C#15248

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS	CASE NO. B90N-4B-C 92021294 GRIEVANCE: Class Action POST OFFICE: Lynn, Massachusetts

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Employer: Mr. D. James Shipman

For the Union: Mr. Keith Secular

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: October 31, 1995

POST-HEARING BRIEFS: January 12, 1996

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated the parties' National Agreement, specifically Article 41.3.O, where, after full-time duty assignments were abolished due to route adjustments, subsequent bidding was not installation-wide. Carriers adversely affected by the Employer's action shall be made whole. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. The grievance is sustained. It is so ordered and awarded.

DATED 3-22-96

Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION)
)
BETWEEN)
)
UNITED STATES POSTAL SERVICE) ANALYSIS AND AWARD
)
AND) Carlton J. Snow
) Arbitrator
NATIONAL ASSOCIATION OF)
LETTER CARRIERS)
(Class Action Grievance))
(Case No. B90N-4B-C 92021294))

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from June 12, 1991 through November 20, 1994. A hearing occurred on October 31, 1995 in a conference room of the postal headquarters located at 475 L'Enfant Plaza, Southwest in Washington, D.C. Mr. D. James Shipman, Manager of Human Resources in the Hawkeye District of Des Moines, Iowa, represented the Employer. Mr. James T. Caputa, Labor Relations Specialist, assisted Mr. Shipman. Mr. Keith E. Secular, an attorney with the law firm of Cohen, Weiss and Simon in New York City, represented the National Association of Letter Carriers. Mr. Stephen D. Hult assisted Mr. Secular.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their

respective parties. Ms. Donna M. O'Neill of Diversified Reporting Services, Inc. reported the proceeding for the parties and submitted a transcript of 68 pages. The arbitrator also maintained extensive personal notes.

There were no challenges to the substantive or procedural arbitrability of the dispute. The parties stipulated that the matter properly had been submitted to arbitration. They auithorized the arbitrator to retain jurisdiction in the matter for 90 days following the issuance of an award. The arbitrator officially closed the hearing on January 12, 1996 after receipt of the final post-hearing brief in the matter.

II. STATEMENT OF THE ISSUE

The parties stipulated that the issue before the arbitrator is as follows:

> Did the Employer violate the parties' National Agreement, specifically Article 41, Section 3, Paragraph O, when full-time duty assignments were abolished due to route adjustments and subsequent bidding was restricted to individual stations/branches, as opposed to being done on an installation-wide basis? If so, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 41 - LETTER CARRIER CRAFT

B. Method of Posting

1. The notice inviting bids for Letter Carrier Craft assignments, and to such other assignments to which a letter carrier is entitled to bid, shall be posted on all official bulletin boards at the installation where the vacancy exists, including stations and branches, as to assure that it comes to the attention of employees eligible to submit bids. Copies of the notice shall be given to the local Union. When an absent employee has so requested in writing, stating a mailing address, a copy of any notice inviting bids from the craft employees shall be mailed to the employee by the installation head.

2. Posting and bidding for duty assignments and/or permanent changes in fixed non-work days shall be installation-wide, unless local agreement or established past practice provide for sectional bidding or other local method currently in use.

Section 3. Miscellaneous Provisions

O. The following provision without modification shall be made a part of a local agreement when requested by the local branch of the NALC during the period of local implementation, provided, however, that the local branch may on a one-time basis during the life of this Agreement elect to delete the provision from the local agreement:

> "When a letter carrier route or full-time duty assignment, other than the letter carrier route(s) or full-time duty assignment(s) of the junior employee(s), is abolished at a delivery unit as a result of, but not limited to, route adjustments, highway, housing projects, all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time duty assignment(s) was abolished shall be posted for bid in accordance with the posting procedures in this Article."

That provision may, at the local NALC Branch's request during local implementation, be made applicable (including the right to delete it) to selected delivery units

within an installation. For purposes of applying that provision, a delivery unit shall be a postal station, branch or ZIP code area. Any letter carrier in a higher level craft position who loses his/her duty assignment due solely to the implementation of that provision shall be entitled to the protected salary rate provisions (Article 9, Section 7) of this Agreement.

IV. STATEMENT OF FACTS

In this case, the Union challenged the decision of the Employer to restrict bidding on abolished full-time duty assignments to individual branches or stations instead of using an installation-wide approach. There is little disagreement regarding the facts of the matter, but the parties are unable to agree on an appropriate interpretation of relevant contractual language and its impact on the facts.

The dispute arose in the Lynn, Massachusetts facility. This is an installation consisting of a main office as well as three delivery satellite units in West Lynn, Swampscott, and Saugus. There are 170 letter carriers employed throughout the Lynn, Massachusetts installation, and approximately 140 carriers hold full-time assignments. There are 77 carriers assigned to the main office. Additional full-time positions are divided fairly equally among the remaining satellite units.

In a Local Memorandum of Understanding, the parties adopted language found in Article 41, Section 3.0 of the National Agreement. The language covered bidding and posting procedures within the Carrier craft. Prior to the current

dispute, the normal practice in the Lynn, Massachusetts facility had been to post vacant or newly established full-time duty assignments using an installation-wide approach.

There was a route inspection in March of 1992, and management adjusted several routes. In June of 1992, management abolished several routes. Full-time assignments held by letter carriers who were junior to carriers whose full-time assignments had been abolished were posted for bids. Management limited eligibility to bid to full-time carriers within the delivery unit in which the assignment had been abolished. The Union asserted that management's approach violated the parties' collective bargaining agreement.

By the fall of 1991, the parties remained unable to resolve the matter; and the Union concluded that the parties were at impasse based on their differing interpretations of Article 41.3.0. Matters were at a standstill until July of 1992 when the parties agreed to seek resolution through the parties' negotiated grievance procedure. That process culminated in this arbitration proceeding on October 31, 1995.

V. POSITION OF THE PARTIES

A. The Union

It is the position of the Union that the Employer violated the parties' National Agreement in 1992 by refusing to allow installation-wide bidding on vacancies that resulted from route adjustments. According to the Union, Article 41.3.O of the parties' agreement expressly required installation-wide bidding in the situation that gave rise to this grievance. It is the position of the Union that installation-wide bidding has been established by past practice at the Lynn, Massachusetts facility. Accordingly, the Union maintains that the grievance should be sustained and that all carriers adversely affected by the action of the Employer should be made whole.

B. The Employer

The Employer argues that Article 41.3.O of the parties' National Agreement, as adopted in the Local Memorandum of Understanding, applies only to the "delivery unit." It is the belief of management that contractual language is clear and unambiguous with regard to the dispute in this case. According to the Employer, for many years the language has been well settled and interpreted by both parties as applying only to the "delivery unit."

It also is the Employer's belief that the allegedly new interpretation espoused by the Union is not supported by con-

contractual language. Nor does the Employer believe that the Union's interpretation accomplishes the purpose for which the clause was designed, namely, balancing the interests of efficiency and protection of seniority. It is the Employer's position that the Union's interpretation of the agreement would produce inefficiency and would not adequately provide protection for carriers whose routes had been abolished.

The Employer argues that comments published by the parties when the language first came into existence supports the Employer's belief that, as of 1980, both parties shared the same understanding of the disputed language. It is the contention of the Employer that the Union is attempting to reinterpret a well-established meaning of the language in order to change the parties' agreement without doing so at the bargaining table. Finally, the Employer maintains that the Union's reliance on past practice in this case is misplaced. Accordingly, the Employer concludes that the grievance must be denied.

VI. ANALYSIS

A. Requirements of Article 41.3.O

The meaning of Article 41.3.O in the parties' agreement is at the heart of the dispute between the parties. The parties failed to agree regarding how this contractual provision applied to the Lynn, Massachusetts facility as well as what appropriate procedures are mandated by the provision in the area of bidding. Before examining bidding procedures, it will be helpful to understand the general operation of Article 41.3.O.

Article 41.3.O of the parties' agreement states:

> The following provision without modification shall be made a part of a local agreement when requested by the local branch of the NALC. . . . (See, Joint Exhibit No. 1, p. 215).

The first requirement of Article 41.3.O is that the local branch of the NALC must request its presence in the local agreement. The first requirement was met when the Lynn, Massachusetts branch of the NALC chose to include this provision in Article XII, Section 1, Part L of the Local Memorandum of Understanding.

Article 41.3.O also states that:

> All routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time duty assignment(s) was abolished shall be posted for bid in accordance with the posting procedures in this Article. (See, Joint Exhibit No. 1, p. 215).

There was no dispute about the fact that management abolished certain routes or full-time duty assignments in the Lynn, Massachusetts facility. The remaining task, then, is to determine what posting procedures Article 41 required.

Article 41.1.B.2 is entitled "Method of Posting." The provision states:

> Bidding . . . shall be installation-wide, unless local agreement or established past practice provide for sectional bidding or other local method currently in use. (See, Joint Exhibit No. 1, p. 207).

The language is clear that, in the absence of a local agreement or past practice dictating otherwise, the parties agreed to mandate installation-wide bidding.

Despite such unambiguous language in the parties' agreement, management maintained the context of Article 41.3.O clearly indicated that bidding was meant to be limited to delivery units only. Logic for the Employer's interpretation was found in the fact that Article 41.3.O can be adopted by individual delivery units and is not required to be adopted by an entire installation. Moreover, because Article 41.3.O uses the term "delivery unit," which is defined on a national level rather than on a local level, the Employer found further support for the intent of the parties to keep bidding procedures uniform and restricted to the "delivery unit."

Such an argument, however, is flawed. The difficulty with such an analysis is that, although there are two references to the "delivery unit" in Part O of the agreement, such references do not address bidding procedures. The first reference to "delivery unit" is mentioned within the context of describing jobs which will be declared vacant. The only other reference to "delivery unit" is the section of the agreement which allows language of the article to be made applicable to selected

"delivery units" on an individual basis. In neither instance was there a mention or bidding procedures. Nor was there any reference to "delivery units" in the discussion of bidding procedures. On the other hand, the specific language of the parties' agreement clearly stated that bidding would be installation-wide, unless local practice or agreement dictated otherwise.

While the Employer's argument might have had more potency if contractual language had been less specific, such unambiguous language in the parties' agreement cannot be ignored. Recall the common law standard of preference in interpretation which states that "specific terms and exact terms are given greater weight than general language." (See, Restatement (Second) of Contracts, § 203(c), 93 (1981)). This is a well-settled principle of interpretation and, of course, is also followed in the Uniform Commercial Code. (See, UCC § 1-205). It is reasonable to apply such a well-settled interpretive principle to the facts in this case.

B. Local Memorandum of Understanding

The local agreement entered into between Branch 7 and the Employer failed to address the question of whether bidding for full-time vacancies was to be conducted on an installation-wide basis or was limited to individual delivery units. (See, Joint Exhibit No. 6). Accordingly, Article 41.3.O of the parties' National Agreement required that there be installation-wide bidding, unless there was evidence of a local practice which indicated that bidding should take place in a different manner. The parties submitted persuasive evidence concerning this matter to the arbitrator.

At the arbitration hearing, both Messrs. Patrick Byrne, Branch President, and William H. Young, National Vice-president, testified that the general bidding practice at the Lynn, Massachusetts facility, prior to the current grievance, always had been conducted on an installation-wide basis. There was no rebuttal evidence on this point. It, accordingly, must stand uncontroverted.

There also was evidence that, on two prior occasions, Article 41.3.O had been invoked by the local union branch. The first instance occurred in 1980 when management abolished several full-time duty assignments after route inspections. At that time, the Employer posted junior positions; and letter carriers on an installation-wide basis were permitted to bid on ther vacancies. Branch President Byrne testified that he, personally, benefited from the installation-wide bidding. He testified that he had been allowed to bid and, ultimately,

was awarded a position in the West Lynn Station, although he previously had been employed in the Main Post Office of Lynn, Massachusetts. There was a similar occurrence in 1990 when management eliminated regular positions, posted junior positions installation-wide, and allowed carriers to bid on vacancies in stations other than where they were currently employed.

The Employer maintained that the incidents in 1980 and 1990 failed to establish a past practice of installation-wide bidding in Article 41.3.O situations. According to the Employer, the general bidding practice at the Lynn, Massachusetts facility was not sufficient to establish a past practice in the specific context of Article 41.3.O. Even though Article 41.3.O had been invoked in the two prior situations, management argued that this was inadequate to establish a past practice. The Employer argued that, since both parties agreed the proper posting procedures were not followed in 1990, this incident should not be used to help establish a past practice. Moreover, the incident of bidding in 1980 allegedly was not sufficient by itself to prove the existence of a past practice.

While the Employer's contentions regarding the absence of a mutually acceptable past practice of installation-wide bidding had merit, there was no contrary evidence to suggest the existence of some other past practice with regard to bidding. In other words, there was a need to shoulder the burden of proving conduct which would counteract express default language in the parties' National Agreement. Given its most favorable reading for the Employer, the evidence established only that there was

no past practice of installation-wide bidding at the Lynn, Massachusetts facility in Article 41.3.O situations. The National Agreement, however, makes clear that, in the absence of such a practice, the default bidding process is to be conducted on an installation-wide basis. Recall that Article 41.1.B.2 states that "bidding . . . shall be installation-wide," unless there is evidence of another bidding procedure. The burden of going forward in the parties' National Agreement meant that there was no necessity for the Union to prove a past practice of installation-wide bidding in order to prevail. They needed only to disprove any allegation of a past practice to the contrary.

Evidence offered by the Employer to support its theory of a local practice of restricted bidding focused on Article 12.5.C.4 of the National Agreement. This contractual provision states:

> d. The duty assignment vacated by the reassignment of the junior full-time employee from the section shall be posted for bid of the full-time employees in the section. If there are no bids, the junior remaining unassigned full-time employee in the section shall be assigned to the vacancy. (See, Joint Exhibit No. 1, pp. 51-52).

The Employer offered this contractual provision to demonstrate that the current concept of a limited bidding scope is not foreign to the parties. Article 12.5.C.4.d governs reassignment within an installation of employes who are excess to the needs of a section.

Even if Article 12.5.C.4.d demonstrated the parties'

familiarity with the concept of a restricted bidding process, it failed to establish a local past practice. It is also useful to consider how Article 12 actually has been applied to the Lynn, Massachusetts facility. Article 12 requires that "sections" be defined through local negotiation. If no such "sections" are established at the bargaining table, the entire installation is considered a "section" within the meaning of Article 12. There have been no "sections" established at the Lynn, Massachusetts facility. (See, Joint Exhibit No. 6). Accordingly, if Article 12 were invoked at the Lynn, Massachusetts facility, it, too, would require bidding on an installation-wide basis.

The Employer also argued for the existence of an agreement establishing a system of restricted bidding on the local level. Management found evidence of such an agreement in a document distributed by the Union to members of the bargaining unit. The document was addressed to branch members of the Union and was dated 1980. (See, Joint Exhibit No. 7, p. 2). It stated that, "if [Article 41.3.O] is included in the National Agreement, abolition of any full-time duty assignment triggers the bidding requirement. Only carriers in the delivery unit can bid on the posted position." (See, Joint Exhibit No. 7, p.2).

The Union responded that the internal manual of 1980 interpreting Article 41.3.O was mistaken, and the Union offered proof that the mistake had been corrected. There also was unrebutted evidence suggesting that the interpretation was merely an internal Union document which at no time was ever

relied on by the parties. Moreover, there was no evidence that the document was the result of any local practice. (See, Joint Exhibit No. 8).

Even if one gave evidentiary weight to the internal Union manual, it would not necessarily support the existence of an understanding between the parties which contradicted the negotiated agreement. The interpretation of Article 41.3.O contained in the internal Union manual directly conflicted with language of the National Agreement. In the face of such a direct conflict, most courts and arbitrators would rely on clear and unambiguous language of an agreement. As Restatement (Second) instructs, "In the absence of some contrary indication, English words are read as having the meaning given them by general usage, if there is one." (See, p. 89 (1981)). Moreover, the internal Union manual came into existence at the national level and was not evidence of a local agreement between Branch 7 and local management which restricted bidding to delivery units at the Lynn, Massachusetts facility.

What the record failed to show was proof that bidding occurred in any manner other than on an installation-wide basis. Nor was there evidence of a local past practice or agreement which dictated a bidding procedure contrary to the one clearly set forth in the parties' National Agreement. Guidelines set forth in the National Agreement were clear and unambiguous.

Contractual language in the parties' agreement called for

installation-wide bidding as a default to the establishment of a local past practice or agreement to the contrary. There was no evidence of a local agreement addressing this issue for the Lynn, Massachusetts facility. On the contrary, there was evidence of a local practice that allowed installation-wide bidding both generally and in Article 41.3.0 situations. Language of the agreement might well represent an improvident bargain, but it clearly is not the kind of bargain which can be avoided because it is the sort that "no person in his or her right senses would make." (See, 28 Eng. Rep. 82, 100 (1751)). Nor was there evidence showing that it is a bargain which can be avoided on the basis of commercial impracticability. In view of the language of the parties' agreement and the absence of supervening impracticability, the Employer is required to meet its duties of performance.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated the parties' National Agreement, specifically Article 41.3.O, where, after full-time duty assignments were abolished due to route adjustments, subsequent bidding was not installation-wide. Carriers adversely affected by the Employer's action shall be made whole. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. The grievance is sustained. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

Carlton J. Snow
Professor of Law

Date: 3-22-96