REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

Grievant: CLASS ACTION

Post Office: TRENTON P&DC
TRENTON, NJ

Case No.: C10C-1C-C 12266606
TNJ12348C
REPRESENTATIVE CASE

Before: RANDALL M. KELLY, Arbitrator

Appearances:

For the Postal Service:

RAY DAIUTOLO, JR., Labor Relations Specialist
BARBARA REAMER, Technical Advisor
ARVINDER MINHAS, Manager, Distribution Operations
MICHAEL CASSANO, Supervisor, Distribution Operations

For the Union:

JEFF KEHLERT, National Business Agent
WILLIAM LEWIS, Local Union President
MICHAEL STRANO, Local Union Vice President
TERRIE BOUCHARD, Observer
ELENA WHITE, Clerk Craft Director

Place of Hearing: Trenton Metro Area Local, APWU, Trenton, New Jersey

Date of Hearing: November 19, 2013

Date of Award: March 30, 2014

Relevant Contract Provisions: Article 1.5, 1.5, 37 and JCIM

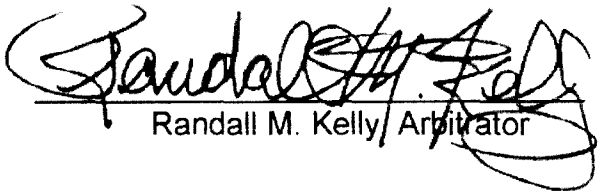
Contract Year: 2010-2013

Type of Grievance: Contract

AWARD

1. That for reasons set forth herein, the Service violated Article 1.6, 37 and the Lead Clerk MOU when management in the Trenton P&DC continued to utilize 204-B's (Acting Supervisors) instead of Lead Clerks to supervise Clerks after June 1, 2012 until the present;
2. That for reasons set forth herein, there is no remedy at the present time; and

3. The cases are placed in abeyance at Step 3 pending the decision of the National level Mail Handler cases.



Randall M. Kelly, Arbitrator

Stipulated Issue:

Did the Service violate Articles 1.5, 1.6, 37 and/or the JCIM when management in the Trenton P&DC continued to utilize 204-B's (Acting Supervisors) instead of Lead Clerks after June 1, 2012 until the present? If so, what shall be the remedy?

In addition, the Service raised an issue of the potential need to hold this matter in abeyance pending resolution of 4 National Level grievances filed by the National Association of Mail Handlers regarding the utilization of Lead Clerks.

Background Facts and Circumstances of the Dispute:

These grievances arose out of the creation of the Lead Clerk position in the 2010-2015 National Agreement. As part of those negotiations, the parties agreed to additional provisions contemplating the phasing out of Clerk Craft 204-B's and replacing them with Lead Clerks. The other postal unions did not agree to these or similar provisions regarding the creation of lead positions within their respective crafts. Among the Questions & Answers agreed to by the Service and the National Union and inserted in the JCIM is the following:

> Q. Beginning June 1, 2012, can employees from other bargaining unit crafts (mail handlers, carriers, etc.) be utilized in 204-B assignments to supervise Clerk Craft employees?
>
> A. Beginning June 1, 2012, employees from other bargaining units may be utilized as 204-B's, supervising Clerk Craft employees, to cover supervisory absences or vacancies of 14 or more consecutive calendar days. Usage of a 204-B in this exception is normally limited to no more than 90 days.

The Trenton P&DC has continuously utilized 204-Bs after June 1, 2012. According to the Union, these acting supervisors have supervised mixed sections of Clerks and Mail Handlers for assignments of less than 14 days and more than 90 days in violation of Articles 1.5, 1.6 and 37. The Union filed a total of 74 grievances for each instance of alleged violation and the parties agreed to consolidate those grievances and present the instant case as a representative case for all of those grievances. The Union pursued the grievances through the contractual grievance-arbitration procedure to arbitration. The matters not being resolved, they are before me for final and binding arbitration pursuant to the terms of the National Agreement.

OPINION

In the 2010-2015 National Agreement, the parties agreed in an MOU that the Service would create new Lead Clerk duty assignments, including new Mail Processing Lead Clerks. The MOU provides:

> **Mail Processing/Customer Service**
>
> The intent behind the creation of the Lead Processing Clerk and the Lead Sales and Services Associate is to provide oversight, direction and support, in the absence of Supervisory presence to bargaining unit employees in both Mail Processing and Retail operations. Lead Clerk positions will be created at one level above other employees in the group.
>
> The Employer will fill duty assignments of a Lead Clerk in any facilities where clerks work without direct supervision and in facilities that have a minimum complement of five (5) clerks. Lead Clerk assignments shall include duties in both the Retail and Mail Processing operations in post offices. . . .
>
> A) Lead Clerk-Mail Processing – Responsibilities include, but are not limited to,
> B) resolving problems that may occur during tour operations and determining when a supervisor should be involved, work as a working leader of mail processing employees in a mail processing activity; maintaining records related to mail on hand and mail processed; maintaining a working knowledge of regulations, policies and procedures related to mail processing activities.
>
> D) [The MOU gives the Service one year to develop the Lead Clerk descriptions and training and fill the positions. During the second year, the parties jointly agreed to a procedure to review the effectiveness of the newly established positions.] At the end of year 2, the parties will meet to apply the review procedure with the expectation that the number of work hours utilized for 204-B operations will be reduced or eliminated in those work units with a Lead Clerk position. Additional reviews will be conducted by the parties at the end of years 3 and 4 of this agreement. Not later than June 1, 2012, the Employer will eliminate the usage of 204-B's except in the absence or vacancy of a supervisor for 14 days of work. The usage of a 204-B in this exception is normally limited to no more than 90 days.

The National parties addressed certain issues raised by the creation of the new Lead Clerk positions in Q and A's incorporated in the most recent JCIM. Those Q and A's were agreed to on July and August, 2012. Among the Questions & Answers agreed to by the Service and the National Union and inserted in the JCIM is the following:

> [July 2012] ARTICLE 37 Qs&As
>
> 118. However, after June 1, 2012, the usage of Clerk Craft employees in 204B details should be limited to covering vacancies or absences of 14 days or more and normally should not exceed 90 days, (see also, Q&A #126)
> 119. However, after June 1, 2012, 204B details will not be utilized except to cover vacancies or absences of 14 days or more.
> 120. No later than June 1, 2012, 204B usage in the Clerk Craft is restricted to "the

absence or vacancy of a supervisor for 14 days or more."
123. Beginning June 1, 2012, 204Bs may only be utilized during the absence or vacancy of a supervisor for 14 days or more and this use is limited to no more than 90 days,

[August 14, 2012]

1. Beginning June 1, 2012, can employees from other bargaining unit crafts (mail handlers, carriers, etc.) be utilized in 2048 assignments to supervise Clerk Craft employees?

Answer:
Beginning June 1, 2012, employees from other bargaining unit crafts may be utilized as 204Bs, supervising Clerk Craft employees, to cover supervisory absences or vacancies of 14 or more consecutive calendar days. Usage of a 204B in this exception is normally limited to no more than 90 days.

2. Can employees from these other bargaining unit crafts (mail handlers, carriers, etc.) be utilized as 204Bs in the Clerk Craft to cover supervisor absences or vacancies of less than 14 days?

Answer: No.

3. Are there any exceptions to the 90 day limit in #1, above?

Answer: Exceptions Would only be appropriate in limited situations (such as supervisor on 4 months maternity leave; supervisor on 6 months military leave; or similar situations).

The Trenton P&DC has continuously utilized 204-Bs after June 1, 2012. As noted, the Union takes the position that these acting supervisors have supervised mixed sections of Clerks and Mail Handlers for assignments of less than 14 days or for more than 90 days in violation of Articles 1.5, 1.6 and 37 and the MOU. The Service position is that these non-clerk 204-B's are not overseeing any clerks and therefore there is no violation of the MOU or the National Agreement.

Local Union and State Union President Bill Lewis testified that there has been a contentious history between the parties over the utilization of 204-B's nationally and in the Trenton Plant; the Union has tried to restrict their use for a long period of time and management has resisted. In the most recent National Agreement, the parties all but eliminated the use of 204-B's for APWU represented employees, particularly Clerks. The new contract restricts the use of 204-B's to supervisor vacancies of more than 14 days up to 90 days. Otherwise, according to Lewis, the parties' intent was to utilize Lead Clerks to oversee other clerks.

However, more than a year after 204-B's were supposed to be "out the door", management has actually increased the use of 204-B's in the Plant, especially on Tour 3. Tour 2 is smaller and there are only three 204-B's. One of those vacancies is lasting more than 90 days because the supervisor in on Military Leave; another (Frank Olla) supervises the whole floor, including clerks (although the MDO says he is not covering for any supervisor). Indeed,

Lewis testified that the only unit that has no clerks in the Plant is the Low Cost Tray System, but that that Unit is one of several supervised by Frank Olla.

After raising the matter with management without success, Lewis directed the Stewards to file grievances over the practice (despite a good relationship with Labor Relations). Lewis testified that most of the grievances challenge 204-B assignments of less than 14 days and that the 204-B's involved supervise mixed units of Clerks and non-Clerks (for example, SBBS and FSS and one 204-B who supervises the whole floor).

The Union requested 1723's and time reports for the 204-B's being challenged (U. Exhs. 2-3). The 1723's and time records do not show which unit the 204-B was assigned to, only the period of the detail and the hours worked.

MDO Arvinder Minhas testified that he has overseen the Tour 3 operations for two years; that is, for the period covered by the grievances. He insisted that the non-clerk 204-B's were only being utilized in units consisting of Mail Handlers only; that the operations with both Clerks and Mail Handlers were being supervised by the six Regular Supervisors. He cited the platform as an example where 2% of the employees are Clerks and because of that the Unit is supervised by a Regular Supervisor. He continued that if there is a joint Clerk/Mail Handler Unit with a 204-B, the Clerks report to a Lead Clerk and the Mail Handlers report to the 204-B. Finally, he emphasized that the Plant has maintained the contractual complement of Lead Clerks with five Lead Clerks for the three Tours.

Former Labor Relations Specialist and now SDO Michael Cassano testified that he handled these grievances at Step 1. He described the process as receiving about 40 "cookie cutter" grievances every pay period. He also testified that he denied all of them because there are no contractual restrictions on Mail Handler 204-B's and the remedy requested was totally improper.

Positions of the Parties

The Union position is set forth in some detail in its Opening Statement which first quotes the applicable contract language and then the applicable Questions and Answers from the JCIM, as follows:

> Mr. Arbitrator, effective June 1, 2012 the U.S, Postal Service was limited in its ability to utilize 2048s to supervise clerk craft employees. Said limitation is stated - and restated - in the Collective Bargaining Agreement, Joint Contract Interpretation Manual and in U,S. Postal Service-American Postal Workers Union National Level asks. The controlling language provisions can best be summarized in the latest set of questions and answers dated August 14, 2012 signed by Patrick M. Devine, U.S. Postal Service's Manager Contract Administration Labor Relations and Rob Strunk, American Postal Workers Union Clerk Division Director. Those Q&As state:

1. Beginning June 1, 2012, can employees from other bargaining unit crafts (mail handlers, carriers, etc.) be utilized in 204B assignments to supervise Clerk Craft employees?
Answer: Beginning June 1, 2012, employees from other bargaining unit crafts may be utilized as 204Bs, supervising Clerk Craft employees, to cover supervisory absences or vacancies of 14 or more consecutive calendar days. Usage of a 204B in this exception is normally limited to no more than 90 days.
2. Can employees from these other bargaining unit crafts (mail handlers, carriers, etc.) be utilized as 204Bs in the Clerk Craft to cover supervisor absences or vacancies of less than 14 days?
Answer: No.
4. Are there any exceptions to the 90 day limit in #1, above?
Answer: Exceptions would only be appropriate in limited situations (such as supervisor on 4 months maternity leave; supervisor on 6 months military leave; or similar situations).

In the case before you (the combined/lead case includes a total of 73 additional cases) the U.S. Postal Service has continuously utilized 204Bs to supervise clerk craft employees since June 1, 2012 in excess of the limitations set forth in the Collective Bargaining Agreement, Joint Contract Interpretation Manual and Q&As.

The American Postal Workers Union's developed and presented evidence clearly has proven the U.S. Postal Service has been in violation of the Collective Bargaining Agreement, Joint Contract Interpretation Manual and Q&As since June 2012. Summary of the American Postal Workers Union's developed and presented evidence is summarized on the attached 66 worksheets.

Mr. Arbitrator, the parties determined 204B limitation date of June 1 2012 was established as being over one year from the effective date of the Collective Bargaining Agreement - May 23, 2011. The parties agreed to permit the U.S. Postal Service one year (and nine days) in which to transition its unlimited, without restriction utilization of 204Bs over clerk craft employees to the agreed upon 204B limitations as stated in the Collective Bargaining Agreement, Joint Contract Interpretation Manual and National Qs&As.

The U.S. Postal Service could not - with any semblance of credibility - plea that it was unable to comply with the effective date of June 1 2012 due to some manufactured hardship, failing or refusal. In addition, the U.S, Postal Service has continued its more than substantive violations from June 1, 2012 through today - November 19, 2013 - with no end in sight.

Mr. Arbitrator, perhaps Arbitrator Linda S. Byars said it best in case G10C4GC12361586:

> In other words, the limitations of the MOU (Clerk Craft Jobs), Section 2(D) applies to 204Bs supervising Clerk Craft employees regardless of whether or not the 204B has been sent up from the Clerk Craft or from other crafts. Contrary to the Postal Service argument, the issue is more complex than whether or not management puts up a clerk or a carrier to 204B status, The Postal Service violates the MOU when it puts up employees from any craft to supervise Clerk Craft employees where the assignment is outside the limitations of the MOU. The intent behind the creation of the Lead processing Clerk and the Lead Sales

> and Services Associate is to provide oversight, direction and support, in the absence of Supervisory presence to bargaining unit employees in both Mail Processing and Retail operations, Lead Clerk positions will be created at one level above other employees in the group.

Mr. Arbitrator, the U,S, Postal Service did not present any evidence at Step 2 or Step 3 to support any espoused position - much less to prove any of the prescribed exceptions existed for continual, extensive 204B usage. Without any U.S. Postal Service evidence the U.S. Postal Servlce could not in any way rebut the American Postal Workers Union's prima facie proof of Collective Bargaining Agreement, Joint Contract Interpretation Manual and Q&A Violation. Any U.S. Postal Service attempt - here, today - to present any evidence it failed/refused to present in support of any U.S. Postal Service argument at Step 2 or 3 would represent new evidence and be barred by the full disclosure/full exchange mandates of Article 15. The Arbitrator simply could not permit such a U.S. Postal Service violation to raise its presence at this proceeding.

Because the U.S. Postal Service presented no evidence to the American Postal Workers Union in support of any argument/position at Step 2 or 3 the hearing today is a remedy hearing.

Mr. Arbitrator, for the total of 74 grievances combined under the representative umbrella grievance the U.S. Postal Service had opportunities at Step 2 Meetings, in Step 2 Decisions at J Step 3 Meetings and in Step 3 Decisions to cease its violations and to end its ongoing liability. This could have occurred seventeen months ago. The U.S. Postal Service made repeated decisions to neither stop the violations nor to limit its liability. In fact, the U.S. Postal Service had two hundred and ninety six (296) such opportunities at Steps 2 and 3 for these many violations, Today, the American Postal Workers Union fully expects the U.S, Postal Service to utter its usual lament of economic duress and unjust enrichment and excessive remedies, This is akin to the child who is compliant in the demise of his parents pleading before the judge, 'Have mercy on me for I am an orphan.' The American Postal Workers Union urges you to look to the Joint Contract Manual Interpretation in response to the U.S, Postal Service cry:

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

The Service does not necessarily disagree with the Union as to the applicable contract principles involved. Rather, the Service's focus is on the factual underpinnings of the Union's assertions and on the Union's case in the grievance process.

> I am perplexed as to why the Trenton branch of the APWU decided to take this case forward without any supporting documentation. Especially when the Union had an ample amount of time to fully develop this grievance to show an alleged violation. Even with the parties creating a lead case for the issue, the Union still was unable to pull any documentation from over sixty-eight (68) grievances to show a contractual violation. As far as Management is concerned, this only further supports Managements position from the inception of this grievance that no violation existed. Three (3) separate Step 2

designees have told the Union over and over that you have failed to present any credible documentation to support your allegation. But the Union just continued to copy and paste grievances every two weeks.

MDO Minhas credibly testified that he used 204b's, which he was/is contractually allowed to do; and the 204b's he used in the Clerk craft, with the exception of Neil Bhavsar, were used within the guidelines of the MOU. MDO Minhas indicated that in Operations that included the Clerk craft those employees reported to one of the regular managers he had on the floor. That is an acceptable practice as defined in the Q & A's dated October 20, 2011, item #19, direct supervision, indicates the actual physical presence of a supervisor. Again, MDO Minhas clearly stated in his testimony and PS Form 2608, that his EAS staff was responsible for the Clerk craft where some Clerk craft employees were working in predominant Mail Handler craft areas. MDO Minhas testified that the Union never presented him any evidence of an actual contractual violation, the Union only presented names of who was acting in a 204b capacity, period. Mr. Cassano also credibly testified that the Union at Step 2 failed to show any proof that a violation occurred. Mr. Cassano in his testimony indicated what the contract actual states in regard to Management's right to use 204b's. It clearly doesn't state what the Union is alleging in the grievance and hearing today. Management has every contractual right to use 204b's as they please, this is outlined in Article 3 of every contract the Service has with every Union, The only limitation on 204b usage is with the Clerk craft, and even in the Clerk craft Management can use 204b's as indicated in the MOU.

Mister Arbitrator, Arbitrator Fletcher's decision on a contract case out of the Chicago Bulk Mail Center on February 2, 2002, is a wonderful read for the case you just heard today. Specifically on page 27 of his discussion Arbitrator Fletcher states, "The Union's "evidence" is akin to a builder dumping a load of bricks on a construction site and saying, "this is your house," when no blueprint is provided, nor rendering made. In this case the Arbitrator is asked to sort out the Union's "bricks" and somehow assemble them into an orderly understandable "building". This is not the task of Management's designees at the steps below, nor is it the task of the Arbitrator here. The Union must present its evidence at the steps of the grievance procedure (and before the Arbitrator) in a form conducive to analysis and evaluation. Then and only then is the Arbitrator able to determine whether or not that evidence supports the conclusion the petitioner seeks to have drawn from material presented. In making this observation we are mindful that the United States Supreme Court in Watts v. Indiana, 388 U.S. 49 (22) (1949) observed that "there comes a point where use should not be ignorant as judges of what we know as men". However, to embrace that notion in this case, and apply it to the raw data the Union has laid before the Arbitrator, would run afoul of the parties' self-imposed requirements in Article 15 on the National Agreement that "each party's representative shall be responsible for making certain that all relevant facts and contentions have been developed and considered" (emphasis supplied).

In Arbitrator Byar's National decision out of Washington, D.C. on June 24, 2009, under her Opinion on page 9, she clearly states what is required of the parties under Article 15, "Not only does strict compliance with Article 15, Section and of the National Agreement eliminate surprise evidence, enforcement of the provision ensures that the arbitration decision is made on the same facts and arguments the parties consider. The parties right to know and discuss the same evidence and argument is presented to an arbitrator for decision is crucial to the process and to the labor-management relationship". Again, I want to emphasize the minimal documentation submitted to back the Union's argument

is weak and frail at best, The Union has only presented you with the side salad, but didn't provide us or you with the meat and potatoes necessary to fulfill the grievance.

In Arbitrator Vaughn's National decision out of Washington, D.C. on January 9, 2011, in his Discussion and Analysis, Arbitrator Vaughn lists on page 19 under Burden of Proof the following, "It is well-established that, in a contract interpretation dispute, the burden of proof rests with the Union to establish, by a preponderance of the evidence, that the interpretation it urges is correct. Management may assert a contractually-based defense, based on an alternative interpretation or the application of another portion of the contract." It is clear that the cause before you today, the Union failed to provide a preponderance of evidence. In fact, they only supplied PS Form 1723's and clock-rings indicating the noted employees worked on 204b assignments. Management has never denied the fact those noted employees were on higher level assignments. However, as the contract indicates, that in itself is not a violation. The Union failed to prove that Management used the noted 204b's to directly supervise the Clerk craft.

Mister Arbitrator, when reviewing the arbitration decisions handed to you by the Union during their closing I want you to notice the common thread in those cases, documented proof of an actual contract violation. Unfortunately for the Union today, the case before you lacks any credible evidence in the case file to support the alleged violation. As was stated in all the denials at Step 2 and Step 3, and as I have stated all throughout this hearing, the Trenton Metro APWU has failed to do that in the grievance at bar today.

Mister Arbitrator, in addition to Mr. Cassano's testimony in regard to the remedy requested by the Union: Management representative Ms. Horton indicated in her Step 3 denial that the remedy requested by the Union was unsupported and nonsensical. The Union showed no nexus between the request for making monetary payment to multiple clerks on the supplemental OTDL, the Lead Clerks and their allegations that the facility needs more Lead Clerks. Even if you were to somehow accept that the Union provided supporting documentation to warrant a decision to sustain this grievance, the remedy in itself is nothing more than an unjust enrichment. If by the Unions own argument, Management didn't properly assign or work the Lead Clerks to represent an actual violation, the only possible remedy would be a cease and desist on the violation. For the Union to request overtime and penalty time for the Lead Clerks is preposterous.

In Arbitrator Mittenthal's National decision out of Washington, D.C. on January 29, 1994, Arbitrator Mittenthal provided the parties with a synopsis of the term unjust enrichment. Under Arbitrator Mittenthal's Discussion and Findings starting on page 14 he summarizes the case in regard to an unjust enrichment. Most importantly, on page 15 Arbitrator Mittenthal states, "The unjust enrichment" theory is more suited to a commercial transaction that to the labor-management relationship. It focuses not so much on what bargaining unit employees have lost but rather on what the Postal Service has gained. True, an excess number of casuals were employed in various accounting periods and the work they performed was paid for at a rate substantially below what the Postal Service would have paid had such work been done by career employees. The difference was of course money saved by the Postal Service. It does not follow, however that such savings should be the measure of the damage done to career employees. The Unions assume that every hour of work by an excess casual would, absent the violations, have been performed at the same time by bargaining unit employees. That assumption is not borne out by the evidence." When used in conjunction with the case before you today, the Union has provided no evidence to indicate Lead Clerk employees

were financially harmed. Management can guarantee you every Lead Clerk was working at least 40 hours a week, and if we had the time reports I can almost guarantee you they were also working overtime. Additionally, the contention that non-Lead Clerks on the supplemental list be paid is outside the four corners of the contract as those employees were not trained to be Lead Clerks. As the parties have bargained, a regular clerk position is a Level 6 while the Lead Clerk is paid Level 7. How can the Union even request that employees not trained or qualified to work the same level also be compensated a financial remedy? Easy, the Union was simply seeking an unjust enrichment.

Mister Arbitrator, in regard to the merits of this case, the Union has failed to show with any evidence how or where Management didn't comply with the contract. Therefore, when making your decision on today's case the Postal Service asks that you deny this case in its entirety. The Service also requests that if you feel the Union actually proved a violation that you rule on the arbitrability issue and place the cases in abeyance at Step 3 pending the decision of the National level cases.

Discussion

As can be seen by a review of the parties' positions, the contractual principles involved are not really in dispute. Both parties understand that they agreed in the last contract, MOU and Q and A's that 204-Bs are not supposed to supervise Clerks for periods of less than fourteen days or more than ninety days. That is the clear intent of the Q and A's as emphasized in the Linda Byers case cited above.

With that principle in mind, the matter hinges on the facts and the parties' positions in the grievance process. As to the Union claim that management cannot raise facts or arguments not raised at Step 2, I am in agreement with the principle. However, the main Service argument on the facts and the Union's case is that the Union did not present a case. Whatever management argued at Step 2, an argument that the other side did not prove its case can almost always be raised at arbitration. For example, in a discipline case, management must always put forth at least a prima facie case that the employee engaged in some misconduct, no matter what the Union argued at Step 2.

In the lead case, alleging a violation on Tour 3 from July 7 through July 13, 2012, the Union's Step 2 grievance appeal states that management is violating Article 37 and the MOU by continuing to utilize 204B's instead of Lead Clerks. The appeal specifically cites and quotes part of the MOU. The specific allegations state:

> From July 7, 2012 to July 13, 2012, management is still utilizing 204B's, Jeff Hall, Mathew Jones, Connie Benton, Neil Bhavsar and Evette Utley. N. Bhavsar and E. Utley are both clerks, supervising clerk operations of SPBS, AFSM & Manual Letter Operations 030/044.
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> However, according to management's own Web Coins Supervisor Complement and Vacancy Report reflects there are currently 7 SDO positions on Tour 3. Yet, there is only

> one (1) vacancy on Tour 3 and 2 Supervisors on detail on Tour 2 (L. Cooper & D. Fladger). Now, T-3 has 9 Supervisors. [The appeal quotes some of the Q&As and continues that Lead Clerks were available for end or begin Tour overtime].
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> [The remedy requested is] Cease and desist from utilizing 204B's to perform clerk craft work. Compensate all Lead Clerks, C. O'Brien, R. Hickman, a. Glennon, A. Willis & B. Lomasang 4 hours each day, at the rate of 2 hours OT, $39.12 & 2 hours at the PT, $52.16 from July 7 through July 13, 2012 (Jt. Exh. 3).

The Step 2 Denial summarizes the Union case as "Management utilized Mail Handler employees as 204 B" and that Lead Clerks should have utilized instead on overtime. LRS Michael Cassano continues:

> There are currently no restrictions on the usage of 204 B employees from the Mail Handler craft. The Union has failed to provide any proof that the employees in the Mail Handler craft must abide by the terms of an APWU Collective Bargaining Agreement (CBA). No book, manual, or proof from any other source was provided to support the Union's position.

Cassano then quotes Article 1.2 of the APWU contract for the proposition that it does not cover Mail Handlers and Article 3 for the proposition that management has the right to "decide who Management wants to utilize".

> The Union bears the burden of proof in this contractual case. The Union did not clearly articulate at Step 2 how each article was violated and provided no documentation to support its allegations. Without clear and specific reference there can be no basis for argument in this instant grievance. Additionally, when the Union files a contractual grievance, it becomes the moving party and inherits a higher degree of responsibility to sustain the burden of proof that a contractual violation occurred. The Union's Step 2 appeal alleges that management violated various articles of the National Agreement and Local Memorandum of Understanding. However, the Union failed to verbally cite many specific sections of the articles of the National Agreement and Local Memorandum of Understanding and how they were violated, and failed to give sufficient information to justify their allegations that Management violated the articles in question.
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> National Arbitration HOC-NA-C38 states:
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> > "In the instant case, where, according to the union's Step 2 appeal, Articles 1, 3, 5, 7, 15,17, 19, 31 and 37 were violated, for example, without identifying any specific provisions of those Articles for which they claim violation, does, in and of itself, violate Article 15. Article 15 mandates that the union's Step 2 appeal shall include a detailed statement of facts, contentions of the grievant, particular contractual provisions involved, and the remedy sought. The union's failure to comply with these Article 15 requirements renders (a) grievance a nullity."
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> The Union asserts in its requested remedy that employees be compensated in monetary damages. As noted in *Elkouri & Elkouri,* "How Arbitration Works", monetary damages should "normally correspond to specific monetary losses suffered." Where no grievant suffered any loss as a result of the employer's violation, no damages were

awarded." As noted by Arbitrator Mittenthal, in Case No. H1C-NA-C 97 et al, "...the purpose of a remedy is to place employees (and Management) in the position they would have been in had there been no contract violation. The remedy serves to restore the status quo ante." The fact that the contract may have been violated does not mean that a monetary award is in order. The Union requested remedy is an attempt to obtain undue enrichment improperly through the Grievance-Arbitration Procedure Management believes this issue also makes this grievance procedurally defective, and because of this the Union has waived their right to proceed in the grievance procedure.

The Union has failed to meet its burden of proof in this case, and the Union contentions present themselves as no more than unsubstantiated allegations.

In the Step 3 appeal, the Union repeats its arguments concerning the utilization of 204B's and added arguments concerning the need to create additional Lead Clerk positions. The repeated factual assertion is:

> However, from July 7, 2012 through July 13, 2012, management has continued to utilize (5) employees in higher level assignments as 204-B's. Several 204-B's are mail handlers (3) supervising operations where clerks are currently working. The mail handler 204B's are Jeff Hall, Mathew Jones & Connie Benton. Also, there are (2) clerks who are also on higher level 204B's, they are N. Bhavsar and E. Utley. All operations have clerks with duty assignments in the operations.

At Step 3, LRS Billie Horton replied to many grievances at once. The denial incorporated the Step 2 decisions and added:

> Initially, it is important to note that you did not provide any additional documentation during our step 3 meeting, choosing instead to rely on the information in the file to support the Union's appeal. Your presentation of the grievance at step 3 was not in compliance with the Union's contractual obligation to specifically state your position and to ensure that all relevant facts and contentions have been fully developed at the step 3 meeting. As you have been known to state, "Presumption, inference or osmosis are rejected." You did not present - during the step 3 discussion - any evidence to support any APWU espoused position as contained in the written grievance appeal. Any and all APWU arguments - unsupported by evidence at step 3 - are rejected.
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> Based on the lack of documentation contained in the file as appealed to step 3, the Postal Service restates its position that the APWU failed/refused to present any evidence in support of any espoused position at either the step 2 or step 3 discussion junctures of the grievance procedure.
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> Addressing the merits of the basic allegation raised in the Union's written appeal, it is also management's position that the Union has failed to carry its burden of proof in this contractual grievance.
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> **Procedure:** The union filed multiple grievances on this subject. As noted above, many are duplicative and many remedy time frames overlap and are therefore improper.
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> **Procedure:** The union made an improper remedy request. Existing Lead Clerks are

already working full time. They were not harmed in any way. Even if a violation occurred, the Union asked for compensation for existing Lead Clerks C. O'Brien, R. Hickman, A. Glennon, A. Willis & B. Lomasang for both Tour 2 and Tour 3 grievances. A Tour 2 clerk could not be harmed by work done on Tour 3 and vice versa. The union's request to "double up" is therefore improper.

Nowhere has the union alleged that management failed to apply the appropriate ratio of Lead Clerk assignments in the clerk craft complement [CBA page 377] at the Trenton Plant. The union's request for additional Lead Clerk positions to be created is not a demandable right. Management may exceed the ratio but there is no provision that would ***require*** a facility to exceed the contractual ratio set forth in Item 2C of the Clerk Craft Jobs MOU.

The remedies requested are unsupported and nonsensical.

Based on the foregoing, these grievances are denied.

When given the opportunity at the step 3 meeting, you also failed to provide the documentary evidence necessary to determine if a contractual violation had indeed taken place.

Finally, the Union submitted Additions and Corrections that accused management of raising new arguments that were not raised during the Step 3 discussions or at Step 2; that states that the Service did not present any evidence to support its position and failed to consider arguments raised by the Union at Steps 2 or 3.

As this summary of the grievance steps shows, the parties were arguing a very different case from the one presented at the arbitration. The Union was asserting that management cannot appoint any 204-B's beyond the number of vacancies and management was asserting that it can appoint whoever it wants. The case has evolved to an argument over whether management abused the MOU by appointing 204-B's to oversee clerks at the plant. That is the problem with both parties' argument that I cannot consider the other parties' evidence and argument because it was not presented at Step 2. Therefore, I cannot exclude any of the evidence and argument presented at the arbitration hearing.

Thus, on the record presented, there is evidence that management appointed 204-B's to oversee some clerks. I cannot go as far at the Union assertion that every unit in the plant includes some clerks, but many do, including some that were overseen by 204-B's during the times in question. As President Lewis testified, most of the 204-B's involved supervised mixed units of Clerks and non-Clerks (for example, SBBS and FSS and one 204-B who supervised the whole floor). As noted, the 1723's and time records do not show which unit the 204-B was assigned to, only the period of the detail and the hours worked (U. Exhs. 2-3).

On the other hand, MDO Arvinder Minhas testified that the non-clerk 204-B's were only

being utilized in units consisting of Mail Handlers only; that the operations with both Clerks and Mail Handlers were being supervised by the six Regular Supervisors. He cited the platform as an example where 2% of the employees are Clerks and because of that the Unit is supervised by a Regular Supervisor. He continued that if there is a joint Clerk/Mail Handler Unit with a 204-B, the Clerks report to a Lead Clerk and the Mail Handlers report to the 204-B. I believe that was his intent. However, it is also clear that as a practical matter a 204-B who has clerks in his or her unit cannot help but oversee them. For example, if the regular supervisor supervising the clerks is not present, the 204-B will naturally supervise the clerks in the unit. This is shown by the fact that one of the 204-B's in question, Raj Yadav, conducted a PDI and issued a Letter of Warning to a Clerk in the AFSM 100 unit on June 12, 2012 (U. Exh. 7). If the system was designed to avoid having a 204-B oversee clerks, it did not work in this instance.

Accordingly, I am finding a violation of the MOU as explicated by the Q&As when management assigned 204-B's to oversee clerk craft employees in the Trenton Plant on the dates in question. However, I cannot order a remedy at the present time. First, I am agreeing with the Service that the cases should be placed in abeyance at Step 3 pending the decision of the National level cases. Secondly, I cannot determine from the record which appointments of 204-B's actually violate the MOU; that is a factual question that may require additional evidence. Finally, the question of monetary remedy, if any, must await the decision of the National level cases.