

C# 03288

An Arbitration in the Matter of:)
THE UNITED STATES POSTAL SERVICE)
and)
THE NATIONAL ASSOCIATION OF LETTER)
CARRIERS)

Grievance No. NB-S-6859
C. H. HANKERSON
FT. LAUDERDALE, FLORIDA

ISSUED: JUN 30 1977

THE GRIEVANCE

In this Grievance, the Union protests the action of the Postal Service when it permitted a city letter carrier, who was temporarily detailed to a supervisory position, to bid and to be awarded a route other than the route that he occupied prior to the detail.

BACKGROUND

C. H. Hankerson, a city letter carrier in the Fort Lauderdale, Florida Post Office, was detailed as a Foreman of Delivery beginning May 17, 1975. An appropriate Form 1723 - Assignment order was completed. At the beginning of each succeeding pay period a new Form 1723 was executed, until 8/30/75 when the final Form was completed covering the period 8/30/75 through 9/12/75. In each instance, the stated reason for the Hankerson detail was that the permanent Foreman of Mails was assigned some other Supervisory position.

Hankerson's assignment is referred to as a 204(b) assignment.

On July 10, 1975, the Fort Lauderdale Post Office posted an advertisement for a number of routes one of which was Route Number 1332. During the 10-day bidding period - July 10, 1975 to July 20, 1975, Hankerson bid on Route 1332. He was judged the senior qualified bidder and was awarded the Route effective upon completion of his 204(b) detail.

There are, understandably, few instances where matters involving temporary transfers into supervisory positions are dealt with in the National Agreement. Article I of the 1973 National Agreement reads in pertinent part:

"ARTICLE I - UNION RECOGNITION

Section 1. Unions. The Employer recognizes each of the Unions designated below as the exclusive bargaining representative of all employees in the bargaining unit for which each has been certified and recognized at the national level:

National Association of Letter Carriers, AFL-CIO - City Letter Carriers.

. . . .

Section 2. Exclusions. The employee groups set forth above do not include, and this Agreement does not apply to:

A. Managerial and supervisory personnel.

. . . . "

The Postal Service uses the NLRA definition of Supervisor:

"The term 'supervisor' means any individual having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Reference to a detail to a supervisory position first appeared in the Letter Carrier Craft Seniority Article of the 1973 Agreement.

It read:

"ARTICLE XLI - LETTER CARRIER CRAFT

Section 1. Posting.

. . .

2. The duty assignment of a full-time carrier detailed to a supervisory position in excess of 6 months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon return to the craft the carrier will become an unassigned regular."

The following sentence was added in 1975:

"A Letter Carrier temporarily detailed to a supervisory position will not be returned to the craft solely to circumvent the provisions of this paragraph."

During the negotiations leading up to the 1975 National Agreement, the Union made the following proposal on April 2, 1975:

"EMPLOYMENT AS SUPERVISOR

Any employee who is employed as a temporary supervisor or acting temporary supervisor, including but not limited to employees in training in such positions, or any employee employed as a supervisor, when so employed, is excluded from the bargaining units covered by this Agreement.

No bargaining unit employee may be required to accept work as a supervisor or temporary supervisor or acting temporary supervisor."

A form of this proposal survived the give and take of negotiations and, on July 14, 1975, it was included in the letter carrier craft discussions in the following form:

"3. Carriers temporarily detailed to supervisory positions may not bid on any assignment posted for bid in the letter carrier craft."

Written at the end of this item were the words "Check Ratner" and in the margin was a symbol resembling the Greek letter "phi." Letter Carrier President-Elect Vacca who was in charge of the letter carrier craft negotiations testified that the notation "Check Ratner" was a note to himself to discuss again with Union Counsel the proposition that the agreement already effectively contained this prohibition. He stated that Ratner reaffirmed this

proposition and the "phi" symbol was used in his tracking system to indicate that this language was necessary only for clarification.

The proposal went to the main table bargaining but was apparently switched to the language prohibiting the termination of a detail solely to circumvent the six-month limitation. However, Vacca could not testify as to the circumstances since he was not in the main table negotiations in 1975.

Apparently troubled by the problem it was having in regard to details to temporary supervisory positions, the Union changed its constitution in 1976 to exclude such temporary supervisors from membership in the Union.

The Postal Service filed the following Unfair Labor Practice charge against the Union on November 16, 1976:

"Basis of the Charge.

The Union has refused to bargain collectively with the employer, in violation of Section 8(b)(3), concerning the employer's right to promote employees temporarily to perform supervisory duties, by threatening to expel such employees from the Union, by threatening to refuse to process grievances on behalf of such employees, and by threatening to terminate the membership of such employees in the Union's health insurance program in the event they accept such temporary promotions.

The Union, by the aforementioned conduct has violated Section 8(b)(1)(A) in that it has restrained, or coerced employees in the exercise of their section 7 rights.

The Union, by the aforementioned conduct, has violated Section 8(b)(1)(B) in that it has restrained or coerced the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances."

It is to be noted that this Grievance was one of several originally certified to Arbitration alleging the same violation. One is held pending this ruling and the others were settled in the 4th Step on the basis that the temporary supervisors who bid in these situations were on details longer than six months and the Postal Service conceded that their right to bid did not extend beyond six months.

CONTENTIONS

The Union maintains that Hankerson should be removed from the Route 1332 duty assignment and placed in the category of unassigned regular. It requests rulings on two issues:

(a) Are city letter carrier employees of the United States Postal Service, who are detailed temporarily to supervisory positions, known as 204(b) positions, represented by the National Association of Letter Carriers while they are serving in such details?

and

(b) If not, may such 204(b)'s who have served less than six months in their supervisory positions bid upon posted city letter craft assignments while they are serving in such 204(b) supervisory positions?

The Union claims that it is clear that the National Association of Letter Carriers does not represent supervisors. It points to Article I, Section 2, and submits a copy of its original certification to demonstrate that it represents only letter carrier craft employees.

It says that there is no past practice here because the establishment of a past practice is dependent upon a settled construction of an issue put upon the contract by the parties. No such settled construction is put on this issue, it says. It claims that there is no evidence that carriers on detail to supervisory positions were permitted to bid on vacancies in the unit where they were holding duty assignments.

The Union says that its attempts during negotiations to clarify language already contained in the Agreement should not be twisted to indicate that the Union was attempting to achieve a language change through Arbitration that it could not obtain in negotiations.

The Postal Service states the issue not as involving employees who are detailed temporarily to supervisory positions but as employees who are detailed temporarily to supervisory duties. It says that there are a number of reasons why the Postal Service temporarily details bargaining unit employees into supervisory functions. One important reason, it says, is to cover the position when the permanent supervisor is not at work. Another stated purpose is to develop supervisory personnel from among the ranks. Management

maintains that its elaborate system of manning vacant supervisory positions from among the bargaining unit employees is dependent on a program that allows employees to request the opportunity to be selected for the list of supervisory eligibles. An integral part of this program, it says, is the training that an eligible bargaining unit employee receives when he is serving in a temporary supervisory capacity. In addition, it claims, Management gets an opportunity to observe a prospective permanent supervisor when he is on a supervisory detail.

Management contends that the language of Article XLI, Section 1.A.2 is evidence that there was a practice of permitting carriers on supervisory detail to bid on duty assignments in the bargaining unit. Otherwise, it says, there would be no reason for the six-month cut off of the retention of the detailed carrier's duty assignment. It says that he has always been treated as a bargaining unit employee while on supervisory detail and any change would deprive him of considerable rights such as vacation scheduling, the opportunity to promote within his unit, possible loss of a desirable parking place and indeed loss of seniority.

The Postal Service says that any attempt to force carriers on supervisory detail out of the unit would not only work hardship on the employees but would cut their career potential. A very serious and undesirable effect of this restriction, it says, is to discourage qualified employees from taking temporary details as supervisors. That result, it claims, would diminish the effectiveness

and the efficiency of the entire Postal Service.

In any event, it says that the Union is wrongfully attempting to secure through Arbitration something that it could not get through good faith collective bargaining.

FINDINGS

It should be clear at the outset that unilateral action by the Union, in amending its constitution, in no way can operate to change any provision of the National Agreement, or affect the rights of the Postal Service recognized therein. Nor can any such unilateral action affect the exercise of any rights of individual employees which may be protected under applicable law.

The problem here thus is to determine the extent to which a Carrier on legitimate detail to a supervisory position also may enjoy benefits available to members of the bargaining unit. It is clear that the National Association of Letter Carriers does not represent supervisors, as such, and there is no need to elaborate the National Labor Relations Board's negative attitude in regard to the propriety of representation of supervisors and those supervised by the same Union. As noted earlier, the Postal Service accepts the National Labor Relations Act definition of Supervisor.

The Union believes that a bargaining unit employee detailed to a supervisory position has very limited bargaining unit rights. The Postal Service on the other hand maintains that such an employee on

detail is merely performing supervisory duties on a temporary basis and otherwise is no different than any other bargaining unit employee. In its Personnel Handbook, Series P-11, the local managers are given the following instructions:

"535 TRAINING AND DEVELOPMENT

535.1 Development of Category B Candidates*

.12 The needs of the individual candidate should be considered. If performance in the present job needs improvement, the candidate's supervisor should provide coaching, counseling, or other appropriate activity which gives the employee the opportunity to demonstrate improvement. If the employee's capabilities of supervision need strengthening, developmental activities may include pre-supervisory training, experience on detail as a supervisor, or performance of certain supervisory functions. The completion of any pre-supervisory training and evaluation of on-the-job supervisory performance should be considered when the employee is reappraised. (Underscoring added.)

and:

536 DETAIL TO SUPERVISOR POSITION

Within an installation, only an employee in category A or B may be detailed (ordinarily, for a maximum of 6 months) to an initial-level supervisor position for which a register has been established. Exception is a Christmas or an emergency detail of any employee not exceeding 45 days."

*ARBITRATOR'S NOTE: Management ranks Bargaining Unit employees according to their readiness to assume supervisory training or jobs. These rankings are: A - Ready, B - Potential, C - Needs more experience.

Although particulars of Carrier Hankerson's detail to a supervisory position were not completely developed, the nine Forms 1732 covering the period of the detail are revealing. The Form is entitled, "U. S. Postal Service Assignment Order." It contains a space in which this statement is completed: "You are assigned and directed to perform the duties of the following position - Title." All nine Forms had "Foreman of Delivery" written in this space. Another space provided for: "REASON FOR DETAIL." Six Forms showed in that space: "B. Greer detailed to Route Examiner"; one, "B. Greer detailed to 2-12c"; one, "B. Greer detailed to 2-13"; and, one, "B. Greer detailed to Special Delivery."

Under these circumstances, the broad argument of the Postal Service that Hankerson was only performing temporary supervisory duties while still a bargaining unit employee for all other purposes does not hold up. When Hankerson reported for work on May 17, 1975, he reported as a Foreman of Delivery and continued in this supervisory position until September 12, 1975.

The real question is: since Hankerson was not actually occupying a position in the bargaining unit while on supervisory detail, what were his seniority rights in relation to other carriers in the bargaining unit in Fort Lauderdale? The Union already has agreed that his duty assignment would be held open and available to him for up to six months. In addition, if his detail lasts beyond six months, he also has residual rights in the bargaining unit which would guarantee him a position as an unassigned carrier. This has the effect of

positioning him, if he were the only senior carrier so situated, to fill the next vacancy opened for bid. All this seems clearly agreed. In addition, I have a strong impression from the testimony that vacation scheduling practices are not disturbed when a carrier takes a supervisory detail. What other contract rights may be extended to employees in this situation is not clear.

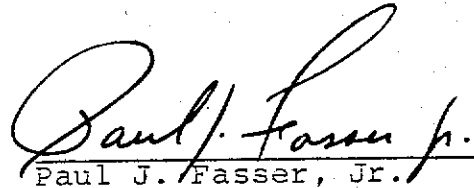
That the Union may agree with Management upon a continuation of benefits for employees temporarily detailed out of the bargaining unit hardly can be disputed. The question now, of course, is whether Management misapplied the National Agreement when it permitted Hankerson to bid on a vacancy in his craft while he actually was serving in a supervisory capacity. For Hankerson, Management's action gave him the best of all possible worlds. He enjoyed the benefits of the supervisory position. He could retreat at any time in the first six months of his detail to his duty position and, in this case, the USPS would permit him to bid on another job, with assurance that that job would be held open until he completed his detail (as long as the detail was completed within six months). His fellow employees could not bid on the job he left vacant and also were insubordinate to his claim for a bid on a more desirable route.

To justify this otherwise anomalous situation, the Postal Service would have to demonstrate that it customarily had permitted carriers detailed to supervisory positions to bid on available openings in the bargaining unit without Union protest. President-Elect Vacca testified that he knew of no situation similar to the Hankerson

case where a carrier on supervisory detail had bid and was awarded a promotion to a bargaining unit position which was sought by other qualified employees in the bargaining unit. The Postal Service failed to put into evidence a single instance to support its claim of such a practice. Lacking hard facts demonstrating that bids were generally awarded to employees on supervisory detail, the Postal Service fails to establish its contention that a viable practice existed.

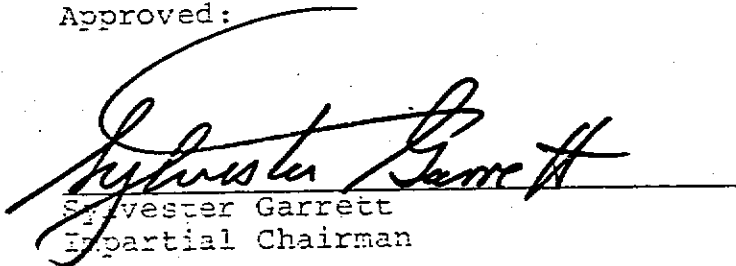
AWARD

The Grievance is sustained. Route 1332 will be awarded to that carrier who was otherwise deprived of the duty assignment by virtue of Management's action. Since his detail to Foreman of Delivery did not extend beyond six months, Hankerson may be treated as if he had returned to the duty assignment that he left on May 17, 1975.



Paul J. Fasser, Jr.
Associate Impartial Chairman

Approved:



Sylvester Garrett
Impartial Chairman