

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
)
between)
)
UNITED STATES POSTAL SERVICE) Case No. Q11C-4Q-C 11311239
)
and)
)
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO)
)

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service: Patrick M. Devine, Esquire
Neftali Pluguez, Esquire

For the APWU: Melinda K. Holmes, Esquire

Place of Hearing: Washington, D.C.

Dates of Hearing: June 26-27, 2012

Date of Award: March 29, 2013

Relevant Contract Provisions: Article 1.6.B and
Q06C-4Q-C 10005587 Global Settlement

Contract Year: 2010 - 2015

Type of Grievance: Contract Interpretation

Award Summary:

- (1) The provision in the Q06C-4Q-C 10005587 Global Settlement which states:

All time the supervisor or Postmaster spends staffing the window during the day will be counted towards the permissible bargaining unit work limits.

applies to all time the supervisor or postmaster is covering the window, which, in the absence of a clerk, includes all time the window is open.

- (2) The provision in the Q06C-4Q-C 10005587 Global Settlement which states:

Any office that is downgraded in level will remain at the bargaining unit work standard that is in place at the beginning of the Agreement through the life of that contract.

is subject to an agreed exception for an office without a clerk that is downgraded under the DUO initiative on or after November 21, 2010 to level 13 or below.

(3) Issues relating to remedy are returned to the parties for discussion and resolution. I retain jurisdiction to decide any remedial issues that the parties are unable to resolve.



Shyam Das, Arbitrator

Article 1.6 of the parties' Collective Bargaining Agreement provides as follows:

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.

The parties have had considerable disagreements over the years regarding Article 1.6.B, which applies to post offices with less than 100 bargaining unit employees. There have been a number of significant national arbitration awards and many regional awards dealing with this provision. The major national award was issued in 1978 by Sylvester Garrett in Case AC-NAT 5221 (Garrett Award). In my 2005 decision in Case Q98C-4Q-C 01238942 (Das Award), which basically is a reiteration of the Garrett Award, I summarized it as follows:

In his lengthy and comprehensive decision, Arbitrator Garrett concluded that there was no support in the language of Article 1.6.B for the Union's suggestion that it encompassed a limitation that no supervisor in a small post office could spend more than about 15 percent of his or her daily work time performing bargaining unit work. Arbitrator Garrett also rejected the literal reading of Article 1.6.B suggested by the Postal Service, which would have allowed it to rewrite or replace all supervisory position descriptions, and, in effect, freely substitute supervisors for bargaining unit personnel, even on a full-time basis.

Arbitrator 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. One such exception was that in small and medium size offices it may be "necessary" to require supervisors to perform lower level work, as reflected in supervisory position descriptions in effect when the parties negotiated their first collective bargaining agreement in 1971.

Arbitrator 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. He 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.

Arbitrator Garrett also clearly did not accept the Union's argument that there could be no regular practice of having supervisors perform lower level work in a small office. Nowhere in his decision does Arbitrator Garrett state or imply that Article 1.6.B might require the Postal Service to reassign bargaining unit work historically performed by a supervisor in a particular office to clerks because such duties are performed on a daily, regular or routine basis, or because clerks are or could be available to perform the work.

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.

Arbitrator Garrett stated: "it seems reasonable to infer that the position description exception initially was spelled out in 1971 because the parties recognized that existing supervisory position descriptions contemplated the performance of bargaining unit duties." Arbitrator Garrett then went on to address situations where the Postal Service revises existing or develops new position descriptions to include performance of bargaining unit work or "substantially increases the amount of bargaining unit work required of incumbents of the supervisory position [which already includes performance of bargaining unit duties], at the expense of hours worked by Clerks". In any of those situations, Arbitrator Garrett concluded:

...I-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.

I further stated:

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.

On October 23, 2009, the Union filed a broadly stated Step 4 grievance in which it asserted:

Pursuant to Article 15, Section 4.D, the APWU hereby initiates a Step 4 dispute over the performance of bargaining unit work by non-bargaining unit employees in violation of Article 1.6.B of the National Agreement in level 15, 16, 17 and 18 offices. The Postal Service has systematically reassigned bargaining unit work in violation of the principles of the Garrett and Das interpretive decisions on the assignment of bargaining unit work.

That grievance was appealed to national arbitration, where the Postal Service challenged its arbitrability. In my November 1, 2010 decision on that issue in Case Q06C-4Q-C 10005587¹, I stated:

Merely alleging a nationwide violation and seeking a nationwide remedy does not satisfy the requirement that a Step 4 grievance involve an interpretive issue of general application....

* * *

¹ The November 1, 2010 award also decided Case Q06C-4Q-C 10032106.

There is, however, one aspect of this case which could support a Step 4 interpretive grievance. In its Step 4 grievance, the Union alleges that the Postal Service has "systematically reassigned bargaining unit work in violation of the principles of the Garrett and Das interpretive decisions" (Emphasis added.) ...

* * *

Consistent with the applicable provisions of Article 15, the Union is entitled to raise in a Step 4 grievance the issue of whether the Postal Service has implemented a national program for shifting work in the relevant small post offices that is inconsistent with the Garrett Award and the 1995 Step 4 settlement. If the Union adopts that position -- which seems at least implicit in the present record -- and the Postal Service disagrees -- either as to the existence of such a program or as to whether it is inconsistent with the Garrett Award and the 1995 Step 4 settlement -- the parties properly could arbitrate that issue at national arbitration.

Both parties have an interest in resolving disputes, particularly those that are widespread. Occasionally, the process carefully crafted by the parties gets derailed. A rule of reason and an appreciation for the parties' good faith obligations and efforts are appropriate considerations. Under the rather unusual circumstances in this proceeding, and without setting any precedent for any future case, I will return the Union's Step 4 grievance to the Step 4 level and direct the parties to meet within 30 days (unless otherwise agreed) in an effort to define the precise interpretive issues, if any, involved -- consistent with the Findings in this Award -- develop all necessary facts and reach agreement. If they fail to reach agreement, the parties shall exchange 15-day statements and the Union may reappeal the grievance to arbitration.

On November 3, 2010, then APWU President William Burrus, requested a meeting with the Postal Service pursuant to my award. On November 12, 2010, Cliff Guffey succeeded Burrus as President of the APWU. The parties then were in the process of negotiating the current 2010-2015 CBA. Later in November, Mike Morris, the APWU Director of Industrial Relations, and Mike Mlakar, Manager of Field Labor Relations for the Postal Service, had a discussion about seeking a resolution of Article 1.6.B issues, and they drafted the following Memorandum of Understanding:

Re: Article 1.6.B

The parties recognize that it is important to resolve issues concerning postmasters and supervisors performing bargaining unit work. To that end, the parties agree to the following:

The parties agree to conduct a joint analysis of the clerk craft bargaining unit workload in Post Offices levels 15 through 18. The parties will utilize this analysis to determine the amount of bargaining unit work, or the basis for establishing the amount of such work, that may be performed by the postmaster in these level offices.

After the parties have conducted and discussed this joint analysis, they will conduct a pre-arbitration review at the National level of grievances currently pending on these issues.

On December 17, 2010, Morris and Manager of Contract Administration John Dockins, the Postal Service's chief negotiator in the CBA negotiations, signed off on the above MOU.

The Union subsequently drafted a "Global Settlement" that, after discussion and revision by the parties, was agreed to by Morris and Dockins on March 9, 2011, two days prior to the parties reaching agreement (subject to ratification) on a new CBA. This Global Settlement, which is included in the parties' printed CBA and referenced at the end of Article 1, provides as follows:

Q06C-4Q-C 10005587 GLOBAL SETTLEMENT

The parties agree that grievance Q06C-4Q-C 10005587 will be resolved effective with the signing of this settlement. The parties further understand that any cases held in abeyance pending the outcome of this case will be affected by this settlement. Those cases will be returned to the level they were held for further processing.

As a result of this settlement, in offices under 100 bargaining unit employees, postmasters and supervisors may only perform bargaining unit work in accordance with Article 1.6.A and when listed in their position description in accordance with the following:

In level 18 offices, the Postmaster is permitted to perform no more than fifteen (15) hours of bargaining unit work per week. There will be no PMR usage in level 18 offices.

In level 16 offices, the Postmaster is permitted to perform no more than twenty-five (25) hours of bargaining unit work per week. There will be no PMR usage in level 16 offices.

In level 15 offices, the Postmaster is permitted to perform no more than twenty-five hours (25) of bargaining unit work per week. There will be no PMR usage in level 15 offices.

In the event there is a second supervisor in any of these offices, only one of the supervisory employees may perform bargaining unit work as prescribed above (either the Postmaster or the Supervisor).

Bargaining unit work performed by Postmasters or supervisors should be consecutive hours to the extent practicable, so as to minimize the necessity for split shifts for clerk craft employees, whenever possible. All time the supervisor or Postmaster spends staffing the window during the day will be counted towards the permissible bargaining unit work limits.

Postal Operations Administrator (POA) will be obsolete.

The Postal Service will report to the APWU, on a quarterly basis, bargaining and non-bargaining unit employee staffing changes in Level 15 and below offices.

In accordance with the M-32, postmasters or supervisors performing bargaining unit work will record what operation they are performing either by time clock, PS Form 1260 or other appropriate means. A copy of such documentation shall be made available to the Union upon request.

Any office that is downgraded in level will remain at the bargaining unit work standard that is in place at the beginning of the Agreement through the life of that contract.

(Emphasis added.)

As of the week ending May 11, 2012 -- excluding Postal Support Employees (PSEs) hired to replace PMRs (Postmaster Reliefs) who were eliminated pursuant to the Global Settlement -- the clerical complement at level 15, 16 and 18 offices was as follows:

Level 15 Offices

1511 offices with no clerks
924 offices with one clerk
349 offices with two clerks

Level 16 Offices

1178 offices with no clerk
1228 offices with one clerk
296 offices with two clerks
81 offices with more than two clerks

Level 18 Offices

78 offices with no clerk
982 offices with one clerk
1901 offices with two clerks
1119 offices with more than two clerks

The present Step 4 grievance, filed by the Union on August 15, 2011, originally raised three issues, one of which the parties have resolved. The two remaining issues relate to: (1) the proper interpretation and application of the provision in the Global Settlement which states: "All time the supervisor or Postmaster spends staffing the window during the day will be counted towards the permissible bargaining unit work limits."; and (2) whether the final paragraph of the Global Settlement is subject to an exception for office downgrades effected under Delivery Unit Optimization (DUO).

In an October 7, 2010 letter to President Burrus, Manager Dockins defined the DUO initiative as follows:

DUO is a cross-functional, field initiative to streamline delivery and post office operations. By identifying opportunities in operations the Postal Service may better position our offices for current success and future change.

Under the DUO concept, groupings of post offices within a geographical radius are reviewed for relocation opportunities. Delivery operations are relocated to a parent office and retail and

post office box operations are usually retained at the original locations. Savings are normally identified in customer service (Function 4), transportation, postmaster levels, and leases.

Please be advised that Retail Operations is developing a Delivery Unit Optimization (DUO) tool and guidelines to assist the field and help standardize the process of relocating delivery operations. DUO provides the field with tools that can be used to transfer delivery unit operations from one unit to a "hub" or "gaining" unit.

Lyle Krueth, Assistant Director for the Clerk Division at the APWU, testified that when the Union was negotiating the Global Settlement it was very aware of the DUO initiative. By the fall of 2010, he said, the Postal Service was implementing DUO across the country with a resulting loss in clerical hours. Some of the loss was attributable to the consolidation of functions like distribution and some to the Postal Service reducing clerks and having postmasters² do more bargaining unit work.

Krueth also testified that in smaller offices most of the work consists of clerical duties, primarily retail -- "working the window" -- but also boxing mail, distributing mail for carriers and so on. He noted that the Postal Service has taken the position that there is little actual supervisory or administrative work performed in level 15 and 16 offices.

Morris testified that at some point after he and Mlakar had the discussion in November 2010 that resulted in the MOU that Morris and Dockins signed in December, Morris sent Mlakar an early version of the Union's proposed Global Settlement and they had a brief conversation. Mlakar, however, was not directly involved in the negotiation of the Global Settlement. Morris said there were perhaps two to four meetings between the parties on the Global Settlement. Final agreement on that document was reached on March 9, 2011, when it was signed off on by Morris and Dockins.

Morris explained that in drafting the provisions of the Global Settlement:

² In this decision, the term "postmaster" includes "supervisor." The Global Settlement applies equally to supervisors and postmasters.

Our objective was to put this issue to rest so that we didn't have to keep litigating it in the field. We wanted to have something that was quantifiable, something that was not always a moving target, as the history seemed to be. It didn't depend on anybody's determination of what the history was. We wanted something that could be accurately measured and that was objective rather than subjective.

Morris added that the paragraph in the agreed-to Global Settlement regarding postmasters performing bargaining unit work in consecutive hours and the counting of all time the postmaster staffed the window, was only drafted on March 7, 2011, and may first have been presented to the Postal Service at the meeting on March 9. He said that the reason the Union added this language was that it looked like the parties were going to reach agreement and he wanted to tie up as many loose ends as possible. Morris said the Union knew that it was possible to use as a measure the actual time a postmaster spent on specific window transactions or "earned time" using the Postal Service's "WOS" (window operating survey) system in offices equipped with POS (point of sale) terminals. Actual time, however, would be hard to enforce and use of "earned time" as calculated by the Postal Service would have resulted in many fewer hours. Using all time spent staffing the window was much easier to measure, because a postmaster staffing the window would have to sign in for the period in which the window was in operation, and did not depend on how many seconds the Postal Service attributed to each retail or other window transaction.

At the negotiating session on March 9, 2011, at which he and Dockins signed off on the Global Settlement, Morris testified, they went through the Union's latest (March 7) draft proposal. Morris said Dockins asked certain questions and indicated language he wanted to be stricken. For example, a paragraph relating to level 13 offices was removed, so that the final agreement applied only to level 15, 16 and 18 offices.³ Morris stated he and Dockins understood that what they were agreeing to was -- to quote a term Dockins used -- a "bright line" settlement. Morris testified that when they got to the provision about counting all time spent staffing the window:

³ Morris noted that earlier Union drafts had provisions relating to even smaller offices, and those had been previously deleted.

John [Dockins] said, what do you mean by this? And, again, this was new language that came in at the end. He said, what do you mean by all time supervisor or postmaster spends staffing the window will count towards the permissible bargaining unit work limits?

And I said, it's pretty simple, John. If the post office is open, it's being staffed. Somebody is staffing it. And that time would count. He said, it seems pretty clear to me.

And that's about the extent of what we said about it.

Krueth, who was also present at the March 9 negotiation session, specifically recalled Dockins asking about this provision. He testified:

Q Do you recall what the discussion was, what he asked about this language?

A Verbatim, I wouldn't go there, but I think I can get awfully close in my recollection. Mike's response to him that -- something to the effect that if the window is open, somebody is staffing it. So when all time spent staffing the window -- we can measure it because, if the window is open, somebody is staffing it. And if the clerk is not there, it must be the postmaster.

Q Do you recall Mr. Dockins' comments on that point?

A I believe what he responded was something to the effect of, well, that seems fairly clear or pretty clear to me, too.

Addressing the penultimate paragraph of the Global Settlement, which requires postmasters to record their performance of bargaining unit work by clocking in in accordance with the MS-32, Morris stated that the Union wanted to be able to check on these hours on a visit. This paragraph remained important, even with the agreement to count all time staffing the window, to keep track of other bargaining unit work a postmaster might perform, such as boxing, collecting and/or canceling mail. Morris added that if a postmaster performs one of these other tasks during a lull while the postmaster is staffing the window, there is no double counting of that time for purposes of the hourly limits in the Global Settlement.

Morris testified regarding a meeting he and President Duffy attended on April 11, 2011, at which Dockins and Postal Service Vice President of Labor Relations Doug Tulino were present. During that meeting, there was a discussion relating to the application of the final paragraph of the Global Settlement regarding offices downgraded after the November 21, 2010 effective date of the CBA. The management representatives discussed a DUO exception to that provision. According to Morris, management wanted an exception for offices that had no clerks and were downgraded to level 13 or below under the DUO initiative.⁴ Morris testified that Tulino said:

...[W]hy do you care about this downgrade exception anyway? He said, most of this work -- he said, I need some relief temporarily. He said, you know that most of this work is going to be coming back to you guys anyway. He'd already told us they were making these changes to the Federal Register to make it so they could give us the work back in these small offices and pay a clerk at a lower level to work in these post offices rather than paying a higher-level postmaster.

So we had seen that they had, in fact, just, what a week or so earlier, 11 days earlier, had actually proposed the rule to the Federal Register and that if we -- in consideration, since we were getting that work, would we agree to an exception for a DUO if it was in an office where the -- where there were clerks [sic] that went from below [sic] level 15 to, like, a 13, an office that did not have clerks? He wanted an exception only in offices that did not have clerks.

In offices where there were clerks, he did not even seek an exception if it went below level 15 at the meeting.

Morris added that Tulino noted that certain steps had to be completed first, before the staffing change could be made, including finalization of the Federal Register changes and consultations with the postmaster organizations.⁵

⁴ The hearing transcript at page 136 indicates Morris said "below level 13," but in context of the Global Settlement I believe Morris said or meant to say "to level 13 or below."

⁵ Morris noted that the Postal Service had proposed changes in the Federal Register to permit the change of a post office to a station or branch to allow it to be remotely managed, so that a clerk could be the only employee staffing the office and/or one postmaster could manage

The following day, April 12, 2011, Dockins sent an email to Morris in which he stated:

...In an over abundance of caution I want to be sure that we have no misunderstanding on the Article 1.6.B agreement.

In our previous discussion you indicated that you can live with a modification of the Article 1.6 agreement to allow a PM to work more bargaining unit hours when the office is downgraded to an office without clerk craft employees. For example, as a result of DUO a level 15 office is downgraded to a level 13, the PM in the new level 13 office would be able to perform bargaining unit work as any other level 13 PM without restriction.

The amount of bargaining unit work hours that can be performed by the PM will remain the same for the remainder of the contract as long as the PM is assigned to an office with clerk craft employees.

Does this capture what we discussed?

Morris responded that same day:

This does represent our agreement reached today regarding the previously negotiated MOU in a good faith effort to give you some breathing room.

Another illustrative example is that in a Level 20 office that was downgraded to a level 15 or 16 after the effective date of the CBA, for this purpose November 21, 2010, the postmaster in the downgraded office could still perform no bargaining unit work.

Our concession to exclude the offices below Level 15 is based upon the APWU's understanding of the USPS' good faith intent, based upon what Doug Tulino told Cliff Guffey and I in his office (in your presence) yesterday, that many, if not most, of these post offices will be converted to stations or branches and staffed by bargaining unit employees rather than postmasters anyway.

several offices from one location. He added that later in 2011, those changes took effect and the Postal Service changed its regulations to match.

It certainly would not be in the economic interest of the Postal Service to staff a Level 13 office with a saved grade Level 18 postmaster doing almost exclusively clerk work when the Level 18 could be reassigned to another office and you could then staff the Level 13 office with a bargaining unit employee at a much lower cost.

I believe this captures our agreement.

Duffy testified that his position on the requested DUO exception was that he would not agree to anything until the new contract the parties had negotiated was implemented in a reasonable manner, which has not occurred. He insisted the Union did not agree to a DUO exception.

Morris noted that at the time of the April 11, 2011 discussion about a DUO exception there were several thousand small post offices where the postmaster position was vacant. The Postal Service was filling those postmaster vacancies with OICs who were paid EAS rates two levels below the postmaster, whereas it could put a clerk in there and save money. The bottom line, according to Morris, is that there was no DUO exception because the *quid pro quo* was not there, although the Union is still open to it if it gets the *quid pro quo*. If the parties had agreed on a DUO exception, he added, they would have memorialized that in a written Q&A, which did not happen.

On May 27, 2011, Manager Mlakar sent Morris an email regarding Article 1.6.B issues, which stated in relevant part:

Mike: As you know, the final resolve of the 1.6.B dispute came about as part of the tentative agreement, ratification and ultimate signing of the new CBA. The tentative agreement reached on March 11 came about so quickly that you and I never had the opportunity to further discuss the various terms of the agreement.

* * *

So far, I'm hearing from the Area Managers that most of the parties have already begun meeting on the grievances they had been holding and working through them using the "work hour limitations" as a guideline. But, beyond those pending grievances,

additional steps need to be taken. I'd like your response on the ones that immediately come to mind, in that regard. Here are my initial thoughts on what I believe could be a fair implementation procedure.

* * *

4. In Post Offices, Levels 15 through 18, management will record the performance of clerk craft bargaining unit work whenever it is performed by a postmaster or supervisor as required by the terms of the national level Article 1.6.B agreement. This will include the recording of the performance of clerk craft bargaining unit work that is performed on an intermittent basis between the performance of management duties. For example, when it is necessary for a postmaster or supervisor to work at the retail window to provide customers with products and services, the time actually spent in the performance of those duties shall be recorded as clerk craft bargaining unit work. However, the time spent with postal customers for reasons other than to provide the products and services that would have been provided by the clerk at the retail window is considered a part of the postmaster or supervisor's normal duties and will not be recorded as clerk craft bargaining unit work.

* * *

6. An exception will be applied to the terms of the national Article 1.6.B agreement in an office that is downgraded in level due to the implementation of Delivery Unit Optimization (DUO). When a Post Office, Level 16 through 18 is downgraded in level because of DUO, the office will be required to comply with the clerk craft bargaining unit work hour limitations of the downgraded level to which the office is assigned provided that the new office level is not set below Level 15.

(Emphasis added.)

Morris stated this was the first time he had seen anyone from the Postal Service take the position Mlakar expressed in item 4 of his email -- which Morris considered to be a complete repudiation of the Global Settlement. Item 6, Morris added, also was contrary to what the Global Settlement provides and is not even consistent with the discussion Morris and Duffy had

with Tulino and Dockins on April 11, 2011. Morris made his views clear in a response he sent to Mlakar on May 28, 2011.

Headquarters Retail Operations Specialist Lawrence Welling testified that Retail Ops had several concerns regarding settlement of Case Q06C-4Q-C 10005587. They understood that case as only applying to small offices where there were clerks who either had retired or transferred and were not replaced or had their hours reduced. There were about 1000 of those offices. At that time, he noted, 54% of the level 15 offices and 37% of the level 16 offices only had a postmaster. In his opinion, those offices should stay that way. Another concern was that performance of clerk bargaining unit work by postmasters should be identified through actual work, based either on transactional data or mail volume.

Welling explained how the WOS system -- which includes earned time (based on average work performance statistics) for revenue and non-revenue window transactions and allowances for "soft time" and opening and closing the window -- measures actual work performed at retail windows in offices that have POS terminals. The Postal Service introduced, through Welling, earned staffing graphs for the top 25 and bottom 25 (based on revenue) POS-equipped level 15 and level 16 offices and for 25 randomly selected level 18 offices. Using WOS data, these graphs are used to calculate earned staffing per day and actual terminal staffing. WOS shows that in many smaller offices earned time is but a small fraction of the time the window is open due to the limited amount of transactions in a day in those offices.

Manager of Field Labor Relations Mlakar testified that sometime in December 2010 Morris sent him a draft version of the Global Settlement. Mlakar said he told Morris he would discuss this with his principals and get back to Morris. Although he had thought they were talking about resolving a national level grievance and using that agreement to resolve the backlog of grievances in the field, he subsequently learned the Union was interested in this settlement being part of the CBA. At that stage of the CBA negotiations, he said, the focus was on economics and work rule issues were tabled. Mlakar had no further substantive discussions with the Union until after the Global Settlement and the CBA had been finalized along with the rest of the CBA.

Mlakar testified, however, that, while negotiations were ongoing, he did have internal discussions about the Global Settlement with Postal Service management personnel, including then Vice President of Operations Granholm, Tulino, Dockins and Welling. In his discussions with Welling, Mlakar testified, he talked about how hours of bargaining unit work performed by postmasters would be calculated, indicating that postmasters would have to record, in accordance with the M-32, every single time they did bargaining unit work, such as boxing mail or selling a book of stamps, and this information then would be made available to the Union. In his mind, this was an agreement about the performance of bargaining unit work. He stressed that there would have been no need to reference the M-32 record keeping if "it was all the time." Mlakar said he also advised Dockins, who was the Postal Service's chief negotiator, of the basic parameters the Union had offered in its proposed Global Settlement. He told Dockins he had discussed them with Tulino and Granholm, and that it appeared to be a settlement that could put Article 1.6.B issues to rest for good. He then was back in Chicago when the parties were pulling all of the agreements together, and he was not involved in any of that.

Mlakar said that after the negotiations were completed, when he sat down with the Union to discuss Q&As and also how to deal with the backed up Article 1.6.B grievances, he learned of the Union's position regarding the provision that all time spent staffing the window was to be counted toward the bargaining unit work limits. That surprised him, he said, because it had been his understanding that the counting up of the hours would be based on actual window transactions.

UNION POSITION

The Union stresses that the Global Settlement is an historic compromise on the part of both the APWU and the Postal Service in order to realize their shared goals of controlling labor costs and settling decades of disputes about the performance of bargaining unit work in Article 1.6.B post offices. The parties consciously and explicitly did so with absolute, measurable, objective limits on supervisors and postmasters performing bargaining unit work.

The overall purpose of the Global Settlement, the Union contends, is to set absolute limits on the number of hours postmasters can perform bargaining unit work in Article 1.6.B post offices. The parties abandoned the conceptual measures and limits they had been using since the 1978 Garrett Award in favor of exact hour limits in level 15, 16 and 18 post offices, beyond which the postmaster must stop performing bargaining unit work. To measure the time against those limits, the APWU proposed and the Postal Service agreed that: "All time the supervisor or Postmaster spends staffing the window during the day will be counted towards the permissible bargaining unit work limits." The parties did not agree to count only earned or actual transaction time.

The Union contends that the unrebutted evidence shows that it designed and proposed a method of measuring time based on the hours a post office window is open and staffed by a postmaster. If the window of a level 15, 16 or 18 post office is open and a postmaster is responsible for staffing that window, every hour the window is open with the postmaster covering it counts against the hour limits in the Global Settlement, regardless of what the postmaster is actually doing during that time. The language the APWU drafted not only describes this standard plainly and explicitly, but the Union expressly explained its intent and meaning to the Postal Service during negotiations. The Postal Service's chief negotiator for the entire CBA said he understood what the Union meant. The Postal Service never raised in negotiations either of the alternative ways of measuring time it urged at arbitration (earned time) or in its position statement (actual time).

The Union stresses that to accept the Postal Service's new re-interpretation of how to measure postmaster time essentially would eviscerate the applicability of the work hour limits which could never be reached using the tiny incremental measures of transaction time the Postal Service now proposes. Such a result flies in the face of the parties' shared goals in negotiating the Global Settlement to resolve past and future disputes, to shift bargaining unit work away from postmasters, and ultimately to drive down the Postal Service's labor costs.

The Union adds that Postal Service witness Welling affirmed the basic assumption of the Union's method of measure that the Postal Service itself assumes a certain minimum staffing whenever the window is open at a post office, irrespective of what tasks the employee does during those hours. Applying that assumption, the APWU determined that the hours the window was open was a fair and objective measure of postmaster time.

The Union asserts that how the Postal Service staffs its offices so as to be in compliance with the Global Settlement is entirely within its control. For the fewer than 30% of existing offices that do not already have clerks, the Postal Service has given itself in its revised regulations the flexibility it needs to staff smartly and efficiently. Whether it retains a postmaster in the offices currently without clerks to work in addition to an added clerk, adjusts the service hours for the office to match revenue, staffing or transactions, or utilizes a clerk to perform the work in the office while shifting the very limited management responsibilities to a postmaster in another office, the Postal Service built a structure that gives it all the choice and options it needs.

The Union also insists that the parties never came to an agreement on a "DUO exception" to the Global Settlement. The DUO exception the Union was willing to entertain is stalled until the Postal Service recommits and implements the 2010 CBA. The DUO exception certainly was not proven in this case to have been perfected or made. As the APWU's evidence demonstrated, it is not even clear what the Postal Service thinks the terms of the DUO exception are. Tulino and Dockins described to Morris and Guffey an exception for only the offices that dropped to level 13 and below, but later Mlakar asserted in an email his impression that the DUO exception applied to any office. In any case, it is clear that there is no evidence of an agreement, and certainly nothing the arbitrator can definitely point to and enforce.

EMPLOYER POSITION

The Postal Service stresses that the Global Settlement is a grievance resolution; not a negotiated Article of the CBA, an addition to Article 1.6.B or a Memorandum of

Understanding. It occurred coincidental to the negotiation of the 2010-2015 CBA; however, it stands on its own.

The Postal Service points out that in the case which is resolved by the Global Settlement the Union alleged there was a nationwide violation of Article 1.6.B, asserting the Postal Service was reassigning bargaining unit work to supervisors in small offices on a nationwide basis without satisfying the conditions specified in the Garrett Award and the Das Award. The Union argued that the Postal Service did not have an unfettered right to reassign work from clerks to supervisors in small offices, but must give full and good faith to other alternatives. The unrebutted testimony and empirical evidence of several Postal Service witnesses in the present case demonstrated that there are very few clerks working at the offices affected by the Global Settlement, there is very little retail activity being transacted, and the Postal Service understood the Global Settlement to prohibit actual performance of bargaining unit work, especially in light of this sparse staffing and retail activity.

The Postal Service asserts that the APWU considers the single sentence added to the final version of the Global Settlement and first presented to the Postal Service on March 9, 2011 -- the date on which the Global Settlement was signed off on -- as the only relevant and the all-inclusive explanation for the issue of how to count the time spent by postmasters performing bargaining unit work. The Postal Service's understanding, in contrast, is based on the Global Settlement document as a whole, the context in which the Global Settlement was reached, the context of the grievances the Global Settlement resolved, and the principles of Article 1.6.B from which the language of the Global Settlement evolved. All of these militate in favor of a recognition that the actual performance of bargaining unit work should be counted against the agreed upon work hour limitations. Simply stated, the postmaster has to perform bargaining unit work before a violation of Article 1.6.B is even ostensibly possible. It defies logic to assert that, particularly in the absence of any change to Article 1.6.B itself, the Postal Service would have handicapped itself in the manner asserted by the Union.

The Postal Service points to various provisions of the Global Settlement which show that the prevailing theme is "performance" of bargaining unit work. The second paragraph of the Global Settlement, which is closely similar to the language of Article 1.6.B, reads:

As a result of this settlement, in offices under 100 bargaining unit employees, postmasters and supervisors may only perform bargaining unit work in accordance with Article 1.6.A and when listed in their position description in accordance with the following:"

The Global Settlement then identifies three office levels and states the agreed-to restriction on hours of bargaining unit work a postmaster is permitted to perform, without specifying what type of bargaining unit work. Then comes the paragraph containing the sentence in dispute. This paragraph provides for postmasters performing bargaining unit work in a consecutive manner in order to minimize split shifts for clerks. The next relevant provision is in the penultimate paragraph which refers to record keeping when postmasters perform bargaining unit work. If as the Union claims, the new way to measure performance of bargaining unit work is by staffing, the Postal Service asks, why would the parties then need to track the operations they are performing in accordance with the M-32? If the APWU assertion were correct, the obvious requirement would be for the Postal Service to provide the schedule of the postmaster when no clerk is present in the office. Given the clear-cut requirement to provide information to the Union on an operation-by-operation basis per the M-32, the more likely conclusion is that the prohibition is against the performance of bargaining unit work as measured by operation.

The Postal Service stresses that if the Union's position is accepted it would be based on the illogical premise that a violation occurs without performance of bargaining unit work. That is not a violation of Article 1.6.B. In addition, the Postal Service notes that if the APWU's position is accepted, the time when a clerk is not present would include time spent by the postmaster performing postmaster duties set forth in the postmaster position description. It defies logic to consider that the Postal Service, through an experienced negotiator, would include time spent performing these postmaster duties toward the work hour limitations. Such postmaster duties are not even remotely considered bargaining unit work.

The Postal Service argues that it is noteworthy that there was no testimony showing the Postal Service understood and agreed to the Union's understanding that if there was no clerk in the office, then all the time the postmaster is present counts against the work hour limitations. There also was no testimony showing the Postal Service understood or agreed that once the work hour limitations were met it was expected to use a clerk or even hire a clerk to replace the postmaster or PMR (that position was abolished under the Global Settlement). There was no testimony which demonstrated the Postal Service understood that all other duties listed on a postmaster's position description now counted as bargaining unit work if no clerk was present whether or not the task ever belonged to the bargaining unit or even if the task was not being performed. Operations Specialist Welling demonstrated the lack of transactions occurring in smaller post offices and he pointed out that he discussed his concerns with Mlakar who served as an advisor to Dockins. It is clear the Postal Service would not agree to a settlement which required it to hire clerks to perform no bargaining unit work.

The Postal Service asserts that when Dockins met with the Union, not only did he have negotiating experience, knowledge of the contractual and arbitral history of Article 1.6 and knowledge of the dispute he was settling, but he also had the benefit of discussions and guidance from members of the Postal Service who understood the Postal Service's concerns regarding the Global Settlement. To now accept the Union's interpretation, the Postal Service insists, would render nearly 40 years of arbitral history meaningless, which certainly was not the intent of the Postal Service. Moreover, it is unrealistic to think Dockins was unaware of the problem shifting from a performance measurement to a staffing measurement would pose to the Postal Service.

The Postal Service emphasizes that the Union drafted the Global Settlement. Any ambiguity in the document, therefore, should be resolved against the Union. The precise meaning of the sentence at issue is not obvious from the plain language and has caused a misunderstanding of the terms by the parties. The Union added the "all time" language at the last minute to the Global Settlement without truly explaining it and Dockins had an understanding that differed from the Union's. Given the Union's failure to explain its intent to

Dockins and considering the rules of contract interpretation, the interpretation should go against the drafter of the document.

The Postal Service also insists that the Union agreed to a DUO exception. Regardless of whether the APWU believes it received the benefit of the bargain on a DUO exception, the April 12, 2011 email from Morris to Dockins clearly establishes there was a mutual understanding and agreement by both parties, first verbally and then memorialized in that email. Similarly, both Morris and Guffey admitted they had an agreement with the Postal Service on the DUO exception without a timeline for the Postal Service to perform what was agreed to in exchange for the exception. Therefore, the Postal Service contends, the Union, now is trying to renege on what was agreed to.

FINDINGS

Staffing the Window

The first issue in this case is the proper interpretation and application of the provision in the Global Settlement which states:

All time the supervisor or Postmaster spends staffing the window during the day will be counted towards the permissible bargaining unit work limits.

The Union contends that if the window is open for retail transactions and there is no clerk in the office the postmaster necessarily is staffing the window and all hours the window is open under these circumstances are to be "counted towards the permissible bargaining unit work limits." The Postal Service contends that only the time the postmaster actually spends on window transactions (as well as on other bargaining unit work) is to be counted for this purpose. It further points out that in many smaller offices actual window transactions account for only a relatively small fraction of the time the window is open. During the rest of the time, the postmaster may perform a variety of nonbargaining unit duties that are not subject to restriction under Article 1.6.B.

On its face, the wording of the sentence in dispute is straightforward. As is clear from the record as a whole -- including the "staffing" graphs and other "staffing" data presented and explained by Retail Operations Specialist Welling -- the term "staffing" in postal parlance refers to assigned personnel, not to performance of a specific task. The Postal Service itself contrasts use of a performance measurement to a staffing measurement. In the Postal Service view, the Global Settlement is only about performance of bargaining unit work. Yet, as written, what the parties agreed to in the Global Settlement was to limit the total hours a postmaster is permitted to perform bargaining unit work and to measure those hours, in part, by counting all time spent "staffing the window."

There really is no other reasonable way in which to read the language the parties agreed to.⁶ The Postal Service does not offer any persuasive alternative meaning for the phrase "staffing the window." Instead, it relies on testimony by managers who did not participate in the relevant negotiations between the parties as to reasons why the Postal Service would not have agreed to such a provision. The Postal Service also stresses that the Global Settlement was a resolution of Case Q06C-4Q-C 10005587, in which the Union claimed the Postal Service had adopted a national campaign to shift work from the bargaining unit to postmasters in smaller offices, and that the Global Settlement's purpose was not to revisit the issues raised and decided in the Garrett and Das Awards. The Postal Service further argues that, as interpreted by the Union, this provision of the Global Settlement goes beyond, and therefore does not serve to explicate, Article 1.6.B.

⁶ This is not a case, such as Case Q06C-4Q-C 07200239 (Das 2008), where seemingly straightforward language cannot reasonably be squared with other language in the agreement or the bargaining history. In particular, there is no inconsistency between the straightforward meaning of the all time spent staffing the window is to be counted provision and the penultimate paragraph which requires postmasters to record the bargaining unit operations they perform in accordance with the M-32, because the latter provision still is important to document other bargaining unit work postmasters perform when not staffing the window, both in offices with clerks and those without clerks. The Union concedes that if a postmaster performs other bargaining unit work while staffing the window there is to be no double counting of the time spent doing those tasks.

The Union, however, presented credible and un rebutted testimony of Morris and Krueth that Dockins, the Postal Service's chief negotiator -- not just of the Global Settlement, but also of the CBA that was finalized just two days after the Global Settlement was agreed to -- asked the Union, which drafted the Global Settlement, what the provision in issue meant, and that Morris explained the gist of it consistent with the Union's position in this case, and Dockins acknowledged that is what the provision said. Other Postal Service representatives, in addition to Dockins, were present at the March 9, 2011 meeting at which the Global Settlement was agreed to. None of them testified in this case. That Dockins was not just a passive participant also is reflected in the deletion of certain language in the Union's final draft proposal that he was unwilling to agree to. Among the deletions was a provision relating to the future "staffing" of level 13 offices.⁷

Moreover, as Arbitrator Garrett stressed in his 1978 Award, which set the framework for resolving Article 1.6.B disputes for decades:

The present interpretation obviously cannot be applied in any given small office except in light of all relevant facts applicable to that particular installation. In order to dispose of all pending grievances under I-6-B, therefore, the parties either will have to negotiate a detailed set of rules for implementing this provision (as the APWU apparently would desire) or proceed with a detailed analysis of each of the pending grievances.

(Emphasis added.)

The Global Settlement had its genesis in Case Q06C-4Q-C 10005587 and served to resolve that case, which alleged a violation of the Garrett and Das Awards, and to provide a basis for resolving the backlog of related local grievances, as stated in the initial paragraph of the Global Settlement. But, as both Morris and Mlakar testified, they envisioned reaching a settlement which would put an end to 40 years of disputes. It is clear from other

⁷ As agreed to, the Global Settlement does not address offices below level 15 and places no restrictions on the performance of bargaining unit work by postmasters in those offices. In those smaller offices, most of which have no clerks, the postmaster can continue to perform bargaining unit work historically performed by the postmaster in that office consistent with Article 1.6.B and the Garrett and Das Awards.

provisions of the Global Settlement -- including elimination of PMRs -- that the parties did not confine themselves to issues raised in Case Q06C-4Q-C 10005587. Furthermore, the Global Settlement was negotiated concurrently with, if not as part of, the parties' negotiation of a new CBA in which the Postal Service was seeking ways in which to address declining business and revenue and the Union, in return, was seeking -- as it made clear to the Postal Service -- to have work brought in, or brought back, to the bargaining unit. In seeking a "global" resolution of Article 1.6.B issues in this context, the parties certainly could agree that all time spent by a postmaster staffing the window will be counted towards the permissible bargaining unit work limits which they agreed would be used in the application of Article 1.6.B, which had proved so troublesome in the past. That is precisely what they did in the Global Settlement, which prefaces the specific restrictions as follows:

As a result of this settlement, in offices under 100 bargaining unit employees, postmasters and supervisors may only perform bargaining unit work in accordance with Article 1.6.A and when listed in their position description...[i.e., as provided in Article 1.6.B.] in accordance with the following:

(Emphasis added.)

Accordingly, I find that the Union's position on the meaning and application of the provision in the Global Settlement relating to time spent by a postmaster staffing the window is correct.

* * *

DUO Exception

In its August 15, 2011 letter initiating the present Step 4 dispute regarding implementation of the Global Settlement, the Union asserted:

We have become aware of widespread instructions from USPS headquarters to the field clearly intended to circumvent the Agreement. For example:

* * *

- In spite of the express language in the settlement that any office "downgraded in level will remain" at the bargaining unit work limitations in place at the beginning of the Agreement, we continue to be told that USPS HQ is instructing the field that an exception exists for offices undergoing delivery unit optimization (DUO). No such exception was ever agreed to. To the contrary, the parties' knowledge of the ongoing DUO process was the express reason this language was included.

In its 15-Day Statement, the Union stated:

Downgraded post offices. The Global Settlement states: "**Any** office that is downgraded in level will remain at the bargaining unit work standard that is in place at the beginning of the Agreement through the life of that contract" (emphasis added). During our discussions, the Postal Service took the position that "any office" did not mean what it says, but rather that offices downgraded under the delivery unit optimization (DUO) program are exempt. There is no support for this position in the Global Settlement. In our discussions, the Postal Service offered no rationale or support for this position; it merely said it was so.

The Postal Service in its 15-Day Statement asserted:

The Delivery Unit Optimization (DUO) Exception

Regarding the union's contention that any office downgraded in level will remain at the bargaining unit work limitations in place at the beginning of the Agreement without exception, and that the parties' knowledge of the ongoing DUO process was the express reason this language was included does not provide framework for the negotiation of the settlement agreement. The parties possessed more than just the knowledge of the possible effect of the start up of the DUO process on office levels. The parties were well aware of the drastic effect economic conditions and the diversion of correspondence was having on the Postal Service, including those elements by which the office levels are determined.

Clearly, there are many factors in addition to the DUO process that affected office levels, despite the union's claim that DUO alone was the "express reason this language was included." The

union is correct that the DUO process was a concern during the negotiation of this provision. It is undisputed that the APWU was notified about the implementation by letter dated October 7, 2010. However, despite the union's contentions, the Postal Service's concerns regarding the effects of the DUO process on resulting office levels were expressed during the parties discussions, and agreement was reached. The agreement reached was made with the understanding that an exception would be made for offices reduced in level as a result of the DUO process.

The evidence presented at arbitration does not show that the parties agreed to a broad DUO exception under which offices reduced in level as a result of the DUO process would not be subject to the provision in the last paragraph of the Global Settlement regarding downgraded offices.

The evidence does support a finding that the Union agreed at the April 11, 2011 meeting -- at which Tulino, Dockins, Guffey and Morris were present -- to the Postal Service's request that the downgraded office provision be modified to exclude an office without a clerk that was downgraded under DUO to level 13 or below. Such an office is to be treated as any other level 13 office that is not subject to restriction under the Global Settlement. This is confirmed by the April 12, 2011 email exchange between Morris and Dockins. The evidence does not support the Union's contention that the APWU told the Postal Service only that it was willing to entertain an exception, rather than agreeing to it. The Union also has not established a contractual requirement that such an agreed modification had to be memorialized in a written and signed agreement in order to be binding on the parties.

It is true that in his email response to Dockins, Morris stated:

Our concession to exclude the offices below Level 15 is based upon the APWU's understanding of the USPS' good faith intent, based upon what Doug Tulino told Cliff Guffey and I in his office (in your presence) yesterday, that many, if not most, of these post offices will be converted to stations or branches and staffed by bargaining unit employees rather than postmasters anyway.

It certainly would not be in the economic interest of the Postal Service to staff a Level 13 office with a saved grade Level 18

postmaster doing almost exclusively clerk work when the Level 18 could be reassigned to another office and you could then staff the Level 13 office with a bargaining unit employee at a much lower cost.

This reflects Morris' testimony regarding the May 11 meeting. The Union did not, however, impose a time limit on when the anticipated change in staffing was to occur or specifically condition its agreement on any concrete event. Indeed, on April 18, 2011 Morris sent Dockins the following proposed Q&A, with some others, which he stated: "I believe represent our agreement last week on issues in dispute":

Pursuant to the global settlement on Article 1.6.B and the limits on BUW performed by postmasters or supervisors, what happens if an office is downgraded in level during the life of the Agreement?

ANSWER: For the purposes of determining the amount of BUW that may be performed by a manager, the standard will apply to the level the office was on November 21, 2010. For example, if an office was Level 18 on November 21, 2010 and it is subsequently downgraded to Level 15 or 16, the postmaster would be limited to no more than 15 hours BUW per week. An exception is made for offices that are downgraded below Level 15.

(Emphasis added.)

While this Q&A was never signed off on, it is evidence of what the Union believed had been agreed to.

The waters later were muddied by the portion of Mlakar's May 27, 2011 email to Morris relating to the DUO exception, which misstated the parties' agreement. In his response to this email, Morris stated:

I have to admit that I am particularly disappointed in your item #6. As you know, I have already attempted to accommodate the USPS concerns in this regard - at no insignificant personal or political cost, as you might imagine. For you now to suggest that we also exclude all downsizing as the result of DUO from the protection of the final paragraph of the global settlement is

downright disturbing. As you know from our discussion, the USPS implementation of DUO around the country was the specific factor which caused us to insert the "downsizing" protection into the agreement. The DUO implementation issue was also the specific reason why we requested and got the November 21, 2010 date for this agreement during our discussion with Tulino and Dockins.

While Morris takes issue, properly, with Mlakar's description of the DUO exception that was agreed to, he notably does not contend there was no agreement.

APWU President Guffey insisted that the Union did not agree to any DUO exception -- which he acknowledged he was not in favor of -- and said he would not agree to anything until the new CBA was implemented in a manner he considered to be reasonable. He also acknowledged, however, that his recollection of this aspect of the April 11, 2011 meeting was "blurry" because it was not the foremost thing on his mind, which was that the Postal Service was not implementing the entire contract, and that Morris was the lead on matters relating to the Global Settlement.

On balance, the evidence does support a finding that the Union did agree to a limited exception to the final paragraph of the Global Settlement under which an office, without a clerk, which was downgraded under the DUO initiative on or after November 21, 2010 to level 13 or below would not be subject to the hourly restrictions set forth in the Global Settlement.

AWARD

For the reasons set forth in the above Findings, I conclude that:

- (1) The provision in the Q06C-4Q-C 10005587 Global Settlement which states:

All time the supervisor or Postmaster spends staffing the window during the day will be counted towards the permissible bargaining unit work limits.

applies to all time the supervisor or postmaster is covering the window, which, in the absence of a clerk, includes all time the window is open.

(2) The provision in the Q06C-4Q-C 10005587 Global Settlement which states:

Any office that is downgraded in level will remain at the bargaining unit work standard that is in place at the beginning of the Agreement through the life of that contract.

is subject to an agreed exception for an office without a clerk that is downgraded under the DUO initiative on or after November 21, 2010 to level 13 or below.

(3) Issues relating to remedy are returned to the parties for discussion and resolution. I retain jurisdiction to decide any remedial issues that the parties are unable to resolve.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator