HOLIDAY SCHEDULE

ARTICLE XI, SECTION 6
ARTICLE XXX, SECTION B.13
ARTICLE VIII, SECTION 5C(2)

C# 02975

An Arbitration in the Matter of:

THE UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

GRIEVANCE NO. NC-C-6085

W. LITTRELL
KANSAS CITY, MISSOURI

ISSUED: August 16, 1978

THE GRIEVANCE

This grievance arose in the Kansas City, Missouri Post Office when the Postal Service failed to assign the Grievant to work on a holiday for which he had volunteered to work. The parties agreed to present the issues involved to the Associate Impartial Chairman on the basis of the following stipulation:

THE ISSUE:

> "'Have the parties agreed upon a remedy applicable to grievances which arise under Article XI, Section 6, of the 1973 or 1975 national agreement, when the Postal Service admits that an employee who volunteered to work a holiday or a day designated as a holiday was erroneously not scheduled to work; and if not, what, if any, is the appropriate remedy?'"

It was agreed that the grievance would be argued on the basis of the stipulation rather than the facts surrounding the specific incident in the Kansas City Post Office.

HEADING: INTERPRETATION N/A ARTICLE XI, SECTION 6, "HOLIDAY SCHEDULE"

BACKGROUND

The issues center around the language of Article XI, Section 6 of the 1973[1]/ National Agreement which reads:

> "Section 6. Holiday Schedule. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Wednesday preceding the service week in which the holiday falls. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so. An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based on an extreme emergency situation and is excused by the Employer."

As stated in Section 6, the priority sequence of assignment on a given holiday, for purposes of this case, can be taken to be as follows:

(a) all casuals and part-time flexibles are to be utilized to the maximum extent possible;

(b) all full-time and part-time regulars with needed skills who wish to work on the holiday shall be afforded the opportunity to work;

(c) those full-time and part-time regular employees who cannot "be spared" from work on the holiday.

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[1]/ The language of this Section was not changed in the 1975 negotiations.

This effectively establishes three categories of employees for use in performing work on holidays, but does not spell out the order in which individual employees are to be selected within each category. This matter is left to local negotiations and is a proper subject for negotiations under Article XXX of the 1973[2/] National Agreement which reads in relevant part:

> "ARTICLE XXX - LOCAL IMPLEMENTATION
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> A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1973 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below.
>
> 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:
>
> . . .
>
> 13. The method of selecting employees to work on a holiday.
>
> . . ."

Local agreements are reported to vary considerably dealing with this matter. Obviously, no local agreement can vary the order of selection as among the three categories set forth in Article XI, Section 6. But in each such category there are important practical

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[2/] For purposes of Item 13, only the implementation dates were changed in the 1975 National Agreement.

problems to determine which employees shall be assigned first -- i.e., as between (1)"casuals" and "flexibles"; (2)"part-time" and "full-time" regulars; and (3)in determining how to select employees who cannot be spared. These intensely practical problems seemingly are left to the local parties under Article XXX.

In April, 1975, the parties were faced with "10 or 15" grievances under Article XI, Section 6. James Rademacher, President of the National Association of Letter Carriers, and David Charters, Director of the Office of Grievance Procedures, met to discuss the grievances. As a result of those discussions, an informal, oral arrangement was made to categorize the grievances and dispose of them. The arrangement was said to be as follows[3/]:

> "The agreed remedy . . . is that the aggrieved employee who should have been selected to work the holiday . . . will be compensated at the straight time rate for one-half of the hours involved."

This arrangement apparently related only to full-time regular "volunteers" under the second category in Article XI, Section 6.

It appears that Rademacher and Charters applied it until October, 1975 when Charters transferred to the Central Region. The parties assiduously avoided arguing details of individual settlements on the basis that each settlement was non-citable and non-precedential. The Postal Service stresses that such an approach was part of the arrangement with Rademacher. Details of the nature and number of settlements are, therefore, not available. Even though Charters was

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3/ From the Postal Service Post-Hearing Brief.

no longer available to meet with Rademacher in regard to the arrangement, his successor issued the following memorandum in July, 1976:

"DATE: 7/26/76

SUBJECT: NALC Holiday Grievance Settlements

General Managers, Labor Relations
All Regions

In April, 1975, a settlement agreement was reached with the NALC relative to the remedy for 'pecking order' violations regarding the scheduling of full time employees to work on holidays pursuant to the provisions of Article XI of the National Agreement. These grievances have previously only been settled at Step 4 or in pre-arbitration decisions. Authorization is now being granted to settle holiday scheduling violations at Step 3 regarding NALC grievance cases in accordance with the instructions provided below.

The agreed remedy, which is provided on a non-precedent and non-citable basis, is that the aggrieved employee who should have been selected to work the holiday pursuant to the National Agreement or local agreement will be compensated at the straight time rate for one-half of the hours involved. This remedy does not apply to an aggrieved employee who actually worked.

Mr. Rademacher has delegated authority to the Union officials at the regional level to settle grievance cases as outlined above.

/s/
John D. Mitchell, Director
Office of Grievance and Arbitration
Labor Relations Department

cc: Regional Directors, E&LR
All Regions
James Rademacher"

There is no reason to doubt that this memorandum accurately reflects the arrangement developed with Rademacher. Nevertheless, there is no evidence that Rademacher subsequently delegated such authority to Union officials as spelled out in the memo nor is there evidence that any Union Representative, other than Rademacher, actually dealt with such a grievance. In any event, incoming NALC President, Joseph Vacca, faced with the Kansas City grievance, refused to settle it on the basis of the Rademacher-Charters arrangement.

The Postal Service, in the present case agrees that the Kansas City Post Office did not follow the agreed sequence established under Article XI, Section 6 within the category of employees' volunteering for holiday work.

CONTENTIONS

The Union argues that it is not bound by the Rademacher-Charters arrangement. It says that the arrangement was used by the two men to settle grievances on a non-citable, non-precedential basis and the arrangement is not necessarily binding on the Union.

In regard to the remedy, the Union maintains that, no matter the "pecking order" established by local agreement within the volunteer category, an employee has the clear right to volunteer for holiday work and, all other things being equal, he thereby becomes entitled to be assigned to work on that holiday in the proper order. When

another employee is assigned to work the holiday in favor of the employee with a prior right, the Postal Service is in violation of the National Agreement and should make up to the employee that which he lost; i.e., the additional pay he would have received for working the holiday had he been given his proper opportunity to work.

The Union says that an employee volunteers to work a holiday for the pay involved and, to the extent that he is improperly denied that holiday assignment, he suffers a loss of the pay which he volunteered, and thereby gained a right, to earn.

The Postal Service maintains that the Rademacher-Charters arrangement, even though unwritten, is a binding agreement and when the parties entered into the agreement they contemplated that it would cover not only current but also prospective holiday work grievances. It says that such arrangements are commonplace in settling groups of grievances with common elements and that negating the Rademacher-Charters agreement would undermine future arrangements to handle grievance problems.

In regard to the remedy, the Postal Service proposes that, if it is determined that no binding agreement arose between Rademacher and Charters, the parties should be instructed to work each grievance out on a case-by-case basis since, "these matters are matters inherently in which a right arises, if at all, only under a local memorandum (of) understanding."[4/]

[4/] Transcript, p. 15.

It says further that, if the Associate Impartial Chairman rejects that approach, it would be appropriate that no penalty be assessed and the offending Post Office be informed that it should not violate Article XI, Section 6. The Postal Service claims that the purpose of Article XI, Section 6 is to provide, to the extent possible, full-time and part-time regular employees with the holiday off work. It says that, to the extent that an employee who volunteered to work the holiday and due to Postal Service error did not work the holiday, he was nevertheless given the full measure of the "day off" principle set out in the National Agreement.

The Service denied that any right to be paid for the missed holiday assignment accrues to a properly sequenced volunteer. It claims that, at best, he should be offered an assignment to work a future holiday since, in the first instance, he suffered no loss. For this proposition the Service relies on the language of the National Agreement set out in Article VIII, Section 5,C(2) which deals with the distribution of overtime among City Letter Carriers on a quarterly basis.

FINDINGS

The first issue here is raised by stipulation, and no elaboration is necessary concerning the facts surrounding the Kansas City grievance. The Postal Service agrees that a local violation of Article XI, Section 6 occurred when holiday work was given to another

employee when the Grievant had established a prior right to that work.

In dealing with such grievances, Rademacher and Charters fashioned a formula which apparently rested on their respective evaluations of the language of Article XI, Section 6. Their oral arrangement obviously reflected a compromise (designed to dispose of grievances in hand) because Article XI, Section 6 does not precisely spell out a remedy for such an infraction. The view of the Postal Service that such an oral, informal arrangement must be observed in perpetuity is not sound. The oral arrangement was just that -- an arrangement. It represented a transitory compromise that arose from a problem under Section 6, but the application of the compromise was on a "non-precedent and non-citable basis."

The Postal Service's argument, that if a right exists it arises only under the local memorandum of understanding, is not valid. Article XXX, Item 13 refers only to the method of selecting employees to work on a holiday within the three categories clearly established in Article XI, Section 6 since the local parties obviously have no authority to change the National Agreement. There is nothing in Item 13 to suggest the need for local agreement to remedy violations of Article XI, Section 6. The parties made a good faith effort to provide certain rights to a holiday volunteer when they negotiated Article XI, Section 6. To maintain that the language, "shall be afforded the opportunity to work," is meaningless is to fly in the face of that good faith effort. The Local Memorandum of Agreement establishes only the "pecking order" among employees to whom that right

accrues. Certainly, there would have been no reason for Rademacher and Charters to enter into the "non-precedential, non-citable" compromise if the local parties had available to them the mechanism of Article XXX to resolve such issues. Under these circumstances, to remand each grievance to be reviewed in the light of the Local Memorandum of Understanding would be pointless.

The negotiators in the 1975 negotiations were aware of the problem but made no change in Article XI, Section 6 to reflect the informal case-by-case compromise. Certainly, a permanent arrangement acceptable to principals for both parties who were on the scene during the negotiations would have received consideration for inclusion in the National Agreement. Perhaps the most important factor that made the arrangement exclusively that of Rademacher and Charters was the method by which it was applied. Rules for categorizing overlooked holiday volunteer grievances are not in evidence. If there were any, they apparently resided with Rademacher and Charters. Moreover, the parties respected the non-citable and non-precedential nature of the individual settlements. No light is shed on the criteria that Rademacher used to determine whether a grievance fell within the purview of the arrangement. Given the oral and informal nature of the arrangement and its case-by-case application of a non-citable, non-precedential basis, it cannot now be held to constitute a binding agreement.

FINDINGS: The second question, under the stipulation, is to determine the appropriate remedy for violation of Article XI, Section 6. The Postal Service suggests that the affected employee be given the next

opportunity to work a holiday within the quarter much as the distribution of overtime for City Letter Carriers is handled. But holiday work problems are not similar to overtime problems. A holiday not worked is lost forever. Overtime situations occur frequently and those on the "overtime desired" list have an opportunity, over the course of a calendar quarter, to work a relatively equal number of overtime hours. Moreover, an employee may desire to work on Memorial Day but not on Independence Day or some other holiday.

The Service suggests that the overlooked holiday volunteer is no worse off than other employees who do not work on the holiday since the purpose of Article XI, Section 6 is to maximize the number of employees who are off on the holiday. This argument is not persuasive when it is considered that the overlooked holiday volunteer elected not to be off on the holiday and the employee who worked in his stead was covered by the same language.

Additionally, the Service's argument that the overlooked holiday volunteer lost nothing since he did not work the holiday and should, therefore, not be entitled to payment for such hours, has no merit. Such a construction of Article XI, Section 6 would effectually negate the part of that Section pertinent to this case and any local agreement worked out in accordance with Article XXX,(B)13. Clearly, the overlooked holiday volunteer suffered the loss of pay for the hours that he would have worked except for Postal Service error.

The thrust of Article XI, Section 6 is to permit the maximum number of full-time and part-time regulars to enjoy holidays off work if they do not desire to work. It also makes clear that employees

who are not scheduled for the holiday (or are scheduled off) have a right to volunteer to work on that holiday. Once a volunteer is reached (in whatever order the parties may have agreed locally), he is entitled to be assigned to work the holiday if his services are required. Here the Postal Service admits that it violated Article XI, Section 6 by failing to work the grieving employee on a holiday according to his rank in the volunteer category.

There is no purpose to be served by instructing the parties (as the Service suggests) to deal with each incident on a case-by-case basis since this would simply evade the issue raised by the parties' stipulation. Thus the only reasonably appropriate remedy available, in the light of the plain language of Article XI, Section 6, is to require that the overlooked holiday volunteer be compensated for the total number of hours lost.

AWARD

The oral, informal, case-by-case, non-precedent technique used to remedy individual grievances under Article XI, Section 6 of the 1973 National Agreement is not binding for cases other than those actually settled thereunder. The appropriate remedy now is to compensate the overlooked holiday volunteer for the total number of hours of work lost.

Paul J. Fasser, Jr.
Associate Impartial Chairman

APPROVED:

Sylvester Garrett
Impartial Chairman