding, routine tasks for which Electronic Technicians are trained.....While supervisory personnel may verify the accuracy of entries, there seems to be no management interest advanced by removing the work from the bargaining unit. It is in this respect that the present dispute markedly differs from the representative cases addressed in the Snow Award. For this reason, the grievance must be sustained."

It is the Union's position that work in dispute falls within the bargaining unit position of Electronic Technician and that these bargaining unit employees were available and qualified to perform the tasks in dispute. As such, the performance of such work by a non-bargaining unit employee violates the provisions of Article 1 Section 6.

It is the Union's position that whenever the Postal Service makes assignments across crafts, groups or levels without meeting the astringent requirements imposed upon them by Article 7, it runs the risk of obligating itself for both the payment of higher level and the payment of overtime to the effected employees. Arbitrators at both the national and regional level have expressed views on what constitutes a violation of Article 7 with the final analysis being that to assign work across different levels, OR different groups OR different crafts is an equal violation of the Collective Bargaining Agreement. These Arbitrators have found the appropriate penalty for cross craft and/or cross occupational group assignments to be the payment of overtime to the level, group or craft person who would have performed the worked had the work been properly assigned.

It is also the Union's position that such assignments can not be made to increase efficiency or to avoid the payment of overtime. Therefore the affected maintenance employee(s) must be paid overtime for the work they would have performed if not for the violation of the Collective Bargaining Agreement. The language of Article 7 Section 2 A is clear, when the Service combines work in different crafts, or occupational groups, or levels, except for the severely limited conditions set forth in Article 7.2.A. 1 and 2, 7.2.B and/or C such action violates the provisions of the Agreement between the parties respective to any such assignment(s).

National Arbitrator Richard I. Bloch in case A8-W-0656/H8S-5F-C-8027 makes clear that there are "limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable." He addresses the language of "insufficient work" in conjunction with "exceptionally heavy work " and makes the determination that the two things must happen simultaneously. On page 6 of his award he provides:

"There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was "insufficient work" for the classification or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well as, in another."

Further, at page 7 he states,

"Under the circumstances, there having been a crossing of craft lines, it is appropriate that Management provide justification for the action." And at pages 10 and 11,


"In this case, the evidence relevant to this particular fact situation fails to sustain Management's responsibility of showing "insufficient" work in the letter carrier unit."

Obviously the same responsibility is incumbent upon Management in regards to "exceptionally heavy work". National Arbitrator Richard Mittenthal in case H8C-2F-C-7406 provides on page 5:

"The principle seems clear. Where Management makes a cross-craft assignment, it must justify that assignment under the terms of VII-2-B or VII-2-C. If not such justification is provided, the cross-craft assignment is improper under the "inherent proscription..." in VII-2. The Postal Service does not claim Arbitrator Bloch's interpretation is incorrect. It has not asked me to modify or overrule his award."

Please contact me if you wish to discuss this matter.

Sincerely,

  
Gary Kloepfer  
Case Officer

APWU #: HQT20082  
USPS #: Q06T4QC08083300

Dispute Date:  
Contract Articles: ;

cc: Industrial Relations

GK /BM