C377

ARBITRATION AWARD

December 12, 1983

UNITED STATES POSTAL SERVICE

-and-

Case No. H1C-3U-C-10899

AMERICAN POSTAL WORKERS UNION

Subject: Exercise of COLA Roll-in Option - Supervisor Returning to Bargaining Unit

Statement of the Issue: Whether a supervisor who could not exercise the COLA roll-in option by the deadline date because of his supervisory status can later do so when he returns to the bargaining unit?

Contract Provisions Involved: Article 1, Sections 1 and 2; Article 9, Section 3; and Article 15, Section 4A(6) of the July 21, 1981 National Agreement.

Appearances: For the Postal Service, Anthony W. DuComb, Attorney; for the APWU, Mike Benner, Director, Special Delivery Division.

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's refusal to allow a former supervisor, upon his return to the bargaining unit, to exercise the COLA roll-in for purposes of optional retirement. The APWU insists this refusal was a violation of Article 9, Section 3B of the 1981 National Agreement. The Postal Service disagrees.

Full-time employees in the APWU bargaining unit are salaried. Their pay depends on their grade level and the step increases they have received within their grade. A basic salary has been negotiated for each grade and step. The employee also is entitled to a cost-of-living adjustment (COLA) which, when added to the basic salary, produces a base salary. Retirement pay is calculated from the basic salary. COLA is not included in this calculation. Part-time employees are paid also by grade and step but because they are hourly-rated their wage is some fixed proportion of the negotiated salaries and COLA.

By the end of the 1978 National Agreement, COLA amounted to $3619 per year. Article 9, Sections 3A and 3B deal with the question of how that accumulated COLA should be handled under the 1981 Agreement. Section 3A provides that the $3619 "shall be continued as part of the base salary...for the duration of this [1981] Agreement, and shall be taken into account only in computing base rates, overtime and shift premiums, and in determining call-in pay, leave pay and holiday pay but shall not become a fixed part of the...Basic Salary ...applicable to this Agreement." In short, COLA was not to be taken into account in calculating retirement pay.

However, Section 3B states the following exception with respect to retirement pay:

> "B. COLA Roll-in for Employees Eligible for Optional Retirement
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> 1. In the first full pay period in November 1981, the cost-of-living adjustment of $3619 per annum, with proportional adjustment to hourly rate employees, which was provided in Article 9, Section 3, of the 1978 National Agreement, shall become part of the basic annual salary set forth in Section 1, above, only for, and at the option of all employees who are presently eligible for optional retirement or who will become eligible for optional retirement within six years from the effective date of this Agreement.

2. Employees exercising their option under Subsection B, above, must do so in writing by October 15, 1981." (Emphasis added)

It should be noted that Article 9, Section 3C calls for this COLA, this $3619, to be rolled in to the basic salary in October 1984 "for all employees not covered by Subsection B or who have not exercised the option set forth in Subsection B, above."

The present dispute concerns L. J. Stephens in the Huntsville, Texas Post Office. He was hired on May 1, 1955. He worked as a Distribution Clerk in the APWU bargaining unit until 1970 when he chose to become a supervisor. He returned to the bargaining unit in 1978 but again chose to move to a supervisory position in August 1980. During this last supervisory stint, he was fully aware of the terms of Article 9, Section 3B. Indeed, he was responsible for counselling employees with respect to whether or not they could elect a COLA roll-in under Section 3B. He knew then that, as a supervisor, he had no right to this COLA roll-in option.

Stephens was at that time, October 1981, covered by the Executive & Administrative Salary (EAS) schedule. That schedule had its own distinct grade, step level and COLA figures. His basic salary was increased by a COLA roll-in of $1955 on November 14, 1981. He received other benefits as well which applied only to EAS personnel. His base salary was then $23828. Because of "personal reasons", he once again chose to return to the bargaining unit on May 1, 1982.* He became a Distribution Window Clerk. He currently plans to retire on or about May 1, 1985.

When Stephens returned to the unit in May 1982, he sought the COLA roll-in provided by Article 9, Section 3B. Had he been in the bargaining unit in October 1981, he would have been entitled to elect the COLA roll-in. The Postal Service denied his request. Its position was that the election had

* He testified at the arbitration hearing that the "pressures" of increased supervisory responsibility, given his concern about his "health", prompted this return to the bargaining unit.

to be made by October 15, 1981 and that Stephens was not then eligible for such an election because of his supervisory status.

A grievance was promptly filed. It conceded that "Stephens was not eligible to elect Art. 9 Sec. 3B option as supervisor..." but urged that he nevertheless "should be allowed that option...as soon as returning to craft as was afforded all other craft members on Sept. 15 thru Oct. 15, 1981." It requested that Stephens' "COLA be rolled in retroactive to 5-1-82 effective date...of [his] return to Clerk craft."

DISCUSSION AND FINDINGS

The issue in this case is extremely narrow. The parties agree that Stephens had no right to exercise the COLA roll-in option in October 1981 because he was then a supervisor. And supervisors, being excluded from the bargaining unit, could not invoke Article 9, Section 3B rights. The question that remains is whether Stephens could, upon his return to the bargaining unit in May 1982, exercise this COLA roll-in option.

The answer is found in Article 9, Section 3B2: "Employees exercising their option under Subsection B, above, must do so in writing by October 15, 1981." This language is clear and unambiguous. It provides a deadline for the exercise of the COLA roll-in option, October 15, 1981. No provision was made for the exercise of this option at a later date. The APWU seeks to attach an exception to Section 3B2 which would permit supervisors returning to the unit to exercise this option whenever they return. But there is no sound basis for creating such an exception.* Article 15, Section

* I recognize that the Postal Service deviated in two situations from the October 15, 1981 deadline. One involved employees who were military retirees and were receiving a military annuity. Some confusion with respect to the circumstances under which they might credit their military service towards Postal Service retirement prompted Management to permit certain individuals to exercise the COLA roll-in option a week or two after October 15, 1981. The other situation was more complicated. The postal bulletin originally announcing the COLA roll-in option included a statement about annuity levels for employees who die or take a disability retirement without having exercised this option. The bulletin's statement was incorrect. Because of this mistake, employees were allowed to reconsider their earlier choice and make another election by December 31, 1981. However, neither of the situations described above is relevant to Stephens' case. And neither suggests that the parties contemplated other deviations based on later equitable claims.

4A(6) establishes strict limits on my authority. It states that "in no event may the terms and provisions of this Agreement be altered, amended, or modified by the arbitrator." The APWU's argument, if accepted, would modify the terms of Article 9, Section 3B2.

The real basis for the APWU grievance is its belief that a "literal reading" of Article 9, Section 3B2 will cause an "inequity to the grievant." It is true that Management's refusal to allow Stephens the COLA roll-in option will result in a reduction in his retirement income assuming he carries out his intention to retire in May 1985. But whether this is an "inequity", under the circumstances of this case, is far from clear. The fact is that Stephens was not forced to return to the bargaining unit in May 1982 against his will. He chose to return for "personal reasons." Although he alleged at the hearing that these "reasons" were somehow connected with concern for his "health", he produced no evidence that he suffered from poor health. He had returned to the bargaining unit once before in 1978 and obviously knew he could return again in October 1981 to take advantage of the COLA roll-in option. He was aware of the benefits of this option inasmuch as he was counselling employees at that time about their rights under Article 9, Section 3B. He chose, however, to remain in supervision. Had he stayed in supervision instead of returning in May 1982, he apparently could have retired in May 1985 with benefits even greater than he would enjoy as a bargaining unit employee with the COLA roll-in. The alleged "inequity" is not at all as compelling as the APWU would have me believe.

In any event, equity cannot always move the arbitrator in resolving a dispute. It is true that when contract language is unclear, equitable considerations may be brought into play in determining how that language may best be construed. But here there is no uncertainty. Article 9, Section 3B2 contains an unequivocal deadline. Some minor deviations in the deadline took place but they have no relevancy whatever to Stephens' situation. There is simply no room for the APWU equity claim in face of the October 15, 1981 deadline mandated by the National Agreement.

For the reasons set forth in this opinion, I find that

the Postal Service has not violated Stephens' rights under Article 9, Section 3B.*

AWARD

The grievance is denied.

Richard Mittenthal

Richard Mittenthal, Arbitrator

* The APWU urged in its post-hearing brief that if the COLA roll-in under Article 9, Section 3B was denied, the arbitrator should "require the Employer to roll the EAS COLA of $1955 back into the grievant's basic annual salary, retroactive to the first day of his voluntary return...as a bargaining unit employee." This claim ignores the fact that the EAS and APWU wage schedules are separate and distinct. A bargaining unit employee cannot assert rights to a COLA roll-in which applies only to EAS personnel.