C#06103
A, B

ARBITRATION AWARD

November 26, 1980

UNITED STATES POSTAL SERVICE
Scranton, Pennsylvania
Salt Lake City, Utah

-and-

Case Nos. M8-W-0027,
M8-E-0032

NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

Subject: Overtime - Order of Distribution

Statement of the Issue: Whether the Postal Service's action in giving part-time flexible employees overtime work prior to full-time regular employees on an "overtime desired list" was a violation of the National Agreement or a Local Memorandum of Understanding?

Contract Provisions Involved: Article VIII, Section 5 and Article XXX of the July 21, 1978 National Agreement and Section 14-F of the November 14, 1978 Scranton Memorandum of Understanding.

Grievance Data:

	Date	
	Salt Lake City	Scranton
Grievance Filed:	Aug. 10, 1979	Aug. 15, 1979
Step 2 Meeting:	Aug. 24, 1979	Aug. 28, 1979
Step 3 Meeting:	Oct. 23, 1979	Oct. 30, 1979
Step 4 Meeting:	Dec. 6, 1979	Dec. 6, 1979
Case Heard:	July 10, 1980	July 10, 1980
Transcript Received:	Aug. 1, 1980	Aug. 1, 1980
Briefs Submitted:	Sept. 3, 1980	Sept. 3, 1980

Statement of the Award: The grievances are denied.

BACKGROUND

These grievances protest the Postal Service's action in assigning certain overtime work to part-time flexible employees rather than full-time regular employees who had placed their names on the "overtime desired list." The Union believes this action was a violation of Article VIII, Section 5 of the National Agreement and, in the Scranton case, also a violation of Section 14-F of the Local Memorandum of Understanding. It asks that the full-time regulars improperly denied the overtime in question be made whole for their loss of earnings. The Postal Service insists there has been no contract violation.

There are several classes of employees in the Postal Service. Full-time regulars ordinarily work a five-day, 40-hour week. Part-time people are considered regulars or flexibles. They too may work a 40-hour week. But Management is free to work them less than five days, less than 40 hours. The part-time regular apparently has a set schedule while the part-time flexible, as the term suggests, is subject to operational needs and cannot rely on any schedule.

The Salt Lake City case involves D. Wendt, a full-time regular Mail Handler. He had placed his name on the "overtime desired list." His tour of duty on July 29, 1979, ended at 11:30 p.m. The Acting Tour Superintendent realized he had a considerable amount of work which had not been completed. He decided to have a number of employees work overtime. Supervision approached Wendt at 11:25 p.m., the only full-time regular then available at the post office, and offered him overtime work. Wendt refused. Supervision used six part-time flexibles to perform the necessary overtime. Their tours did not end until 12 midnight and they each worked until 1:00 a.m. In other words, each of them received one hour of overtime.

The Union grieved (M8-W-0027) on Wendt's behalf, complaining that Management had bypassed a full-time regular on the "overtime desired list" and given overtime to part-time flexibles. It claimed a violation of Article VIII, Section 5 which reads in part:

"Overtime Assignments. When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

"A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an 'Overtime Desired' list.

"B. Lists will be established by craft, section or tour...

"C. 1. Except in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis. Those absent, on leave or on light duty shall be passed over..."

The Scranton case involves C. Cesare, a full-time regular Mail Handler. He had placed his name on the "overtime desired list." Management posted a schedule on July 25, 1979, for the week of Saturday, July 28 through Friday, August 3. Several Mail Handlers, including Cesare, were on vacation that week. Their names did not appear on the schedule. In order to take their place, Management used three part-time flexibles. One was scheduled for five days; two were scheduled for six days, including Thursday and Friday, August 2 and 3. Their sixth day represented an overtime assignment.

Cesare's regular work week was Saturday through Wednesday. His lay-off days were Thursday and Friday. He requested Management to be allowed to work overtime on Thursday or Friday, August 2 or 3, following his vacation. His position was that he had a right to overtime ahead of part-time flexibles. Management denied his request.

The Union grieved (M8-E-0032) on Cesare's behalf, complaining that Management had bypassed a full-time regular on the "overtime desired list" and given overtime to part-time flexibles. It claimed a violation of Article VIII, Section 5. It also claimed a violation of Section 14-F of the Local Memorandum of Understanding which stated in part:

> "Employees absent on sick leave, workmen's compensation or on light-duty assignments prior to the calling of overtime shall be passed over. Those craft employees on the overtime desired list and are subsequently scheduled off on vacation shall be contacted in the proper order of selection only for overtime needed on their lay-off days..."

DISCUSSION AND FINDINGS

The issue, simply stated, is whether Article VIII, Section 5 creates an order of preference in the assignment of overtime.

The Union insists there is an order of preference. It believes Article VIII, Section 5 describes how overtime, "when needed", is to be distributed among employees. Hence, in its opinion, full-time regulars who have placed their names on the "overtime desired list" have first preference to overtime. Its position seems to be that the Postal Service must exhaust this "overtime desired list" before it can give overtime to part-time flexibles. It emphasizes that the National Agreement, while distinguishing full-time regulars from part-time flexibles, only speaks of overtime assignments for full-time regulars. It cites other contract provisions as well to support this argument.

The Postal Service, on the other hand, insists there is no order of preference. It claims Article VIII, Section 5 merely describes how overtime is to be distributed when Management chooses to assign such overtime to full-time regulars. It urges that this

view is supported by the language of the National Agreement, by bargaining history, and by past practice. It alleges that the other unions who are parties to the National Agreement, namely, NALC and APWU, recognize the correctness of Management's interpretation. It states that efficient and effective operation of its facilities require that Management have the flexibility to determine which category of employees will be assigned to available overtime. Its conclusion, accordingly, is that the choice of part-time flexibles for the overtime in question did not violate the rights of any full-time regulars. It asserts that there are in any event special circumstances in the Salt Lake City and Scranton cases which would defeat the grievants' claims.

I - Contract Language

Article VIII, Section 5 states, "When needed, overtime work for regular full-time employees shall be scheduled..." in a certain manner. This section deals with just one category of employee, full-time regulars. It describes how overtime will be distributed when full-time regulars are chosen to perform such overtime. There is an order of preference but that order pertains only to overtime distribution among full-time regulars. Nothing in Article VIII, Section 5 states, expressly or by implication, that overtime must be offered to full-time regulars before it can be offered to part-time flexibles. No such order of preference can be found in this contract language. Nowhere does Article VIII suggest that full-time regulars were to be given a monopoly on overtime.

The weakness in the Union's argument seems clear. It reads Article VIII, Section 5 as if it said, "When needed, overtime work...shall be scheduled among qualified regular full-time employees..." The Union transposes the underscored words in such a way as to make it appear that Article VIII, Section 5 represents an exclusive grant of overtime to full-time regulars. But that plainly is not what the contract says. Had the parties intended to establish an order of preference as between full-time regulars and part-time flexibles, it would have been a simple matter to say so. They were,

however, silent on this subject. That silence reinforces my view that their intention was merely to describe how overtime would be distributed when Management chose to assign such overtime to full-time regulars.*

II - Bargaining History

My findings are borne out by the history of this particular contract clause. Article VIII, Section 5 of the 1971 National Agreement provided:

> "Overtime work shall be required on the basis of need - when it is needed, where it is needed, how it is needed and the skills required and shall be scheduled on an equitable basis among qualified employees doing similar work in the work location where the employees regularly work."

Thus, Management initially had broad authority to require overtime of any category of employee.

The unions in the 1973 negotiations, including the Mail Handlers, sought to curb Management's authority. They wished to make all overtime voluntary; they wished to give employees the option of accepting or refusing any overtime assignment. The Postal Service rejected that idea but made a counter-proposal which included limitations on mandatory overtime. It was concerned about Management's ability to have sufficient people available to handle its ever-fluctuating workloads. Hence, its suggested limitation on mandatory overtime applied only to full-time regulars. It apparently informed the unions' negotiators that "we needed...flexibility...to operate in an effective and efficient manner [a]nd therefore we would not put any restriction on overtime for part-time employees..." These notions, after further discussion, were acceptable to the unions. The result was a new Article VIII, Section 5 in the 1973 National Agreement, the same language before us in the present case.

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* Nothing in the Charters-Johnson Memorandum of Understanding calls for a different conclusion. That Memorandum dealt only with the proper administration of the "overtime distribution list" and the appropriate remedy for passing over employees on such list.

Given this history, it is obvious that the real purpose of this contract clause was to restrict mandatory overtime for full-time regulars. Article VIII, Section 5 had nothing to do with any order of preference between full-time regulars and part-time flexibles. There is not a shred of evidence that this subject was ever raised during the 1973 negotiations which led to the current contract language. The Union's attempt here to enlarge full-time regulars' opportunity for overtime is the exact opposite of the 1973 negotiators' intent to reduce their exposure to overtime.

III - Practice

This interpretation of Article VIII, Section 5 seems to be confirmed by past practice. It is true that no hard evidence was introduced at the arbitration hearing concerning specific cases of part-time flexibles being given overtime ahead of full-time regulars. But it is apparent from overtime statistics that this is a commonplace occurrence. Management's testimony indicated that approximately 7.9 percent of all full-time regular hours involve overtime while approximately 8.9 percent of all part-time flexible hours involve overtime.* This indicates that Management has been assigning overtime to one category or the other on the basis of its needs at a particular moment, on the basis of efficiency and economy. Had the Union's order of preference been in effect in the past, part-time flexibles would have received practically no overtime at all. That has not been the case.

One of the other unions, NALC, has recognized the validity of the Postal Service's interpretation. Its President stated in a March 1980 letter to the NALC Branch Officers that Article VIII, Section 5 "applies only to full-time employees who are 'needed' to work overtime" and "does not require management to use a full-time employee desiring to work overtime in preference to a part-time flexible." He added in such letter

* These figures were for a substantial period in 1980. But it appears from the testimony they are fairly representative of Postal Service experience in recent years.

that "management has the right to determine whether to give overtime work to a part-time flexible or a full-time employee."*

IV

For these reasons, it is clear that the Salt Lake City grievance is without merit. The grievant, Wendt, could not use his status as a full-time regular to claim overtime ahead of a part-time flexible. There was no violation of Article VIII, Section 5.

The same reasoning would apply to the Scranton grievance. The full-time regular there, Cesare, could not claim overtime ahead of a part-time flexible on the basis of Article VIII, Section 5. But his claim rests on another contract provision as well. He points to Section 14-F of the Local Memorandum of Understanding which says "craft employees on the overtime desired list...subsequently scheduled off on vacation shall be contacted in the proper order of selection only for overtime needed on their lay-off days."

Cesare's vacation covered his regular work week, Saturday, July 28 through Wednesday, August 1. His lay-off days were Thursday and Friday, August 2 and 3. Even assuming the Local Memorandum gave him a right to overtime available on Thursday or Friday ahead of a part-time flexible, that would not resolve the dispute in his favor. For the Local Memorandum, according to Article XXX, shall remain in effect only if it is "not inconsistent or in conflict with the 1978 National Agreement..." The preference granted in the Local Memorandum to full-time regulars conflicts with the statement in Article VIII, Section 5 C-1 that "those absent...on leave...shall be passed over" in the distribution of overtime. Cesare was on vacation (i.e., "on leave") the week in question. Moreover, Scranton Management has consistently viewed the leave period in these circumstances to include not just the five vacation days but the succeeding off days as well.** In either event,

* The Mail Handlers are of course not bound by the NALC statement. But it is nevertheless worth noting that one of the union signatories to the National Agreement reads Article VIII, Section 5 in the same way as the Postal Service.

** It has thus sought to insure employees a minimum seven-day vacation period for each five days of annual leave.

the National Agreement seems to call for Cesare to be "passed over." It follows that any right granted to Cesare by the Local Memorandum is denied him by the National Agreement. His claim cannot be sustained on the basis of the Local Memorandum.

There has been no contract violation in either of the cases before me.

AWARD

The grievances are denied.

Richard Mittenthal, Arbitrator