

C#06768

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	(	
.between	(	XXXXXXXXXX Impasse Case
UNITED STATES POSTAL SERVICE	(	Post Office: Holyoke, MA 01041-9998
and	(	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	(	Case No: N4N 1E I 901235
	(	

Before Harry Grossman , Arbitrator

Appearances:

For US Postal Service - Joseph W. Leahy, Jr., Labor Relations Program Analyst, USPS, Windsor, CT 06006-0841

For Union: John Pimental, Jr., Admin. Ass't., NALC, New England Portsmouth, RI, 02871

Date of Hearing: December 16, 1986

Place of Hearing: Holyoke, MA

Award: Article 41, Section 1.C. of the 1984 National Agreement was lawfully augmented by the addition of the provision, agreed to by the Postmaster, Holyoke, Massachusetts, and Branch 379, NALC, in the local Memorandum of Understanding dated May 1, 1985, reading:

The successful bidder will continue to try the new assignment for three (3) working days to accept the bid or return to his previous assignment.

That provision shall therefore be allowed to remain in effect.

Date of Award: JAN 2 1987

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OPINION AND AWARD

The Issue

This arbitration was assigned to be heard by the undersigned Arbitrator on the issue of whether a certain provision of a memorandum of understanding entered into locally between the Postmaster, Holyoke, Massachusetts, and Branch 379, National Association of Letter Carriers on May 1, 1985, to implement the 1984 National Agreement between the parties, was null, void, and of no effect.

The Provision in Dispute

The locally negotiated provision of the memorandum of understanding between the Employer at Holyoke and the Union at that facility was an "addition" to Article 41, Letter Carrier Craft, Section 1. Posting, Subsection C. Successful Bidder, in the National Agreement.

The essence of the Section in the National Agreement is to the effect that in the letter carrier craft, vacant duty assignments (with specific exceptions) shall be posted for bid, how posting shall be conducted (Subsection B. Method of Posting), and who shall be declared the "Successful Bidder" (Subsection C).

Subsection C. Successful Bidder, reads in its entirety as follows:

1. The senior bidder meeting the qualification standards established for that position shall be designated the "successful bidder."

2. Within ten (10) days after the closing date of the posting, the Employer shall post a notice indicating the successful bidder, seniority date and number.
3. The successful bidder must be placed in the new assignment within 15 days except in the month of December.
4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to T/6 and utility assignments, unless the local agreement provides otherwise.

The locally negotiated memorandum of understanding provision in dispute reads:

Add: The successful bidder will continue to try the new assignment for three (3) working days to accept the bid or return to his previous assignment.

Authorization to negotiate local collective bargaining agreements in the form of memoranda of understanding is provided for in Article 30 of the National Agreement, Sections A and B. These read:

- A. Presently effective local memoranda of understanding not consistent or in conflict with the 1984 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 April 1, 1985, on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1984 National Agreement.

Item 22 reads: "Local implementation of this Agreement relating to seniority, reassignments and posting."

Section C of Article 30 of the National Agreement

provides for final and binding arbitration of impasses in negotiations of proposals in local implementation of the Agreement.

Origination of the Dispute

The dispute over the locally negotiated addition to Article 41, Section 1.C, originated with a letter dated May 7, 1985, from the Union's Branch President to the Postal Service's Regional Director, Employee & Labor Relations, Northeast Region. In this letter the Branch President requested that the "addition" be retained without change, that USPS (presumably local Management) denied this request on the basis that the item as worded was in conflict with the National Agreement. The letter then continued as follows:

4. The Union contends that this item is not in conflict with the National Agreement because this is an added item other than the twenty-two (22) items to be negotiated locally. There is no specific language in the contract that would create a conflict. This item was agreed upon mutually in the previous agreement and the Union would like it to remain.
5. USPS (Again, I presume this refers to local Postal Management) claims that they were advised from higher levels that this item must be removed because it was in conflict. There was no further explanation about any problems that were encountered by having this item as a part of the Local Agreement.

By letter dated May 9, 1985, the Postmaster at Holyoke officially notified the Union's Branch President that based upon review of the National Agreement, the Holyoke Post

Office has elected to impasse the disputed item as being inconsistent or in conflict with the National Agreement.

Position of the Parties

In arguing that the local "addition" was in conflict or inconsistent with the National Agreement, the Employer's advocate contended that Article 41, Section 1.C. was controlling and cannot be altered; that in effect the designation of a "Successful Bidder" (Subsection 1), the posting of a notice indicating who he/she was (Subsection 2), and the placing of him/her in the new assignment (Subsection 3) constituted a binding personnel placement; and that any trial period, change of heart, and retreat sought by the Union locally would be contrary to that Subsection as well as to Article 12, PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS, particularly Section 3, Principles of Posting, which, with certain stated exceptions, limited a successful bidder to five times in the life of the contract.

Management's advocate also argued that to allow a successful bidder to change his mind and retreat would cause undue delay in filling vacancies, hardships, extra expenditures and instability in the workforce.

In short, Management argued that Article 41, Section 1.C made all assignment "sales" to the successful bidder final upon placement in the assignment. In support of this

view it submitted the Award of Arbitrator J. S. Liebowitz in a similar case in Albany, New York, dated July 19, 1986, where the disputed local implementing item was for a five (5) day trial period. This Award will be treated below in greater detail.

The Union's advocate argued that the locally negotiated addition to Article 41.1.C was not in conflict or inconsistent with the National Agreement; that it has been in effect in Holyoke and other Post Offices through locally negotiated memoranda of understanding since the early 1970s; that it has been a "prevailing practice" in the Postal Service; that local Management has been able to live with it throughout these years; that the inclusion of a trial period in a new assignment is a common occurrence in collective bargaining agreements.

The Union also submitted two arbitration awards supporting its position in similar cases. One was by Arbitrator J. F. Caraway, in the Postal Service, No. S4N-3A-I 900204, Paris, Texas, dated August 18, 1986. The second was by Arbitrator N.N. Bernstein, Postal Service Case No. C8N-4B-C 7812 (alleged contract violation), Detroit, Michigan, decided April 24, 1981. The Union also submitted other Arbitration Awards, which together with those of Arbitrators Caraway and Bernstein, will be treated below.

Analysis and Conclusions

At the outset, this Arbitrator rejects the arguments of the Employer relating to the effects that the "addition" in the locally negotiated memorandum may have on Postal Service efficiency, cost, overtime, etc. Those considerations I consider to be extraneous to the question of whether the "addition" conflicts or is inconsistent with the National Agreement. To the extent that Arbitrator Liebowitz considered such factors in his Award of July 15, 1986, and did not pinpoint language in the National Agreement which would prohibit a trial period (page 9 and ff), I respectfully disagree with his conclusion that a provision for a five-day trial and retreat to the successful bidder's former position is in conflict with the National Agreement.

In my view, as in the view of Arbitrator Bernstein in Case No. C8N-4B-C 7812, the "addition" falls within the scope of Item 22 of Article 30.B, "seniority, reassignments and posting," and Article 41, Section 1 constitutes the National Agreement on Posting. As did Arbitrator Bernstein, I find that the National Agreement is silent on both the matter of trial periods in the new assignments and the right to retreat.

I reject the contention of the Employer that the words "Successful Bidder" in Article 41, Section 1.C or that the requirement that he/she be placed in the new assignment within a certain number of days or that he shall work the

assignment as posted, preclude the augmentation of the Section by adding a trial period and retreat. In my judgment these are mutually exclusive of one another which makes the locally negotiated provision a supplement as Arbitrator Bernstein called it, rather than being contrary to, in conflict with, or in diminution of anything that the parties bargained for at the national level in arriving at the 1984 Agreement as well as its predecessor agreements.<sup>1</sup>

On the foregoing reasoning and that expressed by Arbitrator Bernstein, in the cited Award, which was also the view and conclusion of Arbitrator Caraway in his Award, Case No. S4N-3A-I 900204, August 18, 1986, I conclude that the locally negotiated "addition" of a three (3) day trial period and right to return to one's previous assignment was not in conflict or inconsistent with the National Agreement.

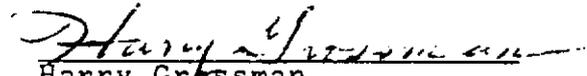
#### AWARD

Article 41, Section 1.C of the 1984 National Agreement was lawfully augmented by the addition of the provision, agreed to by the Postmaster, Holyoke, Massachusetts, and Branch 379, NALC, in the local Memorandum of Understanding dated May 1, 1985, reading:

The successful bidder will continue to try the new assignment for three (3) working days to accept the bid or return to his previous assignment.

That provision shall therefore be allowed to remain in effect at the Holyoke, Massachusetts, Post Office.

Dated: JAN 2 1987

  
Harry Grossman  
Arbitrator

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<sup>1</sup>Of the other four awards offered by the Union in support of its position, one, Case No. IN-S-81-81 is rejected because it is an Expedited Arbitration decision which may not be accepted as a precedent. The other three, H8N-5B-C 17682, N8-W-0406, and C4N-4K-I 99096, 99097 are rejected as not being on point with respect to their subject matter of the disputes.