

C # 13791

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
)
 between)
)
 UNITED STATES POSTAL SERVICE)
)
 -and-)
)
 NATIONAL ASSOCIATION OF LETTER)
 CARRIERS)
)
 -and-)
)
 NATIONAL RURAL LETTER CARRIERS')
 ASSOCIATION)

GRIEVANT:
 NALC President

 CASE NO. H7N-NA-C 42

BEFORE: Richard Mittenthal, Arbitrator
 Nicholas H. Zumas, Arbitrator

APPEARANCES:

For the USPS: Kevin B. Rachel, Attorney
 For the NALC: Keith E. Secular, Attorney
 (Cohen Weiss & Simon)
 For the NRLCA: William B. Peer, Attorney
 (Barr Peer & Camens)

Place of Hearing: Washington, D. C.
 Dates of Hearing: November 14, 1989
 December 13, 1989
 October 26, 27, 28, 1993
 January 28, 1994
 Dates of Post-Hearing Briefs: March 23, 1994 (NALC)
 April 23, 1994 (USPS &
 NRLCA)
 May 10, 1994 (NALC)

AWARD: The grievance is denied.

Richard Mittenthal per NHZ
 Richard Mittenthal, Arbitrator

Nicholas Zumas
 Nicholas H. Zumas, Arbitrator

INTRODUCTION

This grievance involves a National Association of Letter Carriers (NALC) claim that work done by rural carriers in certain Virginia communities close to Washington, D.C. has all of the characteristics of city carrier work and should therefore be transferred to city carriers. NALC argues, in short, that this work is part of its craft jurisdiction under Article 1, Section 1 of its National Agreement. The United States Postal Service (USPS) and the National Rural Letter Carriers Association (NRLCA) disagree. They insist this work has always been and continues to be part of NRLCA's craft jurisdiction.

NALC initiated this grievance at Step 4 on March 30, 1989, claiming that, under its collective bargaining agreement, city carriers were entitled to deliver the mail in the area in question. USPS denied the grievance on June 30, 1989, and NALC appealed the matter to arbitration on July 10, 1989. They agreed to have the dispute heard before Arbitrator Mittenthal, a member of the USPS-NALC national panel, and the first hearing was on November 14, 1989.

In light of a prior decision in a similar arbitration involving NALC and NRLCA, NALC did not object to NRLCA's participation in this case. However, NRLCA elected not to

intervene and filed an action in Federal District Court seeking a temporary restraining order to stop the November 14 arbitration hearing, and further requesting an order compelling tripartite arbitration before an arbitrator other than Mittenthal.^{1/} The application for a temporary restraining order was denied, and the November 14, 1989 hearing was held without the participation of NRLCA. USPS and NALC agreed to postpone the taking of testimony at the next scheduled hearing (December 13, 1989) in order to give USPS an opportunity to compel NRLCA to participate.

After NRLCA voluntarily dismissed its complaint on January 2, 1990, USPS filed an action in District Court against both NALC and NRLCA seeking an order to compel tripartite arbitration. NALC filed a motion to compel bipartite arbitration between itself and USPS. NRLCA moved to align itself with USPS as a party plaintiff, asserting that it would participate in tripartite arbitration if Arbitrator Mittenthal did not sit alone.

After determining that it had authority to order tripartite arbitration, the District Court granted the USPS' motion for summary judgment, and selected two arbitrators: Mittenthal, the NALC arbitrator; and Zumas, the NRLCA arbitrator.

^{1/} Both NALC and NRLCA have collective bargaining agreements with USPS that require grievances involving contract interpretations to be resolved by arbitration. Under both agreements, the parties select arbitrators to decide, inter alia, national level disputes. Arbitrator Zumas has served as the USPS-NRLCA national level arbitrator for the past several years.

NALC appealed the District Court's order, arguing that the court did not have authority to require tripartite arbitration because the parties could not agree on the identity of a common arbitrator. NALC asserted that the court's order did "substantial violence to the foundation of voluntary arbitration" by allowing Arbitrator Zumas to interpret the NALC agreement that he was never asked to interpret.

In affirming the lower court's decision the U. S. Court of Appeals for the D. C. Circuit concluded:

Several other circuits have recognized that, under principles of federal common law, a court has the authority to order tripartite arbitration of a dispute between two unions and their employer where both unions are subject to a collective bargaining agreement with the employer and both agreements contain similar provisions requiring arbitration of the dispute. We hold today that, where such a contractual nexus exists, the District Court is not precluded from ordering tripartite arbitration merely because the two unions cannot agree on a common arbitrator. The District Court's dual arbitrator solution might well resolve the dispute quickly and fairly. And while there is a possibility that the District Court may have to appoint a new arbitrator if the two arbitrators cannot agree, we do not think that the court abused its discretion in creating the dual arbitrator scheme. Accordingly, the decision of the District Court is Affirmed.

FACTUAL BACKGROUND

As indicated above, on March 30, 1989, NALC President Sombrotto initiated a Step 4 grievance claiming that city carrier

bargaining unit work in Vienna and Oakton, Virginia was being performed by rural carriers. The grievance read, in pertinent part:

Both Vienna and Oakton are fully developed, densely populated, urbanized communities. It is my understanding that all residences and commercial establishments in Vienna and Oakton have city style addresses rather than rural delivery designations. Both communities easily satisfy the criteria for city delivery provided by applicable Postal Service regulations. (See Domestic Mail Manual, Section 155.1; Postal Operations Manual, Section 611.1).

Nonetheless, at present approximately half the mail delivery in Vienna and all mail delivery in Oakton have been assigned by the Postal Service to rural letter carriers. Rural letter carriers have been assigned routes which consist either substantially or entirely of deliveries to commercial establishments in office buildings and/or shopping centers. Other mail delivery routes assigned to rural letter carriers encompass residential deliveries to closely compacted townhouses and/or apartment buildings, many of which receive their mail in cluster boxes. In servicing the routes, the rural letter carriers in Vienna and Oakton drive Postal Service vehicles and, in many instances, dismount from their vehicles and deliver most or all of their mail on foot.

It is the position of the NALC that work having the above-described characteristics traditionally and contractually constitutes city delivery. The Postal Service's continuing assignment of mail delivery work in Vienna and Oakton to rural letter carrier employees violates numerous provisions of the National Agreement including, but not necessarily limited to, Articles 1, 3, 5, 7, 19 and 41, and applicable law.

Apart from Vienna and Oakton, I have recently been made aware of numerous similar situations in other locations involving performance of city letter carrier craft work by rural carriers. This apparent nation-wide practice indicates to me that there exists a fundamental, interpretive dispute between the parties, involving work assignment practices, the scope of the city letter bargaining unit, and the NALC's jurisdiction which should be resolved at the National level. However, for present purposes we are limiting this grievance to Vienna and

Oakton, Virginia. We expect that a grievance settlement or arbitration award resolving this dispute within this specific factual context will establish guidelines to assist Postal Service managers throughout the country in complying with the jurisdictional requirements of the National Agreement.

By letter dated June 15, 1989, a USPS Labor Relations Representative denied the grievance. His letter read, in pertinent part:

At the May 30, 1989 meeting, referenced-above, Mr. Keith Secular, on behalf of NALC, further refined the Union's position. Mr. Secular stated that despite the fact that Oakton and Vienna, Virginia were originally appropriately assigned to Rural Delivery, the Union contends that the demographics of the two localities have sufficiently shifted so as to qualify the areas for conversion to City Delivery under existing Postal Service Regulations. Mr. Secular went on to state that the official position of the National Association of Letter Carriers is that once an area grows to the point where it could be converted to City Delivery, that such territory MUST be converted. Mr. Secular indicated that the union contends that conversion is required once an area currently serviced by rural Delivery, meets the conversion criteria outlined in Postal Operations Manual, Sec. 611.321. Finally, Mr. Secular stated that it was the position of the NALC that regardless of how the Postal Service classified the territories in question, the work being done is, in the Union's opinion, "City Delivery-type work," over which NALC has exclusive jurisdiction.

The issue in this case is whether a delivery area assigned to Rural Delivery must be converted to City Delivery when the Union contends that the characteristics of the delivery area meet the conversion criteria outlined in Sec. 611.321 of the Postal Operations Manual.

It is the position of the Postal Service that the areas in question clearly met the requirements for the establishment of Rural Delivery Service at the time such service was established. Moreover, the NALC agrees with such assessment. It is likewise unquestionable, the Sec. 611.321 of the Postal Operations Manual outlines the circumstances under which "conversion from Rural to City

Delivery shall be considered." Postal Operations Manual, Sec. 611.322, then goes on to state:

". . . . However, the fact that a given area is fully developed and adjacent to city delivery DOES NOT, OF ITSELF, CONSTITUTE SUFFICIENT JUSTIFICATION FOR CONVERSION."

While the regulations clearly "authorize" a conversion from Rural to City Delivery upon the occurrence of certain events, such a conversion is not mandatory. Changes in territorial demographics go only to the question of whether conversion will be considered, as opposed to being "required."

The net result is, in our opinion, a set of circumstances under which the Postal Service may elect to convert a Rural Delivery territory to City Delivery, or based on consideration of factors including, but not limited to, continuity of service, overall relative cost-efficiency of either delivery service, and the needs of the customers, continue to service the territory with Rural Letter Carriers. Taking into account these general considerations, as well as the conversion criteria outlined in the Postal Operations Manual, the Postal Service stands by its decision to continue to service Oakton and Vienna, Virginia with Rural Delivery Letter Carriers.

We have also considered Mr. Secular's arguments concerning Article 1 of the National Agreement and the 1962 Certification of Crafts. We find these arguments to be totally lacking in merit. Accordingly, this grievance is denied. (Underscoring and capitalization in original)

By letter also dated June 15, 1989, NALC Counsel responded to the Step 4 denial. The response read, in pertinent part:

Contrary to the statement in the third paragraph in the letter, the NALC is not relying in this case on the broad proposition that "once an area grows to the point where it could be converted to City Delivery, that such territory MUST be converted." (although it reserves the right to assert this position in the future). At our meeting on May 30, Mr. Hult and I made clear that in this grievance, NALC relies on the specific facts and

contentions stated by President Sombrotto in his grievance letter of March 30. To repeat:

Rural letter carriers [in Vienna and Oakton] have been assigned routes which consist either substantially or entirely of deliveries to commercial establishments in office buildings and/or shopping centers. Other mail delivery routes assigned to rural letter carriers encompass residential deliveries to closely compacted townhouses and/or apartment buildings, many of which receive their mail in cluster boxes. In servicing the routes, the rural letter carriers in Vienna and Oakton drive Postal Service vehicles and, in many instances, dismount from their vehicles and deliver most or all of their mail on foot.

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The Vienna, Virginia Post Office covers five zip codes which include both city and rural delivery routes. It has the responsibility for mail delivery in an area that includes the incorporated Town of Vienna and two unincorporated sites known as Oakton and Dunn Loring, each of which has no official boundaries. According to the 1990 census, Vienna has a population of 14,852 and Oakton/Dunn Loring has a population of 24,610. The population of the five zip codes is projected to be over 73,000 by the year

2010. This area is approximately 15 miles from the District of Columbia, outside the "beltway" which surrounds the District as well as parts of Virginia and Maryland suburban counties. It is generally considered to be within the greater metropolitan area of Washington, D. C. It is relatively close to National and Dulles airports, and is served by two rail stops of the metropolitan Mass Transit System (METRO).

While most of the mail service within the Town of Vienna is city delivery, a small part of the eastern section is served by rural delivery. Even though city delivery exists in locations immediately outside the corporate limits of Vienna, a significant majority of the delivery area outside Vienna is served by rural carriers. Postmaster B. Nicholson testified that during his 20 years at the Vienna Post Office, the geographic area served by rural delivery and city delivery had undergone no marked changes.

Currently, there are 42 regular rural routes and one auxiliary rural route staffed by 40 regular rural carriers and 20 substitutes. There are 51 city carriers. The types of mail deliveries in the area include single family houses, townhouses, storefront businesses, and low-rise and high-rise office buildings. Many of these units that are on rural routes have been served by rural carriers since they were built in the early 1970s. A very large percentage of mail deliveries are to residences: 97.5 percent on rural routes and 82.8 percent on city routes. The remaining percentages are business deliveries.

Rural routes are classified as "A," "H," "J," or "K," depending on an evaluation of the weekly number of hours such route requires. Additionally, a rural route is classified as an "L" route if it has an average density of 12 boxes, or deliveries, per mile. The "L" route was introduced in the USPS-NRLCA Agreement in 1981 as a "method of finding an appropriate compensation level for rural carriers who were working on routes that were in higher density delivery areas" such as suburban areas. The record further indicates that of the 49,200 rural routes, 18,900 are "L" routes; and approximately 46 percent of rural deliveries are on "L" routes. Because of the density, it is less costly to provide delivery, and "L" routes therefore have a lower evaluation and less compensation. Currently, all but four of the rural delivery routes in the Oakton/Vienna area are "L" routes.

President Sombrotto testified that in early 1982 he met with E. Hagberg, Assistant Postmaster General - Delivery Services, to express his concern about the agreement that USPS entered into with NRLCA establishing "L" routes, and a memorandum Hagberg distributed to the field stating:

Several changes that were made in the recent labor negotiations between the Postal Service and the National Rural Letter Carrier's Association (NRLCA) have made rural delivery service a more viable alternative in our more densely populated areas. There are now revised standards for high density routes, centralized deliveries, and dismount deliveries. With these revisions, the rural system has evolved into an efficient way of serving our more populous areas.

Sombrotto stated that his fears were "allayed" when Hagberg assured him that the "L" route creation "was not a question of jurisdiction," but that it was a "question of just how to design routes to see how much they [rural carriers] should be paid," and that the "L" routes had "nothing to do with assigning jurisdiction." Sombrotto asserted further that there was nothing in the time frame following this meeting that raised any question with respect to any jurisdictional dispute as between NALC and NRLCA.

In response to a question on cross-examination as to the remedy sought by this grievance, Sombrotto replied: "The conversion of the routes in Oakton/Vienna from rural to city delivery."

As is the practice throughout the country, rural carriers in Oakton/Vienna area sell stamps, pick up postal patrons' parcels for return to the Post Office for further mail processing, and provide certified and registered mail delivery services.

R. West, formerly a Program Manager for rural operations in what was then the Eastern Region (which included Oakton/Vienna) from 1978 to 1983 and General Manager responsible for both rural and city delivery route management at USPS Headquarters since 1984, testified on numerous aspects of mail delivery related to this dispute. His testimony is summarized as follows:

1. Other than the retail duties of a rural carrier (selling stamps, taking certified and registered mail from patrons, processing money orders, etc.), there is no substantial difference in the mail delivery work that is provided by city carriers.

2. City carriers are paid based on an eight-hour work day, five days a week with overtime pay in excess of 40 hours. Rural carriers are paid under an evaluated compensation system used to determine the time that it would take to perform the required work (mail volume based on a previous count) on an assigned route or territory. A rural carrier receives his salary based on the route evaluation irrespective of the time spent on the route on any given day. Overtime is available for work in excess of 2,080 actual work hours per year.

3. With respect to USPS regulations, as well as policies of the old Post Office Department, Management's approach to the conversion from rural to city delivery, has been "very cautious." The regulations warn of "lost services" that are presently received by patrons on rural routes, and the "potential costs associated with possible conversion."

USPS has never considered these regulations to mandate conversion from rural to city delivery, including situations where a previously rural area becomes fully developed, "particularly if the area is receiving appropriate service and is cost effective to the organization."

4. In the late 1970s and early 1980s, there were conversions from rural to city delivery because of cost effectiveness, boundary alignment, zip code realignment and a need to minimize "commingling" of delivery services. There were also "exchanges of territory" by negotiated agreement between NALC and NRLCA. There have been no "wholesale conversions" of offices from rural to city. There have been no conversions from rural to city delivery for any reason other than those enumerated in the criteria set forth in the postal regulations.

5. Since at least 1966, postal regulations have recognized the need for rural carriers to dismount for service including service to "apartment houses and other multiple dwellings which use or qualify to use apartment house receptacles as provided in 155.6 [of the Domestic Mail Manual]."

In excess of 60 percent of all rural carriers (about 31,000 routes) have "at least some dismount," and the route evaluation for compensation purposes reflects the extent to which the rural carrier is expected to dismount. The number of dismounts authorized as of 1981, when the "L" routes were negotiated, is not known.

6. Since as early as 1975, USPS has furnished postal vehicles to rural carriers with shorter routes because it was more cost effective than paying equipment maintenance allowance on vehicles owned by rural carriers. There are currently over 2,000

rural routes utilizing authorized postal vehicles, but the number authorized in 1981, when the "L" routes were negotiated, is not known. City carriers are also allowed to use their own vehicles to deliver their route by either a "drive-out agreement" or leasing their vehicle to USPS.

7. It is not unusual for rural carriers to deliver the mail to neighborhood delivery collection box units (NDCBUs), and even though city carriers also deliver NDCBU mail, it is not "uniquely associated" with city delivery.

8. Post Office Department Regional Instructions (January 1968) include the following language: "Rural service will not be extended to patrons within city delivery limits . . ." That language, according to West, means that it is USPS policy "not to provide -- or not to extend rural delivery service within -- inside the boundaries or where city delivery carriers operate." The term "city delivery limits" does not mean corporate or political boundaries; it is, rather, "a city delivery boundary, that is, the boundaries of the city carrier's delivery area."

D. Charters, recently retired as USPS Vice President of Quality was formerly involved in one position or another in labor relations and contract negotiations with all postal unions. In 1981, Charters was the chief negotiator for USPS in its contract negotiations with NRLCA which resulted in the creation of the "L" routes for "suburban areas, in some of the more built-up areas of

the country." He testified that the "L" route did not change the nature of the work that rural carriers perform, and that the "L" route was only instituted at locations where rural carriers were already working.

Charters asserted that conversions were "relatively few and . . . were for reasons like squaring off boundaries or a clear case of more cost-effectiveness and so on," and that "historically, territory that had been one type of delivery stayed that way." As to the question of whether there were jurisdictional lines between rural or city delivery, it was Charters' opinion, "that historically there was wide latitude on the part of Management as to what type of service to provide. And the appropriate union represents the people providing the service that the Management has decided on . . . [w]ith the proviso that there are certain regulations by which you can convert."

J. Cleer, a city carrier in Vienna, Virginia since 1980 and a shop steward since 1987, assisted NALC in the preparation of its grievance. Cleer testified in considerable detail, based on USPS data and a videotape he made with respect to ten rural routes in the Oakton/Vienna area. NALC asserts, at the very least, those routes should be recognized as city delivery because they have "absolutely none of the hallmarks of a rural route." NALC points out that the traditional rural route averaged over 50 miles in length, that these ten routes are around 10 miles in length, and that more than half of the deliveries on these routes are to

businesses, apartment complexes, NDCBUs, or other deliveries which must be accomplished by dismounting from a vehicle. Those ten routes, all of which are "L" routes, are summarized in the NALC brief as follows:

Rural Route 83

- 9.5 miles total length
- 3.9 miles of actual delivery
- 58% of all deliveries require the carrier to dismount

Rural Route 84

- 10.6 miles total length
- 2.8 miles of actual delivery
- 96% of all deliveries require the carrier to dismount

Rural Route 87

- 14.4 miles total length
- 7.05 miles of actual delivery
- 57% of all deliveries require the carrier to dismount

Rural Route 52

- 13.4 miles total length
- 5.4 miles of actual delivery
- 75% of all deliveries require the carrier to dismount

Rural Route 27

- 13.3 miles total length
- 7.6 miles of actual delivery
- 76% of all deliveries require the carrier to dismount

Rural Route 29

- 8.8 miles total length
- 3.0 miles actual delivery
- 100% of deliveries require the carrier to dismount

Rural Route 62

- 9.2 miles total length
- 3.2 miles of actual delivery
- 53% of deliveries require the carrier to
dismount

Rural Route 74

- 16.3 miles total length
- 8.9 miles of actual delivery
- 53% of deliveries require the carrier to
dismount

Rural Route 76

- 10.6 miles total length
- 6.5 miles actual delivery
- 72% of deliveries require the carrier to
dismount

Rural Route 77

- 8.8 miles total length
- 1.6 miles of actual delivery
- 96% of deliveries require the carrier to
dismount

Postmaster Nicholson testified that if he were required to convert the rural routes into city routes there would be no benefit to either USPS or the postal patron. The contrary, according to Nicholson, would result: necessary scheme changes; additional casing equipment because of the need to switch from a 1-bundle to a 2-bundle casing system; additional supervisory personnel; and additional expenditures of funds.

P. Heath, a Labor Relations Specialist at USPS Headquarters, testified that there are currently approximately 500 grievances

filed by NALC at the local level and progressed to Step 4 that are analogous to the instant dispute.

HISTORICAL BACKGROUND

In 1863 free city delivery was established in 49 of the country's largest northern cities. In 1887, Congress enacted a statute mandating the employment of letter carriers for the free delivery of mail matter "at every incorporated city, village or borough containing a population of 50,000 within the city's corporate limits." The Post Office Department was permitted but not required to establish city delivery in localities with populations between 10,000 and 50,000, and in areas where post offices' receipts exceeded a certain level of minimum revenue. This statutory authority existed unchanged until the enactment of the Postal Reorganization Act (PRA) in 1970.

Beginning in 1845, the Post Office Department contracted with private carriers to serve most of the rural areas. These contract routes were called "star routes" because post office accountants designated them with an asterisk. They delivered mail on ponies or wagons to more than 60,000 tiny fourth class post offices where it was picked up by farmers and cattlemen. Rural Free Delivery (RFD) began as an experiment in West Virginia in 1896, providing mail delivery to farmers through roadside boxes. In 1902, Congress made RFD a permanent part of the postal system. Ten years later, more than 40,000 mail routes were established across

the country, replacing many of the fourth class post offices where mail had been received. In 1906, the Post Office Department authorized rural carriers to use their own automobiles, and as more automobiles came into greater use, the rural routes were lengthened. A series of statutes governing RFD during the period 1916 through 1970 required rural mail delivery to be provided to the extent practicable to "the entire rural population of the United States." The law established two classes of rural routes: "Standard horse drawn vehicle routes which shall be 24 miles in length" and "Standard motor-vehicle routes which shall be 50 miles in length." The law also required rural carriers to provide their own vehicles.

In January 1962, President Kennedy signed Executive Order 10988 authorizing federal agencies to recognize employee organizations as exclusive representatives of an "appropriate unit" when such organization had been selected by the employees in the unit. In accordance with the Executive Order, elections were held to determine employee representation in post office units in June 1962. Voting was conducted separately in the seven recognized postal crafts, including "letter carriers other than rural" and "rural letter carriers." NALC was recognized as the national exclusive representative of the "letter carrier craft;" NRLCA was recognized as the exclusive representative of the "rural letter carrier craft." In 1963, the Post Office Department negotiated the first collective bargaining agreement with the

employee organizations. Bargaining continued on a national craft basis thereafter.

On August 12, 1970, the PRA created the USPS to replace the Post Office Department. The PRA directed USPS to negotiate collective bargaining agreements, covering wages, hours, and working conditions of postal employees, with "the labor organizations which as of the effective date of this section hold national exclusive recognition rights granted by the Post Office Department."

In accordance with the statutory mandate, USPS negotiated an initial national working agreement in 1971 with the unions representing the seven national crafts, including NALC and NRLCA. These parties negotiated successive joint collective bargaining agreements in 1973 and 1975. Beginning in 1978, NRLCA negotiated a separate agreement covering the rural delivery craft only.

In apparent recognition that areas served by rural delivery would likely become more and more developed, it was determined that under certain circumstances a "conversion" from rural delivery to city delivery might be appropriate.

The Post Office Department issued Regional Instructions dated January 15, 1968, regarding such conversions:

By Conversion to City Delivery

1. Reasons for Conversion

It is recognized that rural delivery generally is less costly than city delivery, and conversions do not provide significant patron benefits. Therefore, conversions from rural to city delivery will be approved only to:

- a. Provide relief for overburdened rural routes when all other alternatives are impracticable.
- b. Establish clear cut boundaries between rural and city delivery territory and eliminate overlapping and commingling of service.
- c. Provide adequate service to highly industrial areas or apartment house complexes on rural routes.

Areas converted must meet all requirements for an extension of city delivery and must be contiguous to existing city delivery service. However, the fact that a given area is fully developed and adjacent to city delivery service does not, of itself, constitute sufficient justification for conversion.

After the PRA, and as a result of discussions with the unions during the 1973 and 1975 negotiations, USPS reiterated the policy quoted above in virtually identical language.

By memorandum dated September 15, 1978 addressed to Regional Postmasters General regarding conversions, Senior Assistant Postmaster General E. V. Dorsey wrote:

During negotiations relative to both the 1973 and 1975 National Agreements, management agreed to issue a statement covering the general practice involving conversions from rural to city delivery. Accordingly, a statement was issued in memos dated September 1973 and May 18, 1976, respectively.

That statement, but with an addition, was reaffirmed by management during the 1978 negotiations and, as agreed, is issued as follows:

As a general rule, conversions from rural to city delivery shall be considered only to:

1. Provide relief for overburdened rural routes when all other alternatives are impractical.
2. Establish clear cut boundaries between rural and city delivery territory and eliminate overlapping and commingling of service.
3. Provide adequate service to highly industrial areas or apartment house complexes on rural routes.
4. Provide service to areas where city delivery service will be more cost effective. Regional review is required when cost is the basis for conversion.

Areas considered for conversion must meet all the basic requirements for an extension of city delivery and must be contiguous to existing city delivery service. However, the fact that a given area is fully developed and adjacent to city delivery does not, of itself, constitute sufficient justification for conversion.

As noted, the Dorsey memorandum added Item #4 regarding the cost effectiveness of city delivery service.^{1/}

A Memorandum of Understanding dated September 4, 1975 between USPS and its four unions was incorporated and made part of the 1975-1978 National Agreement. It read, in pertinent part:

^{1/} Language identical to that in the Dorsey memorandum was included in the April 15, 1985 Postal Operations Manual and its revision dated June 26, 1986.

[The parties] recognize that disputes exist among the parties relating to the crafts to which various duties performed by employees represented by the Unions have been assigned. In order to resolve such disputes the parties agree that a standing national level Committee on Jurisdiction, comprised of representatives of each party, shall be established to identify and resolve such current and any future jurisdictional disputes.

Within 90 days subsequent to September 4, 1975 each Union shall submit to the Committee a written description of the scope of the duties it believes are properly assignable to employees it represents. The Committee shall meet to identify those duties over which no dispute as to jurisdiction exists, and to resolve conflicting claims of jurisdiction over duties made by any of the parties.

There were no jurisdictional disputes between NALC and NRLCA submitted to the Committee for resolution. NRLCA defined its jurisdiction in a statement dated December 3, 1975, as "[a]ll work historically recognized as rural carrier craft work and all work functions currently performed by rural carrier craft employees," and "preparing for delivery, delivering . . . in rural and suburban areas outside the limits of city delivery."

POSITION OF NALC

NALC contends that the rural carrier route assignments in Oakton/Vienna, "a densely populated urbanized community," have taken on the "salient characteristics" of city routes and the work therefore falls within the exclusive jurisdiction of NALC. As such, all of these delivery routes constitute city delivery; and the assignment of any of these routes to rural carriers violates several provisions of the NALC agreement, including Article 1,

Section 1 (recognizing NALC as the exclusive representative of city carriers), Article 7, Section 2 (prohibiting the combination of work from different crafts), and Article 41, Section 1 (requiring that city delivery assignments be posted for bid with the city carrier craft).

NALC argues that its claim has clear and binding support from Arbitrator Garrett in the West Coast Jurisdictional Award, which essentially held that each of the postal unions has exclusive jurisdiction over a basic core of jobs defined by the craft structure that had evolved prior to the first collective bargaining agreement.

NALC points to Garrett's conclusion that the National Agreement embodies "a clear intent by all parties to protect the basic integrity of the existing separate craft units as of the time the 1971 National Agreement was negotiated." NALC maintains that Garrett's award considered the question of jurisdiction in two ways:

First, all duty assignments existing at the time the 1971 Agreement was negotiated are to remain in the craft to which they were then assigned (the "status quo" rule), subject to the critical proviso that a change in conditions affecting the nature of such assignment could warrant a change in craft jurisdiction. . . . Second, new positions for individual assignments created after 1971 must be assigned to the most appropriate national craft consistent with the underlying intent of protecting "the basic integrity of the existing separate craft units as of the time the 1971 National Agreement was negotiated."

NALC also relies on Garrett's decision in the Sioux Falls case which, it argues, rejects the USPS contention in this case that it had discretion to assign delivery work to either the NRLCA or NALC crafts in Oakton/Vienna. In view of the fact that most of the present rural route assignments at Oakton/Vienna came into existence after 1971 (and therefore not covered by the "status quo" rule) those routes should have been assigned to the most appropriate craft based on jurisdictional considerations; and that craft is NALC. NALC further asserts:

Alternatively, even if the rural routes at issue were properly assigned to the NRLCA craft in the first instance, those route have since been so transformed by changed conditions in Vienna/ Oakton as to necessitate now the recognition of NALC jurisdiction.

In addition to the fact that there is jurisdictional entitlement based on the integrity of the craft structure, NALC next argues that it is necessary to examine the historic criteria that distinguished city and rural delivery crafts when the 1971 Agreement was negotiated, and as distinguished by USPS in its presentation before the National Labor Relations Board; and that those distinctions have been maintained consistently as evidenced by postal regulations and manuals.

With respect to deliveries in Oakton/Vienna, NALC asserts that such delivery work would have been "unimaginable" as rural even as early as 1971; that the Oakton/Vienna area is a completely

developed "urbanized area" with no open fields and farms; that the rural routes in Oakton/Vienna are "virtually surrounded" by established city delivery areas; that with one exception, all of the rural carriers utilize postal jeeps and long life vehicles, also used by city carriers, to deliver the mail; and that the assignment of postal vehicles to rural carriers to deliver mail to industrial areas and apartment complexes essentially obliterates the distinction between the two crafts.

In the alternative, NALC contends that there were ten specific routes (shown in the videotape and described by NALC witness Cleer) that should be recognized as city delivery because these routes "have absolutely none of the hallmarks of a rural route." These ten routes, NALC submits, "fall squarely within the definition of a 'dismount route' which under applicable postal regulations, is a type of 'city delivery route.'" At the very least, NALC maintains that these ten routes, fitting the profile of a city delivery route, should be posted for bid in the city carrier craft.

Contrary to the contention of USPS, NALC asserts that it does not rely solely on the level of growth and development in the Oakton/Vienna area as the basis for its argument that this is city delivery work that belongs to city carriers under Article 1. In its brief, NALC states:

The crux of our case is that under the guise of rural delivery, management has created city delivery jobs -- i.e., extremely short routes in an urbanized community on which [rural] carriers utilize Postal vehicles to make deliveries on foot. [This has created] de facto city delivery routes without reassigning the work to the city delivery craft. By doing so, it has violated NALC's jurisdictional rights under Article 1.

NALC also rejects the USPS argument that the conversion regulations are dispositive. NALC contends that USPS erroneously treats jurisdiction solely as a matter of geography, i.e., once an area is served by rural delivery, any future modes of delivery within the geographic boundaries of that area will continue to be classified as rural irrespective of how extreme a change in circumstance. NALC contends that this notion that geography determines jurisdiction is wholly inconsistent with the admonition of Garrett that changes in the conditions under which work is performed may necessitate a change in the craft that is assigned the work.

NALC further takes issue with what it considers a mis-characterization of the NALC position with respect to vehicles and dismounting. NALC contends that it has no objection to the use of a postal vehicle by a rural carrier to effect curbside delivery along a 50 mile route in rural territory; it does object to the use of postal vehicles by rural carriers to provide "adequate service to apartment complexes and industrial areas in an urbanized setting like Oakton/Vienna." With respect to dismounts, NALC acknowledges that rural carriers have been required to

dismount from their vehicles. However, as a jurisdictional matter, NALC contends that "route assignments which consist entirely, or almost entirely, of dismounted deliveries from a postal vehicle in an urban setting where city delivery has already been established are city delivery assignments."

NALC rejects as without any factual basis the NRLCA contention that NALC waived its jurisdictional positions through its "course of dealing." NALC points to the concerns expressed by NALC President Sombrotto soon after the negotiation of the "L" route in 1981 and the USPS-NALC meetings where it was agreed that this issue could best be dealt with on a case-by-case basis. NALC also points to the "hundreds of grievances" filed throughout the 1980s protesting the assignment of work to the rural craft. These circumstances, NALC maintains, cannot be considered a waiver of its jurisdictional position.

Finally, NALC also rejects the NRLCA defense of laches, asserting that such defense is appropriate only upon a showing of harm attributable to the delay. Despite the NRLCA "apocalyptic" warnings of the consequences if NALC prevails, this grievance is limited to the facts and circumstances of the situation at Oakton/Vienna; and there is nothing in the record to indicate that the outcome of this case will have any impact on any of the other pending cases.

POSITION OF USPS

USPS contends that NALC has failed to meet its burden of showing that there has been a breach of any established contractual requirement, arguing that NALC has been either unable or unwilling to advance any reasonably specific factual standard it claims was violated because no contractual standard exists that was breached by the mail delivery assignments in Oakton/Vienna.

USPS asserts that under postal regulations, growth and development in a rural delivery area do not require conversion of the area to city delivery. It is the existence of these long-standing postal regulations, and not the vague inferences drawn by NALC from the recognition clause found in Article 1 that must determine the outcome of this case. Under the regulations, USPS has the discretion to determine the type of mail delivery service to be provided to a particular area. More specifically, the regulations critical to a resolution of this dispute are those governing "conversions" from rural to city delivery. These regulations are especially crucial because the remedy sought by NALC is, in the words of President Sombrotto, the "conversion of the routes in Oakton, Vienna, from rural to city delivery."

Inasmuch as it is the conversion of these rural routes in Oakton/Vienna that NALC seeks, it is essential that the regulations which directly govern conversions from rural routes to city delivery be carefully examined. These regulations reveal

that such conversions generally are discouraged; that they recognized that rural delivery patrons will lose special services; and that additional costs may be incurred if these routes are converted to city delivery. USPS points to Section 611.32 of the Postal Operations Manual which is even more restrictive on the matter of conversions, providing: "As a general rule, conversions . . . shall be considered only" to relieve overburdened routes, establish clearcut boundaries, provide adequate service to highly industrialized areas, or where it is cost effective. As such, it is clear that conversions from rural to city delivery are to occur only after a deliberate decision has been taken that a conversion is necessary for one of the purposes stated in the regulations. USPS further emphasizes that the regulations expressly declare that growth and development in a rural delivery area do not mandate a conversion to city delivery and, "does not, of itself, constitute sufficient justification for conversion."

The fact that Oakton/Vienna is no longer rural, in the sense of being sparsely populated or agricultural, as NALC contends, has no relevance in this dispute. USPS argues that the conversion regulations, incorporated and made part of the collective bargaining agreements with both NALC and NRLCA and binding on the parties, specifically provide that even if a rural delivery area becomes "fully developed" that does not, of itself, constitute sufficient justification for reassigning the mail delivery work from the rural carrier craft to the city carrier craft.

USPS characterizes as "specious" the NALC argument that the regulations are "inapplicable" because 1) the regulations only apply when management is considering a conversion and not when it is required and 2) the regulations only apply "as a general rule." USPS responds by asserting:

[M]erely because the NALC asserts that conversion is mandatory does not make regulations which speak in discretionary terms inapplicable. The more rational inference is that, in light of the regulations, the claim that conversion is mandatory is without merit. If there were factors which would compel the conversion of rural territory to city delivery, such factors would necessarily be included in regulations which are intended to advise management whether or not a conversion should take place . . . similarly, there is no rational basis for the NALC's claim that because the regulations apply "as a general rule," there may be exceptional circumstances where conversion would be mandated by considerations "not expressly stated." As a matter of plain logic, when regulations limiting the factors that management may consider are understood to apply only "as a general rule," the result is that management has a freer hand in considering the matter at issue. Management discretion is enhanced when a regulation limiting management's range of permissible considerations is interpreted generally rather than strictly. The NALC, however, argues that because a limitation on management discretion is only generally applicable, other factors not even mentioned in the regulations actually compel a result which the guidelines would not support if they were strictly applied. Such an argument stands logic on its head.

USPS takes issue with the NALC reliance on Garrett's West Coast Jurisdictional Award for the proposition that Article 1 preserves the integrity of the craft structure "as of the time the 1971 National Agreement was negotiated." USPS argues that the regulations of the old Post Office Department and USPS policy in effect when the 1971 National Agreement was negotiated to the

effect that rural delivery areas were not converted to city delivery even when "fully developed," makes it "clear that any preservation of the existing craft structure pursuant to Article 1 does not include any jurisdictional requirement to convert rural delivery to city delivery, regardless of the degree of growth and development in such rural delivery area."

Moreover, USPS contends that the policy stating that conversions are not to be made merely on account of growth and development in a rural delivery area was reiterated on many occasions including the August 27, 1973 memorandum, the May 18, 1976 memorandum and the September 15, 1978 memorandum with no evidence that NALC ever took issue with these policy statements.

USPS points to the fact that both Arbitrator Garrett in the Cabot, Arkansas case and Associate Impartial Chairman Fasser in the Boise, Idaho case relied upon the August 27, 1973 memorandum as the contract standard for determining whether or not a conversion of rural to city delivery was contractually permissible.

Referring again to the reliance placed by NALC on the Garrett West Coast Jurisdictional Award, USPS contends that this award, to the extent that it is relevant, supports the position of USPS. In that award, USPS points out that Garrett drew no straight lines of demarcation between the two crafts involved nor did he establish concrete criteria for determining when USPS was restricted from

assigning work to one craft instead of another. Also, Garrett did not limit the relevant considerations that may be taken into account in determining the appropriateness of a craft assignment. While his award suggests that Article 1 was intended generally to preserve the existing craft structure, "it does not draw strict craft lines where none existed nor does it diminish Management discretion where it had been traditionally employed."

USPS maintains that there is nothing in the nature of the work of the rural carriers in the Oakton/Vienna area that warrants transferring such work to the city carrier craft. Rural carriers in the Oakton/Vienna area are authorized to drive postal vehicles, dismount to effect deliveries, make centralized deliveries and deliver to NDCBUs, and deliver to townhouses and office buildings. USPS maintains that the evidence in this case establishes conclusively that all of the work practices engaged in by rural carriers are consistent with long standing postal regulations and the manner in which rural carriers have traditionally performed their work.

With respect to the contention of NALC that rural carriers in Oakton/Vienna were not actually being used as rural carriers because they did not "maintain a fixed stamp credit as required by the rural carrier regulations," USPS asserts that it was firmly established at the hearing that rural carriers in Oakton/Vienna do perform the full range of retail services provided by rural carriers across the country.

USPS emphasizes that all of the rural delivery area in Oakton/Vienna claimed by the NALC has always been served by the rural carriers, and points to the fact that Garrett in the Sioux Falls case considered "the established practice in each given Post Office" as a prime consideration in resolving city/rural jurisdictional disputes.

USPS further contends that the attempts by NALC to claim exclusive jurisdiction of mail delivery in suburban America is belied by the fact that as early as 1954 Postmaster General Summerfield recognized that rural delivery service was expanding because of increased numbers of Americans were moving out to the suburbs; that NRLCA's jurisdictional statement on December 3, 1975 referred to its jurisdiction as encompassing work "in rural and suburban areas;" and that USPS and NRLCA did not consider any jurisdictional problems for them to negotiate a "suburban route" in the 1981 negotiations establishing the "L" routes.

Finally, USPS asserts that NALC's approach to this case "suffers from the fundamental problem that it seeks to establish in arbitration standards that can only be created in negotiations between the parties or, failing that, interest arbitration."

POSITION OF NRLCA

NRLCA contends that USPS, from the 1960s to the present, has consistently exercised its managerial prerogatives "without reversal or rebuke." NRLCA insists that NALC has failed to come forward with any justification or authority "that holds that where the postal service has the original choice to make between rural and city then a certain result is compelled or mandated." Such assignment is, and should be, left to the proper and reasonable exercise of discretion by USPS.

NRLCA argues that the NALC's reliance on the two Garrett awards is misplaced. Rather than support the position of NALC, a proper analysis of those two awards supports the position taken by USPS and NRLCA.

NRLCA further contends that NALC, by its own conduct, and the course of past performance by USPS, has waived any rights it may have arguably had under its agreement. Whatever NALC's contract language meant originally, for a period of 15 years until this grievance was filed, NALC "conducted itself in such manner and permitted the postal service a course of performance which warrant the reasonable construction of the contract language leaving the postal service free to assign the Oakton/Vienna deliveries and routes to the rural carriers in the exercise of its Article 3 prerogatives." In this connection, NRLCA maintains that NALC had never, until this case, asserted in arbitration any claim that the

terms of its contract in any way restricted, limited or barred USPS from assigning the disputed routes to rural carriers; that it had never before contended that, under its contract, the work in dispute belonged exclusively to NALC; that with one exception in 1981, NALC had never sought to change existing language; and, since 1981, had never challenged the creation of thousands of rural carrier routes in high density areas throughout the country.

NRLCA next argues in its brief:

NALC has waived any claim to exclusive jurisdiction; it has demonstrated by its consistent course of dealing with the postal service that it does not interpret its own contract to constrain the postal service in assigning territory and routes between the two crafts; NALC has suffered and permitted the postal service an uninterrupted course of performance in assigning the disputed work to rural carriers; NALC is now estopped to assert a different contract construction; and, NALC has elected to allow the postal service to exercise its Article 3 powers as the postal service sees fit.

Finally, NRLCA contends that the contractual claim of NALC is barred by the doctrine of laches. Countering the assertion by NALC that the doctrine does not apply because there was never any showing of prejudice or harm from the admitted delay, NRLCA cites arbitral authority to the effect that "tangible harm" need not be shown, and that inexcusable delay, in and of itself, is sufficient to invoke the doctrine because of the damage to the collective bargaining process and to the day-to-day relations between the parties.

A ruling in favor of NALC in this dispute would be "catastrophic" to both USPS and NRLCA. It warns:

The organization [NRLCA] would wither and die. And with it, the potential end of rural delivery in America as it is known today. For what is not yet fully appreciated is that without the delivery services presently being offered to the Oakton/Viennas of America, the likelihood of cost-effective service under existing collective bargaining agreements to the villages, towns and farms of America becomes problematical.

DISCUSSION AND FINDINGS

This dispute poses the question of what jurisdictional consequences, if any, arise when a rural area develops over time into what appears to be a suburban area. NALC alleges that Oakton/Vienna has grown to such an extent that its rural carriers have in effect become city carriers, that NALC has "exclusive jurisdiction" over city carrier work, and that the arbitrators should therefore order a transfer of this work to the city carrier craft, i.e., to NALC jurisdiction. Both the USPS and NRLCA insist there is no merit in NALC's claim.

I.

Jurisdictional Principle

Any evaluation of NALC's claim must begin with the principle upon which its case rests. It asserts that "each of the postal unions has exclusive jurisdiction over a basic core of jobs

defined by the craft structure that had evolved when the first collective bargaining agreement was negotiated." It relies, in support of this proposition, on Arbitrator Garrett's award in a jurisdictional dispute involving three West Coast cities.

That award (Case Nos. AW-NAT-5753, A-NAT-2964, and A-NAT-5750) concerned a Mail Handlers claim that work assigned to employees in the APWU bargaining unit should be reassigned to employees in the Mail Handlers unit because of various agreements between the Mail Handlers and USPS. Both USPS and APWU opposed any such reassignment. Garrett carefully examined the National Agreement to determine its impact on craft jurisdiction. His findings are significant and bear repeating:

The meaning of Article I, Section 1 must be ascertained from an objective reading of its language, in the context in which it was negotiated... The bargaining context in which Article I, Section 1 was negotiated includes two particularly significant elements: (1) the history of collective bargaining on a craft basis in the [former] Post Office Department and (2) the inclusion in the National Agreement of other provisions illuminating the obligations arising under Article I, Section 1.

For many years prior to 1970 the Post Office Department had negotiated with the exclusive national unions. The Postal Reorganization Act of 1970 recognized this situation when it directed the Postmaster General and the labor organizations holding "national exclusive recognition rights" to negotiate agreements covering wages, hours, and conditions of employment "of the employees represented by such labor organizations." Against this background it is highly significant that Article I, Section 5, which deals with newly created "positions", requires that any such new position be assigned to the most appropriate existing national "craft" unit. It is a plain implication from this carefully drawn provision that all parties to the National Agreement contemplated that existing positions,

then included in existing national craft units, should remain in those units.

Article VII, Section 2 also is highly significant since it permits the combination of work in different crafts "into one job" only under limited circumstances (arising from an exercise of Management initiative under Article III) and states that normally "work" in different crafts "will not be combined into one job." Article VII, Section 2-A goes on to declare that "full time scheduled assignments" including work within different crafts may be created only after: (1) all available work within each craft by tour has been combined, and (2) work of different crafts in the same wage level by tour has been combined. Moreover, this provision concludes with a requirement that no such combination full-time assignments may be made except after notice to the "affected Unions" of the reasons for establishing the "combination full-time assignments within different crafts."

Since these detailed provisions reflect a clear intent by all parties to protect the basic integrity of the existing separate craft units as of the time the 1971 National Agreement was negotiated, the Impartial Chairman must find that Article I, Section 1 bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular work assignments), except in conformity with Article VII. (Underscoring added in final paragraph)

We recognize of course that the Garrett award involved neither NALC nor NRLCA. But these unions were, as of April 1975, parties to the same National Agreement as the Mail Handlers and APWU. Garrett's interpretation of Article I, Section 1 is a controlling precedent for all four unions as well as the Postal Service. In any event, USPS and NRLCA have not attacked the Garrett award in their post-hearing briefs. They do not maintain that award was wrongly decided. Rather, the thrust of their argument is that nothing in the Garrett opinion requires NALC's

grievance be granted and that the Garrett opinion is plainly distinguishable from the situation presently before us.

We believe, moreover, that Garrett's view of the history and purpose of Article 1, Section 1 is correct. It follows that the unions may properly invoke this provision to "protect the basic integrity..." of their respective "separate craft units..." NALC has a right to protect its craft jurisdiction; NRLCA has the same right to protect its craft jurisdiction. Article 1, Section 1, to repeat, "bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular assignments)..." Or, to express the point somewhat differently, "existing regular work assignments" must ordinarily remain within the craft to which they have customarily been assigned. An exception is appropriate in those circumstances where the character of such "work assignments" has changed to such an extent that they can no longer fairly be said to constitute "work..." of the original craft.

II.

Application of the Principle

It is one thing to state these principles. It is quite another to apply them to the facts of this case. The difficulty is magnified dramatically when one deals with a dispute between NALC and NRLCA, between the city carrier craft and the rural

carrier craft. For city carriers and rural carriers perform essentially the same work. They case mail in a postal facility; they deliver mail along an established route; they pick up mail from postal customers. There are of course differences and NALC's case, as will soon be apparent, focuses on what it perceives to be critical differences in mail delivery in the Oakton/Vienna area.

Arbitrator Garrett was confronted by much the same question in an August 1974 award in Sioux City, Iowa (Case No. N-C-4120). There, NALC complained of some 800 deliveries being transferred from its bargaining unit to the NRLCA unit. That delivery work had been performed in the past by city carriers. Although NALC stressed both Article I, Section 1 and Article VII, Section 2A, Garrett ruled in NALC's favor strictly on the basis of Article VII. To that extent, the Garrett award is quite different from the present case which rests largely on Article 1, Section 1.

What is important, however, is that USPS then suggested that there was no distinction between city carrier work and rural carrier work, that such carriers could in effect be treated as if they were in the same "craft," and that therefore the appropriate craft for jurisdictional purposes is whichever craft Management has chosen to handle a particular route. Its position was, in short, that when Management decided to designate a route as "rural," that route necessarily became rural carrier work within NRLCA's craft jurisdiction regardless of who had previously performed such work.

Garrett rejected this argument. His reasoning is significant for purposes of the present case as well:

These [Postal Service] arguments, however skillful an exercise in semantics, overlook the consistent treatment of the City and Rural Carriers as separate "crafts" for purposes of collective bargaining. While their work in many instances may be virtually identical, this in no way can detract from the dominant fact that these two groups have been deemed to be separate "crafts" for many years, both in law and in practice. Article VII, Section 2A, cannot be interpreted properly except in light of this firmly established meaning of the words "craft" and "crafts" as used therein. This meaning does not lie in any abstract definition of either "craft." It can only be found in established practice in each given Post Office in assigning work to one or the other of the craft bargaining units. If this interpretation somewhat limits the flexibility of Management to transfer work from City to Rural Carriers (and thus to change the type of service provided in given areas) it nonetheless is inescapable when Article VII, Section 2A is read in the context in which it was written. Moreover, the basic policy thus reflected in this provision may well be essential to the maintenance of sound relationships between the Postal Service and the various Unions involved, as well as among the Unions themselves. (Emphasis added)

The core of this ruling is that the jurisdiction of a "craft" is to be determined by the "established practice in each given Post Office in assigning work..." From the standpoint of jurisdiction, the customary way of doing things becomes the contractually correct way of doing things. Work always performed by rural carriers in a given area is presumptively within NRLCA's jurisdiction just as work always performed by city carriers in a given area is presumptively within NALC's jurisdiction. This heavy reliance on "practice" was a means of insuring the stability of each craft bargaining unit.

III.

The Present Case

NALC acknowledges that the initial assignment of rural carriers to deliver mail in the Oakton/Vienna area in question was not improper. It concedes that this work was then rural in nature and hence part of NRLCA's craft jurisdiction. Its argument, however, is that this work has gradually evolved over the years into city carrier work. It emphasizes the rural carriers' use of postal vehicles, their shorter routes, their frequent dismounts to effect deliveries, and their deliveries to office buildings, apartment houses, or other multiple dwellings including stops at neighborhood delivery and collection box units (NDBCUs). It believes that the highly developed area they now serve in no way resembles the rural area they earlier served and that the changed character of their work demands a transfer of this mail delivery to city carriers.

As for postal vehicles, it is true that most rural carriers in Oakton/Vienna have been furnished postal vehicles. There is nothing unusual about such an arrangement. The "rural carrier craft" article of the 1975 National Agreement called for the payment of an "equipment maintenance allowance" to rural carriers who used their private vehicles to deliver mail. This article went on to say that no such "allowance" was payable "when a vehicle is provided by the Employer..." And rural carriers have frequently been provided with postal vehicles over the years.

USPS has chosen that course because of cost considerations. Where the "allowance" paid for a private vehicle was more costly than the use of a postal vehicle, Management has ordinarily switched rural carriers to a postal vehicle. This appears to have been the practice for some 20 years. Surely, the work performed by rural carriers is no different whether they are driving their private vehicles or postal vehicles.^{1/} The ownership of the vehicle has no jurisdictional significance.

As for dismounting, it is true that 22 of the 40 rural routes in Oakton/Vienna involve dismounting. But there is nothing unusual about rural carriers dismounting to make deliveries. They have done so elsewhere for many years. The "rural service" regulations in the 1966 Postal Manual reveal that "door delivery service" was then being "provided to apartment houses and other multiple dwellings which use or qualify to use apartment house mail receptacles..." The instructions in 1976 for evaluating rural routes included consideration of "dismount time" in serving apartment houses, businesses, schools and so on. NRLCA itself in its weekly publication in 1976 noted that "dismounts" were "becoming a more common occurrence on certain rural routes..." The rural carrier compensation system has for some time been based

^{1/} The same thing would be true of city carriers. The "city carrier craft" article of the 1975 National Agreement stated that whether a city carrier furnishes a private vehicle was a purely "voluntary" matter and that if someone so volunteers he would be paid pursuant to a table of "reimbursement rates." The fact that a city carrier provided his private vehicle for delivering mail could hardly constitute a basis for considering him part of the rural carrier craft.

upon, among other factors, the number of "dismounts" and the "dismount distance" traveled. The testimony plainly shows that rural carriers have been dismounting for some 28 years although the extent of this activity appears to have increased substantially beginning in 1976. Given these circumstances, it cannot be said that dismounting by itself can properly be viewed as a crucial jurisdictional yardstick.

As for changes in the delivery area, it is true that Oakton/Vienna has been transformed over time from a largely rural area to a highly developed area. Office buildings have been constructed; apartment houses and other multiple dwellings have been built; shopping centers have appeared. This meant greater population density which was in turn translated by USPS into shorter routes and more dismounts. These changes did not all occur in the period immediately preceding NALC's grievance. The development of Oakton/Vienna has been an ongoing process for years due to its proximity to the District of Columbia and due to the extraordinary growth of the Washington, D. C. metropolitan area.

There is nothing unusual about the delivery assignments in Oakton/Vienna. Rural carriers elsewhere have made deliveries for years to office buildings, apartment houses, other multiple dwellings, and large structures. As noted earlier, the 1966 Postal Manual stated that "rural service" was then being "provided to apartment houses and other multiple dwellings..." That has, since 1966 and perhaps even earlier, continued to be true. Rural

carriers throughout this period have been responsible for "centralized delivery," that is, a mail receiving unit where the carrier has access to more than one customer's receptacle by opening just one door. "Centralized delivery" is found in apartment houses, mail rooms, NCDBUs, and so on. The NCDBUs were introduced in the late 1960s and quickly spread throughout the country. They are associated mainly with large multiple dwelling units and they have been serviced since the 1960s, by both rural carriers and city carriers. All of this is confirmed by a provision in the USPS-NRLCA National Agreement^{1/} which recognizes that "centralized delivery" is part of the rural carrier's work. This history suggests that the jurisdiction of the delivery crafts cannot ordinarily be defined in terms of the structures they service. The overlap here has been far too great to warrant a finding that city carriers alone are entitled to deliver to offices, apartments, multiple dwellings, and the like.

As for route mileage, it is true that some of the Oakton/Vienna rural routes are from 8 to 16 miles in total length. This is less than what one might expect of a typical rural route. In 1972, for instance, testimony before the NLRB suggested that the average rural route was some 50 miles in length. But such an average could well include at the lower end of the range routes comparable to the 8-16 miles mentioned above. Route length is necessarily a function of population density. That would be true

^{1/} See Article 9, Section 2C5 of these parties' 1988 National Agreement.

of both city and rural carriers. The "L" route was introduced in the NRLCA National Agreement in 1981 as a "method of finding an appropriate compensation level for rural carriers who were working in higher density delivery areas." In once rural areas that have turned suburban, it is hardly surprising that routes become shorter. Nothing in the evidence shows that routes 8 to 16 miles in length have in all cases been associated with city carriers. As early as 1968, the Postal Manual provisions with respect to "rural delivery service" noted at Section 353.112 that "on [rural] routes of less than 10 miles, an average of at least 6 families per miles should be served." And the Domestic Mail Manual at Section 156.21 speaks of some rural carriers handling "routes of less than 10 miles..."

NALC's claim does not rest on any one of these several characteristics. It does not deny that rural carriers elsewhere in the United States have over the years been assigned USPS vehicles, or been placed on relatively short routes, or been expected to dismount, or been required to deliver to offices, apartments, and other large buildings. Its point is that there are rural carriers in Oakton/Vienna whose routes involve all of these characteristics. However, these Oakton/Vienna carriers are not at all unique. The fact is that any rural carrier who delivers to offices, apartments, and other such structures in a well-developed area is also likely to possess all of these characteristics. Such rural carriers appear to have done for a

long time exactly what some rural carriers in Oakton/Vienna are doing.

None of this should come as a surprise to NALC. For the development of Oakton/Vienna has been an on-going process for years. The offices, apartments and similar structures did not suddenly arrive in 1988-89 immediately prior to the grievance. They have been incrementally added to the area since the 1970s, perhaps even earlier. With their construction came dismounts, shorter routes, and "centralized delivery." The number of rural routes grew and some of these must necessarily have possessed all of the characteristics in question. Thus, the nature of the work itself in relation to the history of Oakton/Vienna does not support NALC's case.

IV.

Impact of POM

In assessing the significance to be attached to the development of a rural area, one must also consider the Postal Operations Manual (POM). The POM is one of the "handbooks, manuals and published regulations of the Postal Service..." As such, it is binding on the parties under Article 19 of their respective National Agreements insofar as it relates to "wages, hours or working conditions..." Its rules with respect to conversion of rural delivery to city delivery plainly refer to the very issue before us. NALC seeks the conversion of rural delivery

routes in Oakton/Vienna to city delivery. Should its grievance be granted, the carriers in question would be covered by NALC's collective bargaining agreement. Should its grievance be denied, the carriers in question would continue to be covered by NRLCA's collective bargaining agreement. Obviously, the POM conversion rules help Management to determine the kind of delivery service to be provided in a given area. That in turn determines the bargaining unit in which the carriers will work and hence their "wages, hours or working conditions..."

Sections 611.31 and 611.32 of the POM read, in part:

611.31 General. When considering conversion of rural to other delivery services:

a. Keep in mind that the special services provided by rural carriers will no longer be available to that portion of the public transferred.

b. Additional costs may be incurred through establishment of finance units, as well as relay, collection, parcel post and special delivery service.

c. Determine whether equal or better service can be provided at lower cost by establishment, extension, or rearrangement of the rural service, taking full advantage of the heavy duty provisions of the regulations...

* * *

611.321 As a general rule, conversions from rural to city delivery shall be considered only to:

a. Provide relief for overburdened rural routes when all other alternatives are impractical.

b. Establish clear cut boundaries between rural and city delivery territory and eliminate overlapping and commingling of service.

c. Provide adequate service to highly industrialized areas or apartment house complexes on rural routes.

d. Provide service to areas where city delivery service will be more cost effective.

611.322 Areas considered for conversion must meet all the basic requirements for an extension of city delivery and must be contiguous to existing city delivery service. However, the fact that a given area is fully developed and adjacent to city delivery does not, of itself, constitute sufficient justification for conversion.
(Emphasis added)

Under the POM regulations, Management may "consider" conversion from rural to city delivery when any of the matters set forth in Section 611.321 are present. Such "consider[ation]" may well be prompted, for instance, by a rural route with "highly industrialized areas" or a rural route with "apartment house complexes." Nowhere does the POM state what the outcome of that "consider[ation]" should be. The plain implication is that Management is free to make whatever decision it wishes. It may choose to convert from rural to city delivery; it may choose not to. Nothing in the POM requires Management to convert. A careful reading of the POM clearly shows that Management is to have a large measure of discretion on this subject.^{1/}

^{1/} The fact that the regulations are expressed "as a general rule", or that they focus on what Management is to "consider," in no way detracts from their obvious intent to grant Management broad discretionary authority.

More importantly, 611.322 anticipated the very problem that arose in this case. It states that "the fact that a given area is fully developed and adjacent to city delivery does not, of itself, constitute sufficient justification for conversion." Once a rural area is "fully developed", it will ordinarily resemble suburbia. for the rural carriers in such an area, that will mean more shorter routes, more dismounts, and more deliveries to office and apartment buildings. This is exactly what has happened over the years in Oakton/Vienna. These conditions, however, do not demand conversion from rural to city delivery. Management may choose to effect a conversion if it wishes. But 611.322 expressly allows Management to reject conversion in such a "fully developed" area. Yet NALC here urges the arbitrators to order a conversion precisely because of the impact on rural carriers from the fact that Oakton/Vienna is "fully developed." It would negate the very discretion Management has possessed under 611.321 and 611.322.

The managerial freedom acknowledged by these regulations and incorporated in the National Agreements through Article 19 cannot be ignored. This does not mean that Article 1, Section 1 jurisdictional rights do not exist or that a clear violation of such rights could not in appropriate circumstances call for a conversion from rural to city delivery notwithstanding the POM regulations. Our ruling simply is that where, as here, jurisdictional lines are blurred by the long-standing overlapping duties and working conditions of rural and city carriers, the regulations can properly be invoked to help determine jurisdiction

and to better understand what significance, if any, to attach to a "fully developed" area.

For the reasons expressed in parts III and IV of this opinion, we cannot find that full development of Oakton/Vienna with its understandable impact on routes, dismounts and "centralized delivery" requires a conversion from rural to city delivery.

V.

Governing Principle

There is, however, a principle upon which the jurisdictional question can be effectively resolved. We return to Arbitrator Garrett's award in Case No. N-C-4120. He asserted that the meaning of the word "craft," and hence the scope of a craft's jurisdiction, cannot rest on "abstract definition." Rather, he explained, this meaning "can only be found in established practice in each given Post Office in assigning work to one or the other of the craft bargaining units." We accept this concept because, given the maturity that characterizes the collective bargaining relationships of these parties, the customary way of doing things is the most realistic guide to jurisdiction. We accept this concept also because it does leave room for legitimate jurisdictional challenges when work is changed to such an extent that the "established practice" can no longer be said to have persuasive force.

In applying this principle to NALC's grievance, the answer seems apparent. Oakton/Vienna has been more suburban than rural for a good many years. Its development has been constant. Its population density has grown as apartment houses, other multiple dwellings, and office buildings were constructed. But these changes did not occur suddenly in the one to two years preceding the grievance. These changes have been an ongoing feature of this area's landscape. The rural carriers in question have been serving the same portions of Oakton/Vienna as long as one can remember. Their routes have evolved from the standpoint of route distance, number of dismounts, and scope of "centralized delivery." But these are differences in degree, not differences in kind. Some of the rural carriers in question evidently began having shorter routes, more dismounts, and greater "centralized delivery" at the same time as other rural carriers throughout the country were experiencing the same types of changes.

The point is that the "established practice" in Oakton/Vienna has been to assign the work on the disputed routes to rural carriers. And it is that "practice" which should prevail in this case. The evolution of rural carrier work in this area has been so gradual over so many years that we cannot find, on the record before us, that the "established practice" no longer has persuasive force.

VI.

Other Considerations

The Garrett awards in 1974 and 1975 recognized that there are jurisdictional lines between the several crafts, that Article 1, Section 1 grants each craft union the right to protect its jurisdiction, and that "established practice" is the most reliable guide in defining jurisdiction. Neither in these awards, nor in any subsequent awards, has any attempt been made to translate these generalities into objective criteria for distinguishing one craft from another. The practical difficulties in formulating such criteria should be obvious. These difficulties are even more pronounced when dealing with two crafts, such as rural carriers and city carriers, whose work overlaps in so many ways.

NALC itself acknowledged this problem in the 1981 national negotiations. It proposed amendments to USPS regulations in order to "better define what constitutes city delivery territory" and to "establish firm criteria for conversion of rural delivery territory to city delivery territory." Those proposals were not acceptable to the USPS. As a result, jurisdictional issues remain subject to Article 1, Section 1 and to the POM. Nevertheless, NALC asks the arbitrators here to do what the USPS and NALC were unable to do in the 1981 negotiations. It asks in effect for some kind of objective criteria. To grant that request would be unwise not just because of what occurred in the 1981 negotiations but, more important, because the arbitrators have only a limited

knowledge of the detailed work assignments for these crafts on a national basis. It would be highly mischievous to establish such criteria without any clear idea as to what their probable impact on the crafts would be. Such complex matters are best left to the bargaining table.

* * *

For all of these reasons, we cannot find a violation of Article 1, Section 1 on the facts of this case.

AWARD

The grievance is denied.


Richard Mittenthal, Arbitrator


Nicholas H. Zumas, Arbitrator

August 1, 1994