C #16863

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS	Case No. Q90N-4Q-C 93034541 ('Three Bundles' Case)

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Employer: Mr. Anthony W. DuComb

For the Union: Mr. Keith E. Secular

PLACE OF HEARING: Washington, D.C.

DATE OF HEARINGS: April 22, 1996
September 13, 1996
November 13, 1996

POST-HEARING BRIEFS: March 5, 1997

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that it is a violation of the Memorandum of Understanding on Work Methods executed in September of 1992 to require a letter carrier on a Park and Loop route in a DPS environment who uses the composite third bundle work method to work "marriage mail" behind addressed flats. Accordingly, the grievance is sustained, and the issue is remanded to the parties to reach agreement with regard to an accommodation consistent with the MOU of the parties. The arbitrator shall retain jurisdiction to resolve any problems resulting from the remedy in the matter. It is so ordered and awarded.

Date: June 9, 1997

Carlton J. Snow
Professor of Law

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION BETWEEN UNITED STATES POSTAL SERVICE AND NATIONAL ASSOCIATION OF LETTER CARRIERS (Case No. Q90N-4Q-C 93034541) ('Three Bundles' Case)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to an agreement between the parties effective from June 12, 1991 through November 20, 1994. Hearings occurred on April 22, September 13, and November 13, 1996 in a conference room of Postal Headquarters located at L'Enfant Plaza in Washington, D.C. Mr. Anthony W. DuComb, Senior Attorney in the Law Department of the San Francisco, California office, represented the United States Postal Service. Mr. Keith E. Secular with the Cohen, Weiss and Simon law firm in New York City represented the National Association of Letter Carriers.

The hearings 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. Ms. Jan del Monte of Diversified Reporting

Services, Inc. reported the proceeding for the parties and submitted a transcript of 606 pages in three volumes. The advocates fully and fairly represented their respective parties.

There were no challenges to the substantive or procedural arbitrability of the dispute, and the parties stipulated that the matter properly had been submitted to the arbitrator. The parties elected to submit the matter on the basis of evidence presented at the hearing and post-hearing briefs, and the arbitrator officially closed the hearing on March 5, 1997.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Under the Work Methods Memorandum of September, 1992, may management require a letter carrier on a "park and loop" route in a Delivery Point Sequence environment who uses the composite third bundle work method to work "marriage mail" behind addressed flats? If so, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

The U.S. Postal Service and the National Association of Letter Carriers, AFL-CIO, recognize the importance of the work methods that will be used in a delivery point sequence environment. The parties also realize the substantial contribution that letter carriers can make in the development of these work methods. Towards facilitating that involvement, the following principles have been agreed to by the parties at the national level:

1. The following are the approved work methods:

   - Case residual letters in the same separations with vertically cased flat mail, pull down and carry as one bundle.

   - Case residual letter mail separately into delivery sequence order, pull down and carry as a composite (third) bundle.

2. As implementation of the delivery point bar coding impacts a delivery unit, local parties will select the most efficient work method possible from the delivery point sequence work methods authorized in number 1 above. If the local parties cannot agree on the most efficient work method, the issue will be presented to ~~the~~ parties at the Headquarters level to determine the most efficient work method.

3. Local parties will also be encouraged to develop efficient new work methods and to share their ideas with the parties at the national level for joint review and evaluation. The purpose of this joint review and evaluation will be to determine the efficiency of the local method. After the review and evaluation of the new work method and if the method proves to be efficient, it will be added to Item 1 above.

4. The parties agree that the work method in place at the delivery unit will be utilized in the day-to-day management of letter carrier routes and in the procedures for inspection, evaluation and adjustment of routes.

5. The parties at the national level will continually review alternative methods in an effort to improve efficiency. Both parties agree that the process of continual joint review of new and more efficient work methods will result in the continued upgrading at the local delivery unit of the most efficient work method.

SHERRY A CAGNOLI /s/	VINCENT R. SOMBROTTO
Sherry A. Cagnoli	Vincent R. Sombrotto
Assistant Postmaster General	President
Labor Relations Department	National Association of
U.S. Postal Service	Letter Carriers, AFL-CIO
Date: 9/14/92	Date: 9/17/92

IV. STATEMENT OF FACTS

In this case, the Union challenged the Employer's interpretation of a Memorandum of Understanding between the parties involving work methods used in a "delivery point sequence" environment. "Delivery Point Sequencing"or DPS refers to work methods designed to give carriers mail already pre-sorted in walk sequence order by a DPS processing operation. A consequence of pre-sorting mail by machine according to bar codes is that it should reduce the amount of time a carrier is required to spend casing mail at a local postal facility. Another consequence of the automation program is that it should increase the amount of time a carrier has for delivering mail "on the street." Routes

might be larger, and the expectation is that DPS will produce a more efficient system of mail delivery.

The parties discussed changes that would be necessary in order to adjust to new DPS work methods, but a dispute, nevertheless, arose regarding the appropriate interpretation of the Memorandum of Understanding on Work Methods. The Employer's interpretation would require letter carriers on "park and loop" routes in a DPS environment using a "composite bundle" method to work "marriage mail" behind their flat bundles. "Park and loop" involves using a method of delivery by which a carrier parks a postal vehicle and delivers mail away from and, then, back to the vehicle. In a DPS environment, pre-sequenced letters must be combined with other mail through the normal casing procedures, unless all the mail has been processed by bar codes in a DPS processing operation. "Marriage mail" involves delivering addressed cards and unaddressed circulars to postal patrons.

The Union argued that the Employer's interpretation of the Memorandum of Understanding on work methods is precluded by the parties' agreement. The parties are in disagreement regarding the number of bundles of mail being handled by an individual carrier and whether management's instructions for processing the bundles violates the parties' Memorandum of Understanding. When the parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. The Union

It is the position of the Union that letter carriers on a "park and loop" route who elect the "composite bundle" method may not be required to work "marriage mail" behind their addressed flat bundles. The Union asserts that its understanding of appropriate work methods provided the basis of the bargain when the parties agreed to the MOU on work methods. The parties agreed that letter carriers in such situations would not be required to carry more than three bundles, and the Employer's interpretation allegedly is inconsistent with that understanding. Moreover, the Union contends that, while it is conceivable management did not understand "marriage mail" would constitute a fourth bundle, this fact is irrelevant since, in reality, "marriage mail" constitutes a separate bundle.

Accordingly, the Union concludes that letter carriers on a "park and loop" route in a DPS environment who use the composite third bundle method may not be required by the Employer to work "marriage mail" behind their addressed flats. The Union's understanding of the relevant work method allegedly represents the intent of the parties, and the Union seeks an award consistent with that understanding.

B. The Employer

The Employer argues that the Union's understanding is incorrect. The MOU allegedly does not prohibit management from requiring carriers to work unaddressed "marriage mail" from behind the flat bundles. The Employer believes it cannot be demonstrated that the MOU precludes delivering unaddressed flats in the manner prescribed by management, especially since the MOU is silent with regard to the issue. The MOU, according to the Employer, does not address carrying "marriage mail" in conjunction with a flat bundle. Nor does the agreement refer to "marriage mail" as a bundle, and it allegedly does not preclude requiring a carrier to handle a fourth bundle. Moreover, the Employer argues that statements by Union officials after the parties reached the agreement on work methods does not demonstrate that the Union's interpretation ought to prevail. In addition to reliance on the express agreement of the parties, the Employer asserts the bargaining history of the parties shows that "marriage mail" never has been considered a separate bundle when work from the back of mail being processed by a carrier. It is the position of the Employer that the Union is attempting to achieve through arbitration what it could not gain at the bargaining table. Accordingly, the Employer concludes that there has been no violation of the parties' agreement and that the grievance must be denied.

VI. ANALYSIS

A. The Context of the Dispute

Relevant background for this case began in 1980 with the Simplified Address Agreement between the parties. "Simplified Address Mail" is mail "without individual name and address, mail by a government agency to each stop for possible delivery of a route." (See Union's Exhibit No. 5.) The mail might be addressed to "Postal Customer," "Residential Customer," or "Business Customer."

In the 1980 "Simplified Address" settlement agreement, the parties agreed that "park and loop" carriers would carry simplified Address Mail without casing it (that is, manually sorting the mail into delivery sequence) and place it on the bottom of the appropriate mail bundle. Then, the carrier would work the mail from both ends of the bundle. The Employer agreed to urge mailers to tie Simplified Address Mail in bundles of 50 pieces.

In 1984, the parties agreed to extend the 1980 transaction to "marriage mail." "Marriage mail" requires letter carriers to sort addressed cards into their other cased mail while placing a corresponding number of unaddressed flat pieces behind their flat bundles. If a carrier had an addressed card at a delivery point, an unaddressed flat piece would be pulled from the back of the regular flat bundle, along with any addressed flat piece for that destination. In 1984, a dispute arose concerning whether the Employer "improperly required a grievant to prepare "marriage mail" for street delivery while

on the street." (See Union's Exhibit No. 6.) In their negotiated settlement, the parties agreed that:

> Marriage mailings received on park and loop routes are handled in accordance with the April 17, 1980 settlement agreement concerning Simplified Address Mail. (See Union's Exhibit No. 6.)

In approximately 1995, delivery point sequencing came on the scene. Using automated equipment, a portion of a carrier's route is processed in walking sequence without being manually. After a number of disputes involving new methods of work and an arbitration decision, the parties sought peace and opted to establish a cooperative approach to work projects. They entered into a collaborative agreement entitled "Building our Future by Working Together." (See Employer's Exhibit No. 1.) Members of the management team that produced the agreement were Messrs. Anthony Vegliante, William Downes, and Richard McKillop. The Union's negotiation team consisted of Messrs. William Young, Brian Ferris, and Lawrence Hutchins. Approving the final agreement were Ms. Sherry Cagnoli for the Employer and Mr. Vincent Sombrotto for the Union. They signed the agreement on September 14 and September 17, 1992, respectively.

As a part of the transaction, the parties negotiated a total of six memoranda and established work methods for DPS mail. They agreed that automatically sequenced mail (DPS mail) would be carried in one bundle. Additionally, letter carriers were required to carry another bundle of "pre-sequenced flat mail." This is addressed flat mail that is sequenced by mailers in proper delivery order. Local offices were to have

the option of choosing one of two methods for dealing with residual mail." "Residual mail" is letter mail not processed by equipment and which must be placed in delivery sequence by a carrier. It may be vertically cased, or it may be cased separately and carried as a separate bundle. This second option is described as the "composite method." The grievance before the arbitrator involved only those who chose the composite method.

As mentioned, in accordance with their collaborative spirit, the parties published a joint training guide entitled "Building our Future by Working Together." In November of 1992, the parties used the training guide to conduct a joint, national level training session in Arlington, Virginia. They, in effect, were training the trainers. During the training session, questions arose about the application of certain provisions of the agreement reached by the parties. One such question involved how many bundles a carrier would be required to carry who was delivering DPS mail. The Union allegedly responded that a letter carrier would be required at most to carry three bundles, and the Employer allegedly did not challenge the answer.

It was in February of 1993 that the current dispute formally began to take shape. Management suggested that carriers could be required to deliver unaddressed "marriage mail" circulars behind their addressed flat bundle in accordance with the agreement of the parties. The Union disavowed any such understanding and asserted that management's belief

was inconsistent with the agreement of the parties because the Employer would be requiring carriers to handle four bundles. As the Union saw it, carriers using the composite method in a DPS context were being asked to carry (1) a DPS bundle, (2) pre-sequenced flats, (3) residual mail, and (4) unaddressed flats as a part of "marriage mail." Despite other efforts to resolve the disagreement, the dispute remained in essentially this configuration until it was addressed in arbitration.

B. The Sound of Silence

The issue to be reviewed is whether an agreement between the parties precluded management from requiring carriers in a DPS environment, who use the composite method, to work "marriage mail" behind their regular mail. The parties did not explicitly address the issue in their agreement, but the arbitrator received considerable evidence showing that language in the agreement held a meaning for the parties which was not readily apparent to someone not on the negotiating teams. The incompleteness of the agreement signaled no misstep by members of the bargaining teams. Virtually all agreements are, by necessity, incomplete to some extent. Parties drafting an agreement are unable to foresee the future and, therefore, cannot include terms in an agreement specifically covering all contingencies. It is a recognition of this reality that

has produced gap-filling principles in the law of contracts.

Gap-filling principles, or "default rules" as they are known in the modern contract law lexicon, reflect a long-standing recognition of well established arbitral doctrines which provide a backdrop for understanding collective bargaining agreements. As Dean Roger Abrams stated:

> The body of arbitral principles in large measure is 'drawn out of the institutions of labor relations and shaped by their needs.' While arbitration law is private law, it is a fundamental error to think of this private law as unique to each particular collective relationship. Even if the parties desired to do so, they would be hard put to adjust and order their relationship along sui generis lines. It would be foolish to, and indeed parties do not, ignore the lessons learned from the negotiation and interpretation of other collective agreements. (See 14 U.C. Davis L. Rev. 551, 566 (1981); see also Coca Cola Bottling Co. of Boston, decided by Saul Wallen in 1949, as reprinted in Cases and Materials on Labor Law by Archibald Cox and Derek Bok, 530 (1962)).

Language and concepts in a collective bargaining agreement are given meaning, in part, by the context in which they are negotiated. For decades, arbitrators have filled silent gaps in any resulting agreement by using standard gap-filling principles; and the use of such default rules does not impose an arbitrator's will on the parties because negotiators are presumed to have been knowledgeable and to have understood the arena in which they work.

Gap-filling rules are also bounded by the "unless otherwise agreed" rule. In other words, gap-filling principles apply unless the parties agree otherwise. As two commentators observed, "Default rules fill the gaps in incomplete contracts; they govern unless the parties contract around them." (See

Ayres and Gertner, "Filling Gaps in Incomplete Contracts," 99 Yale L.J. 87 (1989)). As used by labor arbitrators, gap-filling rules generally reflect the commonsense or conventional understanding of negotiators of collective bargaining agreements. The parties consented to the use of such gap-filling principles by invoking their negotiated grievance procedure with a recognition that an arbitrator would use standard principles of contract interpretation to fill any gaps. Silence at the bargaining table in the context of understanding this well established system manifested a consent to gap-filling provisions, especially when a party could have modified the system by speaking up at the bargaining table.

In their 1992 Memorandum of Understanding on work methods, the parties approved the following work method:

> Case residual letter mail separately into delivery sequence order, pull down and carry as a composite (third) bundle. (See Joint Exhibit No. 3, emphasis added.)

This contractual provision did not specifically address the exact contingency placed before the arbitrator. Implications, however, in the language of the parties' agreement as well as the context which gave birth to the language provided a clearer understanding of the parties' meaning. Language in the Memorandum of Understanding itself has offered the starting point for resolving the disagreement between the parties.

The Union argued that, by including a reference to the "third" bundle, the parties agreed those bundles constituted the maximum number of bundles "park and loop" carriers would be required to process. Standard tools of contract interpretation allow the parties' understanding to be parsed carefully and deliberately. It is the task of an arbitrator dispassionately to uphold the parties' agreement, and rules in aid of interpretation provide a method of determining whose understanding of the agreement must prevail.

Mr. William Young, Vice-president of the Union, testified in arbitration that, during negotiations for the MOU on work methods, the parties discussed the topic of "marriage mail" in connection with local divisions that chose the composite method. He testified that the Union negotiation team was explicit with management about the fact that the Union simply could not agree to enter into the Memorandum of Understanding unless it contained protection against carrying a fourth bundle and that the absence of such protection constituted a "deal-breaking" issue.

Mr. Young also recalled two specific discussions with Mr. McKillop, a member of management's bargaining team. The first occurred during a plane flight in June of 1992. Mr. Young specifically recalled telling Mr. McKillop that protection from a fourth bundle provided the basis for a bargain and that "under no circumstances would we be required to carry a fourth bundle." (See Tr., vol. 3, p. 76.) Mr. McKillop allegedly responded that carrying a fourth bundle

"was not going to be a problem." (See Tr., vol. 1, p. 73.)

Mr. Young also testified he suggested to Mr. McKillop that the parties reduce the "no fourth bundle" part of the bargain to writing as a section of the Memorandum of Understanding. Mr. McKillop allegedly responded to the request by stating that it was unnecessary to include such language in the Memorandum of Understanding because decisions regarding what accommodations needed to take place should occur on the local level. According to Mr. Young, the conversation with Mr. McKillop developed as follows:

> QUESTION: So your testimony is that in June of 1992, Mr. McKillip [sic] told you that in a marriage mail--that in a DPS environment where the carrier had elected to use the--where the carrier was using the composite bundle method, marriage mail would not--would count as a bundle; it wasn't [sic] have to be carried behind the flats.
>
> ANSWER: Didn't say it would count as a bundle; he said it would not have to be carried behind the flats. He did it in June and he repeated it again in September in Mr. Billy Anthony's office.
>
> QUESTION: Did he tell you how you would carry it, then?
>
> ANSWER: He was asking me, he was telling me there was a problem because they had no address on them. He was acting like that made it impossible to do.
>
> QUESTION: So it's your testimony, then, that Mr. McKillip [sic] both said on the plane ride that in a DPS environment where the carrier was electing the composite bundle, he wouldn't have to carry the unaddressed flats behind the bundle, but then he also said, but I don't know how they are going to carry it.

ANSWER: He said to me, if they don't carry them, how will they carry them? I said to him they can case them in the vertical flat case on either side, and he said OK. He repeated again that he was not going to authorize the casing of DPS mail as a solution to this problem that we were discussing. (See Tr., vol. 1, pp. 146-147, emphasis added.)

Three members of management's bargaining team gave a different account of negotiation history for the Memorandum of Understanding. Mr. William Downes, then Manager of Contract Administration, had no recollection of discussing or reaching any understanding with respect to "marriage mail." He testified as follows regarding bargaining history for the MOU:

QUESTION: At any time did Mr. Young, Mr. Farris, or Mr. Hutchins, with respect to the memorandum at issue here, ... at any time did any of those three gentlemen come to you and say they wanted some language inserted into the agreement that would say that in the residual mail letter situation they would not have to carry marriage mail behind their flats?

ANSWER: We talked about a lot of things, but I have no recollection of that at all.

QUESTION: At any time did either of these three individuals come to you and say they wanted inserted into the Memorandum of Understanding at issue here language that said that unaddressed flats in the marriage mail context were a fourth bundle?

ANSWER: I have no recollection of that at all.

QUESTION: Now, are you aware of the Postal Service's historical position prior to the signing of this Memorandum of Understanding with respect to whether or not unaddressed flats are characterized as a bundle?

ANSWER: No. I really didn't have that expertise prior to the signing of this document. (See Tr., vol. 2, pp. 157-158, emphasis added.)

Nor did Mr. Anthony Vegliante, current Manager of Contract Administration, recall discussing or reaching an understanding with respect to "marriage mail." He testified as follows:

QUESTION: At any time between the plane flight from Tampa and the execution of the MOUs, did Mr. Young ever state to you words to the effect that, "Hey, Tony, Mr. McKillop made a commitment on behalf of the Postal Service that in a DPS environment, on marriage mail days, letter carriers would not have to carry the unaddressed flats behind or in back of a flat bundle."?

ANSWER: No.

QUESTION: Did Mr. Hutchins or Mr. Farris ever make such a statement to you between those two days?

ANSWER: No. None of the three made that statement to me.

QUESTION: At any time prior to the execution of this MOU did either Mr. Farris, Mr. Young or Mr. Hutchins state to you or in your presence to Mr. McKillop or Mr. Downs [sic] that they believed the last box on the lower left hand corner to mean that they wouldn't have to carry marriage mail in a DPS environment?

ANSWER: No.

QUESTION: Did any of those three gentlemen ever say to you or your two counterparts that they believed that, in a marriage mail environment, unaddressed flats suddenly became a fourth bundle?

ANSWER: Not in my presence, no.
(See Tr., vol. 2, pp. 177-178.)

Messrs. Downes and Vegliante also testified that, at the time the MOU negotiations were occurring, they did not fully understand the nature of "marriage mail" and were uncertain whether it would be considered a "bundle." Mr. Vegliante testified as follows:

QUESTION: And you knew at the time of these discussions that marriage mail was not considered a bundle by the Postal Service, didn't you, Mr. Vegliante?

ANSWER: Yes. (See Tr., vol. 2, pp. 178-179.)

Shortly after giving this testimony, Mr. Vegliante stated:

QUESTION: Were you aware at the time of these discussions whether marriage mail was considered to be a bundle?

ANSWER: No, I was not. (See Tr., vol. 2, p. 179.)

Although not as clear-cut, Mr. Downes offered similar testimony. (See Tr., vol. 2, pp. 157-158.) There was testimony that the person on management's team most qualified to handle "marriage mail" issues was Mr. McKillop. (See Tr., vol. 2, p. 193.)

Mr. McKillop drafted the Memorandum of Understanding on work methods at issue in this case. (See Tr., vol. 2, p. 236.) He testified that, although the parties did not discuss "marriage mail," the Union expressed concern about carriers being required to carry a fourth bundle. He specifically recalled that the two bargaining teams discussed the topic of "marriage mail" enroute to the Memorandum of Understanding on work methods. (See Tr., vol. 2, p. 239.) When asked more specifically about the content of any conversations regarding "marriage mail," Mr. McKillop testified as follows:

QUESTION: And what do you recall being said by the Union and by management with respect to marriage mail?

ANSWER: As normally came about on any subject on work methods, I would turn to Brian and say, "Brian Farris--" not just whole names. I would say, "Brian, have you been to New York? Have you talked to the people? Kuyawa talked to you about the

work methods. "The studies are still ongoing. We don't have any of the results. Jim told you to bring all your questions to him. Have you talked to him about this?"

QUESTION: Jim being who?

ANSWER: Jim Kuyawa.

QUESTION: And he was someone on Long Island?

ANSWER: He was the person who--he was the general manager that briefed Brian on the Work Methods test, and what was to be studied in New York.

QUESTION: So it is fair to say that you suggested to Farris that any questions as to how marriage mail should be worked should be referred to Mr. Kuyawa?

ANSWER: It's fair to say that on questions like certified mail and marriage mail where they had a question on how they were to go handled [sic] that I had asked Brian if he had discussed those issues with Kuyawa.

We were willing at that time to look at any alternatives for the more efficient handling of mail. I'd asked him if he had gone up there; had he talked to Kuyawa; had they looked at that subject.

What would normally happen then is Brian would say, "No, I haven't made the trip." People would kind of look around, and we would move onto the next memorandum.

QUESTION: Now, I'm a little confused. Where was Kuyawa based? Was he up in New York?

ANSWER: No. He was the general manager that was responsible for conducting the test stationed right here in Washington, D.C. He briefed Brian on the seventh floor conference room right across from the Operations area.

QUESTION: All right. So it's your testimony that Farris said he didn't discuss it with Kuyawa, and the subject was left hanging.

ANSWER: Yeah. "Brian, have you been to New York yet?" Brian would look down and say, "No, I haven't been up." "Have you talked to Jim about it?" "No, I haven't." He'd look down, and the subject would move on.

QUESTION: Do you recall any discussion of unaddressed flats generally apart from marriage mail?

ANSWER: I'm having a tough time recalling that. (See Tr., vol. 2, pp. 240-242.)

Mr. McKillop failed to establish that the parties engaged in a substantive discussion of "marriage mail." At the same time, he acknowledged the Union expressed concern about any requirement that carriers handle a fourth bundle. He testified that the "third bundle" language in the Memorandum of Understanding on work methods was a part of the agreement in order to meet concerns of the Union with regard to carriers being required to carry a fourth bundle. Mr. McKillop, however, qualified his testimony by stating that he thought the parties were only discussing the future possibility of DPS and flat mail. He testified as follows:

QUESTION: So what you're saying is that this language was intended to preclude the possibility that the carrier would be required to carry a bundle of DPS letters, a bundle of residual letters, a bundle of DPS flats and a bundle of residual flats? That would not be an option; isn't that correct?

ANSWER: Residual addressed flats, that's correct.

QUESTION: And because in that scenario, you would acknowledge that there would be four bundles; is that correct?

ANSWER: Yes.

QUESTION: And carrying the fourth bundle would be inconsistent with the language of the second bullet [in the MOU]; is that correct?

ANSWER: The carrying of the fourth addressed bundle.

QUESTION: Fourth addressed bundle.

ANSWER: Yes.

QUESTION: With that caveat, fourth addressed bundle, you would agree with my statement that that would be inconsistent with the language of the second bullet [in the Memorandum]?

ANSWER: Yes.

QUESTION: Now, having testified as you just testified, is it not true that during the negotiations the NALC indicated that its position was that carriers could not be required to carry a fourth bundle?

ANSWER: A fourth bundle issue came up. (See Tr., vol. 2, pp. 245-246.)

But Mr. McKillop insisted that the issue of a fourth bundle came up only with regard to addressed flats. No other witness offered such a recollection.

Inconsistencies generally undermine the credibility of a witness. There were puzzling inconsistencies in Mr. McKillop's testimony. At one point, he testified that the Memorandum of Understanding on Work Methods was not yet drafted at the time of the airplane flight in June of 1992 when Mr. Young and he conversed with each other. Later, he testified that the parties discussed the drafted memorandum in their conversation on the flight. (See Tr., vol. 2, pp. 226, 236-237.) Another challenge to Mr. McKillop's credibility came in conjunction with a meeting between Mr. Young and him in Jacksonville, Florida. Mr. Young, NALC Vice-president, testified that, during a visit to Jacksonville, he asked Mr. McKillop whether Mr. McKillop

would tell the truth at the impending arbitration before this arbitrator. According to Mr. Young, Mr. McKillop responded by saying that his testimony would be the same as other witnesses for the Employer.

When questioned at the arbitration hearing concerning this encounter in Jacksonville, Mr. McKillop testified that he did not recall having such a conversation with Mr. Young. Two months later at a subsequent day of hearing, Mr. McKillop modified his testimony and said that he now remembered being asked such a question by Mr. Young. His response to Mr. Young was that Messrs. McKillop and Vegliante were consistent in their recollection of the bargaining history. (See Tr., vol. 3, p. 94.)

C. Joint Training

In addition to testimony about bargaining history, the parties also presented evidence about joint labor-management training that took place in Arlington, Virginia. The guide for the training was a manual entitled "Building our Future by Working Together. During the training session, Union officials who were members of the bargaining team and who participated in refining language for the Memorandum of Understanding were present. Due to organizational changes, the Employer did not have in attendance at the training session members of its MOU bargaining team. (See Tr., vol. 1, pp. 79-83.) Others represented management at the joint training session.

Although recognizing some factual dispute about the matter, the totality of the record supports a description of the training event as presented by Mr. Ronald Brown,a Business Agent for the Union. During the training session, Mr. Brown asked the general question regarding how "marriage mail" would be handled under the system. There was credible testimony that Mr. Brown's question was "asked of those individuals that were at the front of the room, which included management representatives." (See Tr., vol. 1, p. 239.) As recalled by Mr. Brown, Mr. Young, a member of the Union's bargaining team, responded by saying that:

> There would be no carrying of a fourth bundle on park and loop routes, absolutely that would not occur, and that the parties agreed on that.
>
> Bill, as he described it, looked to his side, actually to his right, looking right at the Postal Service representative to see--and it was clear if he was asking if there was any problem with that response. No one else came to the mike. (See Tr., vol. 1, p. 239 , emphasis added.)

Two Operations Specialists, Mr. Philip Knoll, Jr. and Mr. Anthony Colatrella, were also management trainers at the joint training meeting in Arlington, Virginia. They agreed that Mr. Brown's question was asked and answered as previously described. Nor did management challenge Mr. Young's answer. Mr. Colatrella testified as follows regarding the incident:

> QUESTION: I believe you also said you recalled that Bill made the statement, "carriers won't be required to carry a fourth bundle." Do you recall hearing that statement?
>
> ANSWER: Words to that effect.
>
> QUESTION: Again, without getting to the question of

what is or is not a fourth bundle, do you recall any management representative disagreeing with the statement that carriers won't have to carry a fourth bundle?

ANSWER: Disagreeing with it?

QUESTION: Yeah.

ANSWER: Verbally?

QUESTION: Verbal.

ANSWER: No. (See Tr., vol. 1, pp. 115-117.)

At the joint training session, the parties collected questions from participants to give to Ms. Cagnoli for the Employer and Mr. Hutchins for the Union. They, in turn, were to prepare a joint response. On January 22, 1993, the parties issued their joint answers. Mr. Brown's question and a response to it were included in the publication. Ms. Cagnoli and Mr. Hutchins stated:

> The Joint Task Force has reviewed the questions submitted from the trainers who conducted training using the joint publication. The attached is the task force's responses to those questions. Every effort should be made to distribute this information as widely as possible. (See Union's Exhibit No. 12, p. 1, emphasis added.)

Question No. 20 of "Questions and Answers Concerning the September 1992 Memorandum" was as follows:

> Q-20 How many bundles will a letter carrier have to carry under delivery point sequencing? What about marriage mail, ADVO cards, etc.?
>
> A Under the DPS work method scenarios curbline delivery territories may carry more than the customary three bundles on a given day if a "marriage mail" type mailing(s) is (are) to be delivered on that day. Under the DPS work method scenarios foot delivery territories may carry three bundles. (See Union's Exhibit No. 12, p. 5, emphasis added.)

At the time of the joint labor-management statement in January of 1993, the parties were in agreement that foot delivery carriers would be required to handle three bundles.

Evidence submitted to the arbitrator makes it reasonable to conclude that, at a minimum, the parties discussed the number of bundles a carrier would be required to carry in a day. The evidence also supports a conclusion that this topic was not broached within the context of "marriage mail." The issue, then, to be resolved is whether the parties intended "marriage mail" to count as a "bundle" in this context.

D. Marriage Mail

How many bundles and what constitutes a "bundle" often have been topics of debate by the parties at the bargaining table. In the 1970s, management's position was that mail is only a "bundle" if it is addressed. The Union never agreed with management's position. The definition of a "bundle" appears to have been malleable depending on the circumstances. For example, in 1978, the Employer agreed in a national level arbitration case that "Pre-sequence flat mail . . . is delivered as a third bundle by carriers serving motorized curb delivery routes." (See Union's Exhibit No. 3, p. 2.) During the 1980s, the parties entered into agreement carefully detailing how Simplified Addressed Mail and "marriage mail"

would be processed. There was agreement that such mail would be worked behind a carrier's addressed bundles without casing. In 1987, however, the Employer agreed that it would require only one "marriage mail" bundle at a time. At this point, a dispute lingered regarding whether or not "marriage mail" technically counted as a "bundle." It must be stressed, however, that this work method was often described as a "three-bundle" system. These agreements were all reached before the development of mail in an environment of delivery point sequencing.

Evidence submitted to the arbitrator made clear that the capacity of carriers effectively to carry more than three bundles was a concern of Union negotiators at the time the parties bargained the 1992 MOU on work methods into existence. Union negotiators were clear in bargaining about their desire not to agree to a system in which carriers were handling more bundles than in the past and that three was the maximum desired number, including "marriage mail." "Marriage mail" circulars constitute a separate bundle in the DPS composite context.

The Employer argued that behavior by Union officials after the parties negotiated the 1992 MOU on work methods revealed the Union's recognition that it had not achieved the right to limit the number of bundles to three. In support of this conclusion, the Employer pointed to a general lack of flaunting the concession alleged by the Union to have been gained at the bargaining table. The Employer found support for its conclusion in a number of other specific transactions.

First, the Employer cited comments by union representatives in which they posed questions about the proper method for dealiong with "marriage mail" in a DPS environment. The Employer contended that, if some union representatives were unclear about proper procedure, it showed that the parties failed to reach agreement. Evidence submitted to the arbitrator, however, established that the issue was a perplexing one and that several management negotiators themselves were not altogether clear regarding the nature of "marriage mail" and how it was to be handled. Under such circumstances, it was not unusual for clarification to be sought by bargaining unit and nonbargaining unit members alike.

Second, the Employer highlighted proposals submitted by the Union at the Union's 59th annual convention. Those proposals suggested that the Union hoped to gain the right to case DPS mail along with residual mail. (See Employer's Exhibit No. 10.) The Employer argued that, if the Union believed it already had gained such a concession, it would not be necessary to bargain for something it already had achieved.

Yet, the Union's position was not that the Memorandum of Understanding on work methods gave letter carriers the right to case DPS mail and residual mail in all circumstances. Its position was that the parties had reached an accommodation on "marriage mail" days. It was consistent behavior on the part of the Union, on the one hand, to believe it had the right to some sort of accommodation on "marriage mail" days

and, on the other hand, to desire an even greater concession of casing DPS mail and residual mail, regardless of the presence of "marriage mail."

The Employer earlier contended that the Union sought to achieve through arbitration what it was not able to obtain at the bargaining table. According to the Employer, the Union is attempting to gain the right to case residual mail with DPS mail. This broader issue has been a point of contention between the parties for some time and was discussed as a proposal in the 1994 negotiations. (See Employer's Exhibit No. 10.) The Union, however, failed to achieve its objective at the bargaining table or in interest arbitration. (See Employer's Exhibits Nos. 11 and 12.) While it may or may not be correct that the Union desires to achieve such a result through this arbitration decision, such a broader issue has not been presented to the arbitrator and is not the focus of this decision. The narrower issue in the dispute before the arbitrator concerns whether or not the parties contractually agreed to limit the number of bundles to three for those carriers on Park and Loop routes in a DPS environment. The totality of the record makes clear that the parties, in fact, agreed to such a limitation, and now there must be fidelity between words and conduct.

Such an accommodation for carriers on "marriage mail" days does not mean that the Union has obtained the right to case residual mail with DPS mail. That this is a potential accommodation and also happens to be something the Union

sought through bargaining does not detract from the validity of a request to have the Employer fulfill its present commitment. It, ultimately, is for the Employer to choose the most appropriate work method as long as it does not violate the agreement of the parties, and the method selected in this case failed to be consistent with a 1992 agreement on work methods between the parties.

By express language, the parties manifested their general intent to be bound with regard to work methods in a DPS environment when carriers used the composite method. Although the agreement remained silent about the narrow issue contested in this arbitration proceeding, the parties are presumed to have understood that relevant bargaining history provided a customary gap-filling tool in the event a gap existed in their contractual expressions. (See, e.g., Ozark Air Lines, 744 F.2d 1347 (8th Cir. 1989), and California Elec. Power Co., 21 LA 704 (1953)). In bargaining, they were free to deviate from this well-established principle and did not do so. Testimony describing the context which produced the Memorandum of Understanding on Work Methods proved with clear and convincing evidence that the parties did not intend their agreement to sanction the "marriage mail" work method challenged in this proceeding.

It must be stressed that it is not the purpose of the arbitration report to evaluate the efficiency of the work method challenged in this case. Unless otherwise agreed by the parties, it is for management to decide methods of operation

and to resolve issues of organizational efficiency. It is the function of an arbitrator to serve as "the parties' designated, definitive reader of their labor contract." (See St. Antoine, Proceedings of the 30th Annual Meeting of the NAA 29 (1978)). Now knowing the meaning of their agreement, the parties are in a position to act reasonably based on their commitments.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that it is a violation of the Memorandum of Understanding on Work Methods executed in September of 1992 to require a letter carrier on a Park and Loop route in a DPS environment who uses the composite third bundle work method to work "marriage mail" behind addressed flats. Accordingly, the grievance is sustained, and the issue is remanded to the parties to reach agreement with regard to an accommodation consistent with the MOU of the parties. The arbitrator shall retain jurisdiction to resolve any problems resulting from the remedy in the matter. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: June 9, 1997