

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN POSTAL WORKERS UNION,
AFL-CIO
1300 L Street, N.W.
Washington, D.C. 20005,

Plaintiff,

v.

NATIONAL POSTAL MAIL HANDLERS'
UNION, A DIVISION OF LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA, AFL-CIO

Defendant

and

UNITED STATES POSTAL SERVICE,
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260,

Necessary Party

CASE NUMBER 1:07CV00003

JUDGE: Paul L. Friedman

DECK TYPE: Labor/ERISA (non-employee)

DATE STAMP: 01/03/2007

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action for breach of a collective bargaining agreement brought under Section 1208(b) of the Postal Reorganization Act, 39 U.S.C. §1208(b) by the American Postal Workers Union, AFL-CIO ("APWU") against the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America ("MHU"). The United States Postal Service ("Postal Service") is named as a necessary party in accordance with Rule 19(a), F. R. Civ. P. The collective bargaining agreement at issue is one governing work jurisdiction disputes,

namely, the memorandum dated April 16, 1992, entitled "Memorandum of Understanding" pertaining to "Regional Instruction 399 - Dispute Resolution Procedures" ("the MOU"). In this action, the APWU seeks a declaration that the MHU has breached and continues to be in breach of the MOU. The APWU also seeks a permanent injunction directing the MHU to comply with the MOU.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the parties under 39 U.S.C. §§ 409 and 1208(b), and under 28 U.S.C. §§ 1331, 1337, 2201, and 2202.

3. Venue is proper under 39 U.S.C. § 1208(b) and 28 U.S.C. § 1391.

PARTIES

4. Plaintiff APWU is an unincorporated labor organization with its offices at 1300 L Street, N.W., Washington, D.C. 20005. The APWU is party to a collective bargaining agreement with the Postal Service and represents, for purposes of collective bargaining, approximately 300,000 employees of the Postal Service nationwide, including postal clerks in the clerk craft.

5. Defendant MHU is an unincorporated labor organization with its offices at 1101 Connecticut Avenue, N.W., Suite 500 Washington, D.C. 20036. The MHU is party to a separate collective bargaining agreement with the Postal Service and represents, for purposes of collective bargaining, approximately 50,000 employees of the Postal Service.

6. The Postal Service is an independent establishment of the Executive Branch of the Government of the United States under 39 U.S.C. § 101 . Postal Service headquarters are at 475 L'Enfant Plaza, S.W., Washington, D.C. 20260.

STATEMENT OF FACTS

BACKGROUND

7. At all material times, the Postal Service has maintained a National Agreement with the APWU covering the wages, hours and working conditions of postal employees in a number of groupings or crafts, including the clerk craft, comprising postal clerks, nationwide.

8. The Postal Service has maintained a separate National Agreement with the MHU covering the wages, hours and working conditions of mail handlers in the mail handler craft nationwide.

9. At all material times, disputes between the APWU and the MHU concerning assignment of work have been common. These disputes involve disagreements between the two unions and the Postal Service in which the APWU claims that certain work must ordinarily be assigned to clerk craft and the MHU claims that the same work must ordinarily be assigned to mail handler craft. The parties refer to these work assignment disputes as "jurisdictional disputes." The Postal Service is obliged to make work jurisdiction determinations under a document known as Regional Instruction 399 (known to the parties as "RI-399").

10. Prior to April 16, 1992, such jurisdictional disputes between the two unions frequently led to the filing of RI-399

grievances by the union claiming the work had been assigned incorrectly. In such a case, the grievance would be filed by the aggrieved union against the Postal Service, claiming a violation of the aggrieved union's collective bargaining agreement.

11. Under each union's separate collective bargaining agreement with the Postal Service, there is a multi-step grievance procedure leading to arbitration before a neutral arbitrator, if the grievance is not resolved through the grievance procedure prior to arbitration. Before April 16, 1992, both unions filed jurisdictional grievances against the Postal Service and both unions presented jurisdictional grievances to neutral arbitrators for resolution under their respective collective bargaining agreements. This process proved to be unsatisfactory to the parties.

12. On April 16, 1992, the APWU, the MHU and the Postal Service signed the MOU, which established a "new procedure for resolving jurisdictional disputes." The MOU created dispute resolution committees meetings of which "must be schedules with sufficient frequency so that a decision can be rendered within the time limits contained in" the MOU.

13. Under the MOU, "[e]ither union party may initiate a dispute at the National level when such dispute involves an interpretive issue which under the National Agreement is of general application."

FAILURE TO APPOINT AND MAINTAIN A NATIONAL ARBITRATOR

14. With respect to national level arbitration of jurisdictional disputes, the MOU provides that "[o]ne arbitrator will be jointly selected by the parties at the national level on the basis of mutual agreement."

15. Beginning shortly after April 29, 1992, representatives of the APWU have met repeatedly with representatives of the MHU and the Postal Service seeking, among other things, agreement on appointment of a National level arbitrator in accordance with the MOU. It was not until in or about 1997 that the MHU agreed with the APWU and the Postal Service on the appointment of Arbitrator Dana Eischen. Arbitrator Eischen issued only one award on April 24, 1998, before his term of appointment expired.

16. It was not until in or about 2003 that the MHU agreed with the APWU and the Postal Service on the appointment of Arbitrator Joseph Sharnoff. Arbitrator Sharnoff issued a single award on April 22, 2006, by which date his term of appointment had already expired.

17. Despite repeated requests by the APWU, the MHU and the Postal Service have failed to agree with the APWU on the appointment of a successor to Arbitrator Sharnoff or on the renewal of Arbitrator Sharnoff's appointment. Although the parties reached agreement in principle on or about June 28, 2006, to re-appoint Arbitrator Sharnoff, the MHU has failed and refused to finalize the appointment.

18. Since the signing of the MOU on April 16, 1992, only two national arbitration awards have been issued.

19. There are fourteen disputes pending at the national level, all but two of which are APWU-initiated disputes. These involve approximately 10,000 jobs which the APWU alleges the Postal Service has erroneously assigned to the mail handler craft.

20. As a result of the Postal Service's jurisdictional decisions which the APWU has disputed, APWU-represented clerks have often been, are being and will be involuntarily reassigned, frequently to lower-level positions and/or distant locations, while the Postal Service is assigning and hiring mail handlers to perform the work at the locations where reassigned clerks had formerly performed the work.

21. The MHU has obstructed and delayed the appointment of a national arbitrator, at least in part, because the pending disputes concern claims by the APWU that the Postal Service has erroneously assigned work primarily to the mail handler craft which should have been assigned to the clerk craft. In the circumstances, delay is in the interests of the MHU.

22. The MHU has been and is in breach of the MOU by its failure to appoint and maintain a national arbitrator.

FAILURE TO SCHEDULE AND ATTEND NDRC MEETINGS

23. The last meeting of the NDRC which dealt with jurisdictional issues or the appointment of a national arbitrator took place on June 28, 2006.

24. Since June 28, 2006, notwithstanding requests by the APWU, the MHU has refused to schedule or attend another meeting for these purposes.

25. The MOU requires that meetings of the NDRC "must be scheduled with sufficient frequency so that a decision can be rendered within the time limits contained in this [MOU]."

26. The MHU has been and is in breach of the MOU by its failure to schedule and attend NDRC meetings as required by the MOU.

FAILURE TO SCHEDULE ARBITRATIONS

27. Under the MOU, the NDRC has 60 calendar days after receipt of a properly filed or appealed dispute to attempt to resolve the dispute, and, if unresolved, the parties should thereafter write a "tripartite decision" setting forth the position of each party. The MOU states that the "moving Union may appeal the dispute to National Arbitration within twenty-one (21) calendar days of the date of receipt of the written decision of the" NDRC. The MOU further states: "If a committee fails to render a decision within the time frames in [the MOU] the moving union may appeal the dispute to the next step in the procedure." The MOU further states: "Scheduling of cases will be jointly performed by the parties from a list of dates submitted by the national arbitrator." According to the MOU, "[t]ime frames [for arbitration] will be the same as those designated for regional arbitration. Addressing regional arbitration, the MOU states: "Cases will be scheduled and heard within ninety (90) calendar

days after receipt of the appeal."

28. On or about January 26, 2006, the APWU appealed Case QOOC-4Q-C 04189225 (involving work assignments related to the Automated Package Processing System ("APPS") to arbitration.

29. On or about January 26, 2006, the APWU appealed Case QOOC-4Q-C 04189233 (involving work assignments at the Priority Mail Processing Centers ("PMPCs") and the Logistics and Distribution Centers ("L&DCs")) to arbitration.

30. The APWU has submitted to the NDRC its written positions on the APPS and the PMPC and L&DC disputes.

31. The APWU has complied with all the prerequisites of the MOU to the arbitration of the APPS and the PMPC and L&DC disputes.

32. At the NDRC meeting on June 28, 2006, the MHU stated that it did not intend to schedule arbitration of the APPS and the PMPC and L&DC disputes.

33. The MHU has failed and refused and continues to fail and refuse to fulfill its obligation under the MOU to schedule the APPS and the PMPC and L&DC disputes for arbitration.

34. The MHU has been and is in breach of the MOU by its failure and refusal to arbitrate the APPS and the PMPC and L&DC disputes as required by the MOU.

INJURIES TO THE APWU AND THE CLERKS IT REPRESENTS

35. As a result of the breaches of the MOU by the MHU alleged above, the APWU and the clerks it represents have suffered and continue to suffer substantial injuries. These

include, but are not limited to:

- a. The abrogation of the grievance and arbitration procedures under the APWU National Agreement without any alternative arbitration procedure.
- b. The inability of the APWU to obtain resolution of jurisdictional disputes that would have been resolved if the grievance and arbitration procedures under the APWU National Agreement, rather than those of the MOU which the MHU has obstructed and violated, had been followed.
- c. The loss of work opportunities for APWU-represented clerks because the Postal Service is erroneously assigning work to mail handlers.
- d. The reassignment of APWU-represented clerks to lower-level work at distant locations while the Postal Service is assigning and hiring mail handlers to perform the work which should be performed by clerks.

PRAYER FOR RELIEF

WHEREFORE, plaintiff APWU asks this Court to issue a decision and order:

- (1) Finding that the MHU is in breach of the MOU;
- (2) Ordering the MHU to comply with the MOU, including but

not limited to:

- (A) Scheduling and attending meetings of the NDRC and conferring in good faith with the APWU and the Postal Service on issues pending and placed before the NDRC;
- (B) Signing forthwith a letter appointing Arbitrator Joseph Sharnoff or another arbitrator as the parties' national arbitrator;
- (C) Scheduling forthwith the arbitrations of the APPS and the PMPC and L&DC disputes

(3) Granting plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,



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