

C#00369

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ARBITRATION

OPINION AND AWARD

.....
UNITED STATES POSTAL SERVICE

and

NATIONAL POST OFFICE MAIL
HANDLERS, WATCHMEN, MES-
SENGERS AND GROUP LEADERS
DIVISION OF THE LABORERS'
INTERNATIONAL UNION OF
NORTH AMERICA, AFL-CIO
.....

MAIL HANDLERS WASH-UP
TIME IMPASSE

Sectional Center Facility
of Northern Virginia
Merrifield, Virginia

ISSUED:

December 17, 1974

BACKGROUND

This interest arbitration is before the Impartial
Chairman, by agreement of the above parties, under Article
XXX of the 1973 National Agreement between the American Postal
Workers Union, AFL-CIO; National Association of Letter Carri-
ers, AFL-CIO; National Post Office Mail Handlers, Watchmen,
Messengers and Group Leaders Division of Laborers' International
Union of North America, AFL-CIO; and the National Rural Letter
Carriers Association.

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The case arose at the Sectional Center Facility for
Northern Virginia located in Merrifield, Virginia (a suburb of
Washington, D.C.), where there are about 1200 employees in the
bargaining units represented by the four National Postal Unions.
The approximately 136 Mail Handlers at Merrifield are members
of Mail Handlers Local 305, which has jurisdiction over the
States of Virginia, West Virginia, Maryland, and North Carolina.
A hearing was held at Merrifield on October 2 and 3, 1974, dur-
ing which the Impartial Chairman inspected various relevant

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operations and work assignments. The parties filed briefs on November 8, 1974.

Operations at more than a dozen Post Offices in the area were consolidated into the Merrifield Facility when it opened early in 1972, requiring transfers of Mail Handlers from seven such facilities. Postal Service officials at Merrifield advised Mail Handler and other Union representatives, as the transfers were being effected, that Management would continue to observe existing work schedules for employees being reassigned to Merrifield for a period of 180 days (in view of the reassignment provisions of the 1971 National Agreement).

Under informal practices in some of the consolidated facilities, Mail Handlers had enjoyed wash-up time before lunch and tour end. During the first few months of operations at Merrifield some such practices apparently were continued by individual supervisors, who also had been reassigned with the employees they supervised. After all Merrifield jobs had been posted and filled in accordance with the National Agreement, however, it became apparent that wash-up practices at former work locations of some employees were not deemed applicable at Merrifield. Nonetheless some supervisors continued to permit Mail Handlers to enjoy wash-up periods. The extent to which this may have happened is unclear. Union testimony indicated that Mail Handlers on Tour 1 generally were receiving wash-up time before lunch and tour end, and that the same was true for many Mail Handlers on Tour 3. The Union asserted, however, that most supervisors on Tour 2 refused to grant wash-up time. Although Article VIII, Section 9 provides that each installation head "shall grant reasonable wash-up time" to employees who perform dirty work, there are as yet no directives to supervisors at Merrifield prescribing the basis on which wash-up time

shall be granted. Each supervisor handles the matter in his or her discretion except to the extent that certain specific groups now are granted regular wash-up periods.

There were no local negotiations at Merrifield concerning wash-up periods under the 1971 Agreement, nor were any individual grievances protesting failure to grant wash-up time filed between early 1972 and the date this case was heard.

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Relevant provisions in the 1973 National Agreement include:

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"ARTICLE VIII--Hours of Work

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"Section 9. Wash-Up Time. Installation heads shall grant reasonable wash-up time to those employees who perform dirty work or work with toxic materials. The amount of wash-up time granted each employee shall be subject to the grievance procedure.

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"ARTICLE XXX--Local Implementation

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"B. There shall be a 30-day period of local implementation to commence 45 days after the effective date of this Agreement, on the 22 specific items enumerated below, provided

that no local memorandum of understanding may be inconsistent with or vary the terms of the 1973 National Agreement:

"1. Additional or longer wash-up periods.

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"C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President. The request for arbitration must be submitted within 10 days of the end of the local implementation period. However, where there is no agreement and the matter is not referred to arbitration, the provisions of the former local memorandum of understanding shall apply, unless inconsistent with or in conflict with the 1973 National Agreement."

In the local negotiations under Article XXX which began on September 5, 1973 the Mail Handlers presented a request for 10-minute wash-up periods (before lunch and tour end) for all platform and truck terminal employees and 5-minute periods for all other Mail Handlers. Discussions of the matter thereafter were inconclusive. On September 17, 1973, the Mail Handlers tentatively suggested a 5-minute wash-up period for all Mail Handlers prior to lunch and prior to end of tour. The final Postal Service proposal on the subject read:

"The employer will grant mailhandlers working on the platform truck terminal and 549 (bumming) operation, five (5) minutes wash-up time prior to going to lunch and prior to leaving for the day. All other mailhandlers performing dirty work or working with toxic materials will be granted, upon request to his immediate supervisor, a reasonable amount of time (not to exceed five (5) minutes) to wash-up prior to going to lunch and prior to leaving for the day."

The parties were unable to reach agreement at a final meeting on September 26, 1973 and the matter then was carried to arbitration under Article XXX.

At the hearing the Mail Handlers proposed that (1) all Mail Handlers whose work primarily involves handling of sacks should receive 10 minutes wash-up time before lunch and 10 minutes before tour end (this group is said to include all individuals who qualify for a work clothes allowance under the Work Clothes Program set forth in Article XXVI, Section 5 of the National Agreement); (2) all remaining Mail Handlers should receive 5 minutes of wash-up time before lunch and tour end; and (3) there should be recognition in the local agreement of the continuing right of any individual employee to file a grievance in respect to wash-up time under Article VIII, Section 9.

The Postal Service replied that it had offered (and was granting) wash-up time to all Mail Handlers working in the truck terminal and in the "bumming" operation. It urged that all other Mail Handlers enjoyed adequate protection under Article VIII, Section 9; enabling them to obtain wash-up time on any given day on an as-needed basis. It found support for its position in recent decisions by Arbitrator Richard Mittenthal, involving employees represented by the American Postal Workers Union in the Houston, Texas, and Tampa, Florida Post Offices. It particularly emphasized the following passages from Arbitrator Mittenthal's Opinion in the Houston case:

"The Local Union's case has a number of serious weaknesses. To begin with, its proposal rests largely on the belief that 'all work in the Postal Service is to one degree or another dirty enough' to justify a contract provision which gives 'everyone ... a right to ... wash up before they ... eat [or] leave for the day.' But that belief is not borne out by the evidence. There are numerous jobs in the Clerk craft - for example, Clerk-Stenographer or Personnel Clerk - which could hardly expose anyone to 'dirty work' or 'toxic materials.' Similar observations could be made regarding the other crafts. For instance, the Special Delivery craft, apart from occasionally servicing vehicles at the start of a tour, is not ordinarily subjected to any 'dirty work' or 'toxic materials.' To give these employees a fixed wash-up period before lunch and before the end of a tour as a matter of contract

right would be to provide them with a benefit they do not appear to need. Moreover, such a benefit would allow employees to receive this wash-up period without regard to whether they perform 'dirty work or work with toxic materials.' That result would conflict with the plain language of Article VIII, Section 9 of the National Agreement. The arbitrator should, where possible, seek to avoid any such conflict. For Article XXX states that 'no local memorandum of understanding may be inconsistent with or vary the terms of the 1973 National Agreement.'

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"The fact is that employees get dirty* on some jobs but not on others. Those who become dirty are given wash-up time. Those who don't have no need for wash-up time. This concept is incorporated into the National Agreement through Article VIII, Section 9, '... [Local Management] shall grant reasonable wash-up time to those employees who perform dirty work or work with toxic materials.' Any disputes over the application of this provision - whether particular work is 'dirty' or whether a particular

* "By the term 'dirty', I include exposure to 'toxic materials.'

wash-up period is 'reasonable' - can be resolved through the grievance procedure. Thus, a mechanism is available for determining the precise scope of the wash-up time benefit on a case-by-case basis. That is the only way a question of this kind can be confidently answered. The Local Management proposal, providing for wash-up time only as a matter of actual need, will permit full exploration of this issue in light of specific work situations.

"There was good reason for the national parties to couch wash-up time in terms of the particular work being performed by a particular employee. For this subject does not lend itself to an all-encompassing generalization. To hold, as the Local Union urges, that all employees must receive a wash-up period before lunch and before the end of a tour is to ignore the many differences which exist in any post office. Each craft normally encompasses a variety of jobs; each job includes a variety of possible assignments. Hence, exposure to 'dirty work' or 'toxic materials' is not ordinarily a craft-wide phenomenon and not necessarily a job-wide phenomenon. It is the individual employee's situation, his specific work tasks in a specific area, which determines whether he is entitled to wash-up time. The Local Union's general proposal for all employees would destroy these crucial distinctions. The Local Management's

proposal preserves these distinctions by basing wash-up time on actual need as revealed by a specific set of circumstances.

"Perhaps there are jobs, outside the Maintenance craft, which are sufficiently dirty for sufficiently extended periods so as to justify a fixed wash-up period before lunch and before the end of a tour. But, on the present state of the record in this case, there is simply no evidence upon which one could confidently make such a determination.

"For these reasons, I find that the Local Union has not justified its demand for a contract clause which would give all employees a wash-up period, as a matter of right, before lunch and before the end of a tour. The Local Management's proposal is far more compelling in terms of the language of the National Agreement, the past administration of the wash-up time provision, and the actual needs of Houston Post Office employees."

(Underscoring added.)

EVIDENCE AND ARGUMENT1. Mail Handlers

The Union brief revises its earlier proposal so as to seek 10 minutes wash-up time for all Mail Handlers at Merrifield both before lunch and tour end, plus such additional time as the Impartial Chairman might find justified by the evidence. It also seeks a provision that individual Mail Handlers may file grievances under Article VIII, Section 9, as to individual instances involving need for emergency wash-up.

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The Mail Handlers see a basic inconsistency between the approach of two Postal Service Arbitrators who, between them, have issued the five earlier decisions dealing with wash-up time. As opposed to Arbitrator Mittenthal's Opinions, cited by the Postal Service, the Union stresses three Opinions by Arbitrator Allan Dash in which various groups of employees represented by the APWU were granted wash-up periods varying from 5 to 10 or 12 minutes at various locations.

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The Union urges that Arbitrator Mittenthal erred in suggesting that actual need for wash-up time must be demonstrated for each and every job for which wash-up time is granted, on the basis of exposure to dirt or toxicity. In its view the additional wash-up periods to be established through local negotiations under Article XXX cannot be limited to only those individuals who are entitled to receive wash-up time in specific instances, or on specific jobs, by virtue of Article VIII, Section 9. The Union suggests that this provision is designed primarily to deal with emergency wash-up, when an employee unexpectedly comes in contact with toxic or unusually dirty

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materials during the course of a work tour. In contrast, it says, Article XXX, Paragraph B-1 deals with "institutionalized or non-emergency wash-up time," such as an employee would desire under the dictates of good health and good sense.

Basically the Union believes that the frequent handling of mail sacks warrants wash-up time for substantially all Mail Handlers because sacks never are cleaned and soon become inherently dirty or toxic. It stresses that Mail Handlers in four major Postal facilities which it deems comparable (Richmond, Washington, Prince Georges, and Baltimore) routinely enjoy wash-up time prior to lunch and tour end either under local agreement or established practice. In many other facilities under the jurisdiction of Local 305 the Mail Handlers enjoy similar wash-up periods, it is said, and no problems have been experienced elsewhere in the administration of Article VIII, Section 9. The Mail Handlers also place considerable weight on an argument that most Mail Handlers are entitled to a work clothes allowance, which is said to have been granted under Article XXVI, Section 5 because these employees perform "dirty" work. Thus it characterizes the agreement of the Postal Service to provide such employees a uniform allowance as an "admission" that their jobs are "dirty" for purposes of the present case. The Union also stresses that the Postal Service already has agreed that APWU represented Clerks in Operations 010, 020, and 200 at Merrifield are to receive 5 minutes wash-up time before lunch and tour end.

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2. Postal Service

The Postal Service brief suggests that this case should be decided by directing inclusion in the local agreement of a clause "essentially incorporating the provisions of

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the National Agreement including the right to grieve regarding any problem of application" of Article VIII, Section 9. In developing its argument to support this conclusion, it urges that there are two basic issues to be decided here: (1) whether the Mail Handlers' work is "dirty or toxic" within the meaning of Article VIII, Section 9, and (2) if any Mail Handler's work is dirty or toxic, whether this requires a clause guaranteeing a minimum amount of wash-up time each day.

The Service suggests that the interplay between Article XXX and Article VIII, Section 9, clearly restricts the scope of local bargaining concerning wash-up time to only those individual employees who are shown to perform dirty or toxic work. This, it says, was the holding of Arbitrator Mittenthal in both the Tampa and Houston wash-up time cases. Thus it urges that any wash-up time provision which does not conform with the standard of Article VIII, Section 9 as to all individual employees involved would be inconsistent with the National Agreement and proscribed under Article XXX, Paragraph B.

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The Service also contends that most Mail Handler assignments are similar to mail handling performed by "all craft employees including Clerks and Carriers who are not given regular and automatic wash-up." It particularly urges that those Mail Handlers who operate Mark II canceling machines or Sack Sorting Machines, or who perform culling work, are not exposed to dirty or toxic conditions. It goes further, however, in holding that the regular handling of mail sacks is not necessarily dirty. Even if it were, it notes that the Mail Handlers may use work gloves and this is said to reduce the exposure to dirt.

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The Service denies that its agreement to grant a work clothes allowance to certain Mail Handlers (under Article XXVI, Section 5) is relevant. This program, it says, essentially was designed primarily to provide some degree of parity for such employees, who are not entitled to uniforms at Postal Service expense.

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In the Postal Service view, moreover, Article XXX, Paragraph B-1 was adopted only to permit local parties to reach agreement where there had been some difficulty in applying Article VIII, Section 9, so as to obviate repetitious filing of grievances. There having been no such grievances at this Facility, the Service can see no possible support for an overall wash-up time provision. It denies the relevance of claimed wash-up practices in other Postal facilities, on the basis that local implementations necessarily are developed in response to the specific circumstances prevailing in each given facility. Buildings differ, equipment differs, wash-up facilities differ, and there are varying practices as to coffee breaks, personal relief periods, and other relevant conditions. Even if practices in other facilities were relevant, it stresses that among 33 local agreements negotiated with the Mail Handlers in the Eastern Region, only 18 refer to wash-up time, while 15 are silent on the subject. In only 7 such agreements are 5-minute wash-up periods specified.

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Although the Clerks in Operations 010, 030, and 200 at this Facility have been granted wash-up time, the Service suggests that there is no evidence of any similarity between the work of these Clerks and that of Mail Handlers in the same Operations. Even if there were some basis for a wash-up provision for Mail Handlers here, the Service urges that no more than 5 minutes could be justified under the present evidence.

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FINDINGS

Determination of whether regular wash-up periods are warranted for given groups of employees under Article XXX, Paragraph B-1, properly can be made only on the specific facts of each case. The nature of the work performed, the conditions under which it is performed, the availability of wash-up facilities, the nature of local practices or understandings, and many other relevant factors usually vary from one case to another. Arbitral decision of any single such case, therefore, is not likely to be very helpful in deciding a case involving other employees at another location.

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The presentations here, however, require discussion of a broad issue concerning the permissible scope of local agreements under Article XXX, Paragraph B-1. The Postal Service views two earlier decisions under this provision as establishing that no regular daily wash-up period can be granted except upon a showing that (1) "every" Mail Handler job involves dirty or toxic work and that (2) "such work is of such steady and continuous degree that wash-up on a regular basis is required." To provide regular wash-up periods for any individual employee whose work does not always meet this rigid test, it implies, would be "inconsistent with" Article VIII, Section 9 of the National Agreement and thus not permissible under Article XXX, Paragraph B.

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Initially, this argument seems to rest upon an unduly narrow reading of Article VIII, Section 9 itself, since some exercise of judgment and discretion in practical application of this Section manifestly is required. More critically, however, the argument seems to overlook the normal meaning of

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the word "additional," as used in Article XXX, Paragraph B-1. This surely authorizes the negotiation of something more than the minimum requirements of Article VIII, Section 9. Finally, the Service argument seems to overlook the plain administrative desirability of dealing with wash-up periods on the basis of reasonable employee groupings, rather than laboriously exercising discretion on an individual and day-to-day basis.

Language from the Opinions of Arbitrator Mittenthal, cited by the Service to support its argument on this point, cannot be regarded as persuasive here. In both cited cases, employees in the APWU bargaining unit were involved, not Mail Handlers. There is a substantial difference in the degree of potential exposure to dirt, as between the various groups of employees in these two separate bargaining units. On the face of the two cited Opinions it seems plain that they were addressed to the facts before Arbitrator Mittenthal and realistically cannot be projected into radically different fact situations. Indeed, some of the cited passages in these Opinions hardly would have been included had the Arbitrator there been faced with evidence such as in the three cases decided by Arbitrator Dash. 24

The Impartial Chairman fully agrees, of course, that regular wash-up periods properly may be granted only when there is a reasonable showing of actual need therefor. Thus the bare fact that some jobs may have been awarded a work clothes allowance under Article XXVI, Section 5, does not establish a controlling employer admission that every such job was "dirty" for purposes of granting wash-up periods. The work clothes allowance under Article XXVI, Section 5 is granted because work clothes are deemed "essential" for certain work in certain areas, without specific reference to exposure to dirt or toxic conditions. 25

In determining the merits of the present case, one key fact is that Management already has granted regular wash-up periods to Clerks in Operations 010, 020, and 200 at Merrifield. Another key fact is that the great bulk of the Mail Handlers here normally are called upon to handle sacks to some significant extent during each tour. This may vary as between one work assignment and another, but each day substantially all of the Mail Handlers may be reassigned to various duties involving some handling of sacks. Observation of typical Mail Handler work in this Facility confirms that the exposure to dirt in the normal course of a work tour is sufficient to warrant reasonable wash-up periods for nearly all of the Mail Handlers.

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It is true, as the Service urges, that the work on several assignments may not normally require the handling of sacks to the same extent as is true for the remaining Mail Handlers. These assignments include: (1) Mark II (canceling) Machine Operators, (2) Sack Sorter Operators, and (3) employees culling parcel post and other mail. As the work actually is performed in this Facility, however, the Sack Sorter Operators, and those who may cull mail, in fact often are assigned to handling and dumping of sacks. The Mark II Operators, moreover, work in Operation 010, where the Clerks already have been granted wash-up time. From an administrative viewpoint it would make no sense to grant wash-up periods to all other Mail Handlers at Merrifield and to all Clerks in Operations 010, 020, and 200, while denying it to Mark II Operators.

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In balance, therefore, the Impartial Chairman concludes that all Mail Handlers at the Northern Virginia Sectional Center Facility are entitled to wash-up time before lunch and tour end.

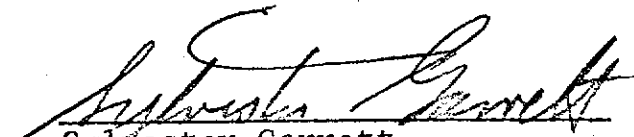
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It would seem from the available evidence that 5 minutes before lunch and 5 minutes before tour end should be adequate for most of the Mail Handlers. It is argued, however, that those Mail Handlers working primarily on the docks and in the bumming operation should receive more wash-up time because of the nature and location of their work. The Impartial Chairman does not so find. In any reasonable grouping of employees for purposes of determining appropriate wash-up periods there are bound to be some individuals who may have greater need than others, either on a day-to-day basis, or over longer periods. Decent respect for administrative convenience requires some averaging of conditions for purposes of dealing with a matter of this sort. Thus the Chairman will not award more than 5 minutes wash-up time to Mail Handlers who work primarily on the docks or in the bumming operation.

Finally, there is no apparent need to direct inclusion in the local agreement of a provision to the effect that Article VIII, Section 9 will continue to apply in any instance where special wash-up time may be required on an emergency basis. No local agreement would seem necessary for this purpose since Article VIII, Section 9 continues in effect at all times.

AWARD

The October 3, 1973 Agreement between the parties shall include a provision that all Mail Handlers at this Sectional Center Facility shall receive 5 minutes wash-up time before lunch and before tour end.


Sylvester Garrett
Impartial Chairman