C#18997

A+B, C+D

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In the Matter of the National Arbitration Between

UNITED STATES POSTAL SERVICE (USPS)	)	
and	)	**W4N-5H-C-40995 (Placerville, CA)**
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO (NALC)	)	**and**
and	)	**S1N-3P-C-41285 (Cary, NC)**
NATIONAL RURAL LETTER CARRIERS' ASSOCIATION (NRLCA) (NRLCA)	)	**City/Rural Jurisdictional Issues**

****

Before: Dennis R. Nolan, Arbitrator, School of Law, University of South Carolina, Columbia, SC 29208-0001.

Appearances:

For the Employer: Kevin B. Rachel, Labor Relations Counsel, Washington, DC.

For the NALC: Keith E. Secular, Cohen, Weiss and Simon, New York, NY.

For the NRLCA: William B. Peer, Peer & Gan LLP, Washington, DC.

Place of Hearing: Washington, D.C.

Date of Hearing: July 14, 1998

Date of Award: December 23, 1998

OPINION

I. Statement of the Case.

This arbitration proceeding involves what must be two of the oldest pending grievances in the USPS dispute resolution system. The NALC filed Grievance No. S1N-3P-C-41285 (Cary, NC) on August 21, 1984 and Grievance No. W4N-5H-C-40995 (Placerville, CA) on January 29, 1987 to challenge the Postal Service's shifting of certain deliveries from city to rural delivery service. (In the Placerville incident, the Employer also changed certain deliveries from rural to city delivery, but the grievance did not challenge that shift.) The Union certified the cases for arbitration on November 16, 1988 (Cary) and July 18, 1989 (Placerville). Rather than proceed to arbitration, however, the parties, joined by the NRLCA, engaged in extended discussions and other proceedings.

The delay in processing these grievances was due in large part to the existence of many other NALC grievances presenting the same general issue. In each instance the Employer shifted certain deliveries from city to rural service, prompting protests from the NALC. Because the problem was widespread and recurring, and because it involved the interests of both unions as well as those of the Employer, the three parties decided to establish a separate arbitration forum to deal exclusively with jurisdictional conflicts between the NALC and NRLCA. The parties then chose as test cases the Cary and Placerville grievances from the many waiting arbitration. Their hope is that the parties themselves will be able to apply the principles announced in these cases to settle the remaining grievances. If that proves impossible, they will then proceed to arbitrate other grievances.

The arbitration hearing took place in Washington, DC on July 14, 1998. The parties appeared and had full opportunity to testify, to examine and cross-examine witnesses, and to present all pertinent evidence. In addition to the voluminous documentary evidence, the parties submitted substantial briefs and more modest reply briefs. The last of these briefs arrived on November 10, 1998.

II. Statement of the Facts.

Because the facts bearing on the general question of city-to-rural conversions are so closely tied to the merits of the case, I will discuss them in Part VII. For the moment it will suffice to sketch the background of the two grievances the parties have chosen to use as proxies for their broader disputes. The parties decided not to delve into many specifics about the Cary and Placerville grievances. The NALC in particular agreed at the hearing only to proceed on questions of principle while reserving its right to raise certain factual and procedural issues peculiar to these grievances. For example, while accepting for the sake of argument Management's stated reasons for making the Cary and Placerville adjustments, the NALC notes its disagreement with the Postal

Service as to whether the Placerville changes actually clarified boundaries and about the most convenient placement for the disputed Cary deliveries. Accordingly, the facts stated below provide only a brief outline.

The first grievance arose in Cary, North Carolina, a suburb of Raleigh. Following the annexation of a subdivision by the City of Cary and in response to customer requests, the Postal Service in 1984 transferred 244 deliveries (136 city deliveries and 108 rural deliveries) from the Raleigh Post Office to the Cary Post Office. All 244 were added to a Cary rural route as an extension of that route's territory rather than to a Cary city route. Because its members lost 136 deliveries and gained none in return, the NALC grieved. The 136 deliveries represented only 20-25% of any city route. So far as the record shows, the Postal Service made the switch purely for operational reasons.

The second grievance arose in Placerville, California. Early in 1987, the Postal Service exchanged territory between rural and city deliveries to establish clearer boundaries, avoid commingling, and relieve overburdened city routes. Again, so far as the record shows, the Postal Service made the changes purely for operational reasons. As in Cary, the NRLCA gained more deliveries (455) than the NALC (238), so the NALC grieved the change.

The two cases were similar in many respects. In both, the city routes had long been delivered by city carriers; in neither did the Postal Service negotiate the changes before implementing them; and in both the NALC sought reconversion and compensation for the affected City Carrier Craft. Needless to say, in neither case did the NALC agree to the conversions.

III. The Issue.

The specific issue applicable to these grievances is this: did the Postal Service violate any controlling authority by converting certain deliveries in Cary, North Carolina and Placerville, California from city to rural? If so, what shall the remedy be? Beyond this narrow issue, the parties have presented a broader question: to what extent and under what circumstances may the Postal Service convert city deliveries to rural deliveries?

IV. Pertinent Authorities.

Of all the arguably controlling and persuasive authorities, just a few are accepted as relevant by all three parties. In the case of precedential arbitration awards, a few sentences or paragraphs distill the essence. Because it would be impossible to decide any jurisdictional grievance without referring to these authorities, and because it would be impossible to understand a jurisdictional arbitration award without reading the the cited authorities, I shall quote them in pertinent part.

A. USPS/NALC 1994-1998 Collective Bargaining Agreement (Joint Ex. 2)

ARTICLE 1
UNION RECOGNITION

Section 1. Union

The Employer recognizes the National Association of Letter Carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level — City Letter Carriers.

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive rights, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties; . . .

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted; . . .

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. . . .

B. USPS/NRLCA 1995-1999 Collective Bargaining Agreement (Joint Ex. 1)

[Articles 1, 3, and 19 of the USPS/NRLCA Agreement are identical in relevant respects to the same-numbered provisions of the USPS/NALC contract quoted above. The USPS/NRLCA Agreement does not contain a counterpart to the USPS/NALC contract's Article 7.]

C. USPS/APWU/NPOMH/NALC/NRLCA Memorandum of Understanding on Jurisdictional Disputes, September 4, 1975 (NALC Ex. 13)

> . . . In order to resolve [jurisdictional] 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. . . .
>
> . . . In resolving disputed assignments, the Committee shall consider, among other relevant factors, the following:
>
> 1. existing work assignment practices;
>
> 2. manpower costs;
>
> 3. avoidance of duplication of effort and "make work" assignments;
>
> 4. effective utilization of manpower, including the Postal Service's need to assign employees across craft lines on a temporary basis;
>
> 5. the integral nature of all duties which comprise a normal duty assignment;
>
> 6. the contractual and legal obligations and requirements of the parties. . . .

D. Postal Operations Manual (USPS Ex. 9)

611.3 Conversions

.32 Rural Delivery to Other Delivery Service

.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 industrial areas or apartment house complexes on rural routes.

d. Provide service to areas where city delivery service will be more cost effective. Divisional review is required when cost is the basis for conversion.

E. Postal Operations Manual, August 1, 1996 Additions (USPS Exhibit 5)

64 City Delivery Service

644 Conversions

644.1 Definitions

In this section, *conversion* refers to replacement of city service with rural delivery service. Any conversion of city delivery territory must be approved by the district manager.

644.2 Conversion of City Delivery Service to Rural Delivery Service

As a general rule, conversions from city delivery to rural delivery service shall be considered only for the following reasons:

a. To establish clear-cut boundaries between city, rural, and highway contract delivery territory and eliminate overlapping and commingling of service.

b. To restore reasonable operating efficiency where pockets of delivery area become separated due to some physical change that is expected to be permanent (e.g., construction of a dam or limited access highway, elimination of a bridge, etc.).

c. To accommodate municipal or community identity preferences where the post office gaining the delivery territory does not have city delivery service and the carrier casing and delivery workload

to be transferred is less than the minimum scheduling requirement for an auxiliary city route.

F. Other Authorities

1. USPS/NALC Arbitration Award, N-C-4120 (Sioux Falls, SD), Sylvester Garrett, Impartial Chairman, August 30, 1974 (NALC Ex. 10)

Article VII, Section 2-A itself must be read in the context of the entire National Agreement, and of the collective bargaining relationships which have existed in the Postal Service since the early 1960's. At first blush, two basic propositions emerge from this provision:

(1) Normally work in different crafts will not be combined into one job, and

(2) full-time or part-time scheduled assignments may be established to include work within different crafts "in order to maximize full-time employment opportunities and provide necessary flexibility," but only after "studied effort" by Management to meet its requirements "by combining within craft or occupational groups." . . .

[Management's arguments] 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 2-A, cannot be interpreted properly except in light of this firmly established meaning of the words "craft" and "crafts" as used therein. This meaning thus does not lie in any abstract definition of either "craft." It can only be found in established practice in each 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 2-A 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.

Although Article VII, Section 2-A, therefore must control here, the manner of its application is not free from difficulty. The Union appears to suggest that no work, under any circumstances, may be reassigned from City Carriers to Rural Carriers. It emphasizes that Article VII, Section 4, makes clear that none of Article VII applies to Rural Carriers, and seemingly would imply from this that no work may be assigned to Rural Carriers under Article VII, Section 2-A. This argument possibly may rest on an erroneous belief that Article VII, Section 2-A, constitutes a grant of authority to Management. It does not.

Instead, it places a limitation upon the exercise of Management authority defined under Article III. Thus Management retains full discretion to deal with matters covered by Article VII, Section 2-A, except to the extent limited by the reasonable meaning of that provision.

[Pp. 16-18; emphasis in original.]

2. USPS/NPOMH/APWU Arbitration Award, AW-NAT-5753, A-NAT-2964, and A-NAT-5740 (West Coast), Sylvester Garrett, Impartial Chairman, April 2, 1975 (NALC Ex. 12)

[Reaffirming his Sioux Falls decision, Arbitrator Garrett states that since the National Agreement reflects] 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. [P. 48]

It should be understood, however, that the present rulings in no sense restrict Postal Service discretion to realign job duties, to make temporary assignments, to create new positions, or to establish additional full-time schedule assignments which include work within different crafts, as long as such actions are in conformity with all relevant provisions of the National Agreement, including Article I, Section 5; Article III; and Article VII. [P. 60]

3. June 9, 1975 Memorandum from David H. Charters, Director of the USPS Office of Grievance Procedures, to Regional Labor Relations Directors, stating the views of the USPS, NALC, and Arbitrator Garrett on the Arbitrator's Sioux Falls Decision (NALC Ex. 11)

[After a meeting between Charters, NALC President Rademacher, and Arbitrator Garrett] a basic premise emerged to the effect that no significant amount of work that has traditionally been done by city letter carriers may be transferred to rural carriers (absent a material change in the nature of the work) except through the provisions of Article VII, Section 2.A. . . .

The obligations under Article VII, 2.A. are somewhat different in the 1971 and 1973 Agreements, but each Agreement requires certain specific steps to be taken before a combination job may be created, and therefore before work may be transferred from city carriers to rural carriers. In none of the outstanding cases was there any attempt to follow these steps properly. Service improvements, efficiency, or cost are, under the Agreement, not legitimate factors for consideration in making determinations of this nature.

It is impossible to spell out with any degree of specificity the definitions of such words as "significant," "traditionally," and "material." Suffice it to say that good judgment should be used, and each case must be handled individually upon its own merits, in accordance with the general principles set forth in the second paragraph. . . .

Although the Agreement does not specifically address the subject, I believe that if changes from city to rural service appear operationally advisable, for example to square off boundaries for scheme simplification purposes, such changes may be accomplished through exchanges of territory provided there is no significant net transfer of stops from city carriers to rural carriers, and also provided that both the NALC and NRLCA locals agree to the changes.

[Emphasis in original.]

4. USPS/NALC Arbitration Award, NC-NAT-1576 (Miami/Hollywood, FL), Sylvester Garrett, Impartial Chairman, January 17, 1977 (USPS Ex. 7)

[In a grievance involving a jurisdictional dispute between the NALC and APWU over the practice of mail clerks performing "direct hold-outs," Arbitrator Garrett distinguished his West Coast decision as involving transfer of entire bid assignments from one craft to another. The Miami/Hollywood case, he said, "involves only a minor reassignment of work." Article I must be interpreted "in he context in which it was negotiated," and that included "not only . . . the history of collective bargaining on a craft basis, but also a long history of day-to-day administration of the Postal Service, as embodied in various Manuals." Existing manuals expressly authorized the use of "directs" and "special listings."]

There is no basis, against this background, to find an implied obligation under Article I, Section 1 which would preclude the Postal Service from continuing to apply such a long established technique for improving the efficiency of its operations, even if a realignment of duties among the various crafts may result. [Pp. 20-22, emphasis in original]

5. USPS/NALC/NRLCA Arbitration Award, H7N-NA-C 42 (Oakton/Vienna, Virginia), Richard Mittenthal and Nicholas A. Zumas, Arbitrators, August 1, 1994 (NALC Ex. 29)

[Although Arbitrator Garrett's West Coast award did not involve either the NALC or the NRLCA], 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. [P. 39]

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. [P. 40]

The core of [Arbitrator Garrett's Sioux Falls] 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. [P. 42]

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. . . ." [P. 48]

[After quoting POM Sections 611.31 and 611.32, the arbitrators conclude that] Management may "consider" conversion from rural to city delivery when any of the matters set forth in Section 611.321 are present. . . . 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. . . . A careful reading of the POM clearly shows that Management is to have a large measure of discretion on this subject. [P. 50]

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 jurisdictions and to better understand what significance, if any, to attach to a "fully developed" area. [Pp. 51-52]

[Arbitrator Garrett's principle that the meaning of "craft" can only be found in established practices is correct 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. [P. 52]

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.

[To set objective criteria] 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. [Pp. 54-55]

6. USPS/APWU/NPOMH Arbitration Award, AD-NAT-1311, Howard Gamser, Arbitrator, October 13, 1981 (USPS Ex. 6)

In weighing the merits of the contentions raised by the APWU, the Arbitrator was guided principally by the criteria established in the Memorandum of Understanding [NALC Ex. 13], which are set forth above, as well as by the other considerations voiced by the arbitrators who decided earlier jurisdictional disputes between these same parties. Furthermore, the changes which have taken place in mail processing in the postal service in the relatively recent past also had to be taken into consideration in order to realistically appraise the compliance by the Postal Service with the criteria mentioned above in its determinations made in publishing and implementing Regional Instruction No. 399 in the manner protested by the APWU.

There is no question that with the passage of the Postal Reorganization Act, as the USPS pointed out, Congress decreed that greater emphasis on efficiency and economy would have to be exhibited by management. To that end, management was charged by the

Congress with the responsibility for reviewing all postal service operations to promote greater efficiency and more expeditious mail handling.

At the same time, perhaps spurred on by postal reorganization legislation, there have been dramatic and far reaching changes adopted in the actual mail distribution process. . . . [P. 8]

[In contrast to the situation in Arbitrator Garrett's West Coast decision, where certain work assignments were unilaterally transferred from one craft to another, in this case] each of the disputed assignments were being performed by Mail Handlers as well as Clerks at various facilities throughout the Country. Additionally, . . . the assignments made in Regional Instruction No. 399 are "primary" assignments only. There is no entitlement bestowed upon either the Clerks nor the Mail Handlers to perform each of these operations at every facility. No employee presently performing any of the disputed operations of functions is to be replaced except by attrition. No hard and fast demarcations have been made. No wholesale dislocations or reassignments of functions or operations is contemplated.

It must also be noted that the Garrett Award did provide that changed conditions could bring about changes in assignments. As was discussed earlier in this Opinion, revolutionary changes in the process of mail handling have been experienced. Regional Instruction No. 399 has reacted to those changes on a national basis by a reevaluation of previous functional assignments in a very limited way. Craft lines have not been obliterated or ignored. They have been recast in a formal writing to reflect changes in practice, which have evolved over the period of the past several years, which were responsive to the technological and other operational changes which have been instituted by management to move the mail more efficiently and effectively.

7. USPS/NALC Arbitration Award, S1N-3W-C 18751 (Venice, FL), J. Fred Holly, Arbitrator, December 5, 1983 (NALC Ex. 44)

The POM does not deal specifically with conversions from city to rural delivery. Instead, it deals exclusively with conversions from city to rural delivery. Despite this, however, it is logical that the same criteria would apply in either event. [P. 8]

8. USPS/NALC Arbitration Award, S1N-3W-C-33880 (West Palm Beach, FL), J. Earl Williams, Arbitrator, August 29, 1985 (NALC Ex. 45)

The Arbitrator also agrees with Arbitrator Holly when he concluded that, despite the fact that the POM deals exclusively with conversions from rural to city delivery, it is logical that, unless clearly impractical, the same criteria would apply either way. [P. 12]

9. USPS/NALC Arbitration Award, S1N-3Q-C-25242 (Florence/Richland, MS), P. M. Williams, Arbitrator, November 6, 1987 (USPS Ex. 10)

. . . The undersigned does not disagree with Dr. Holly's observation of it being logical that the criteria should be the same whether the conversion was from rural to city delivery or vice versa. But it seems to him that the proper test is not whether the latter situation is logical, rather the test is whether the parties have intended that conversions from city to rural delivery are within the province of the POM? If they did then Dr. Holly's reasoning was correct; however, if they did not then while he may have reached the right result from applying the facts before him to §610 and §630 his authority to do so is questionable at best, and lacking at worst. . . .

[Posing the question as to whether the POM's omission of city-to-rural conversions was an oversight, Arbitrator Williams] is not inclined to believe it was oversight because the parties at the national level are too sophisticated to have allowed that to happened [*sic*]. He therefore assumes it was a conscious effort on their part to not include it in the POM. . . .

[He believes the party excluded that topic] because the parties understood the remoteness of the possibility to not warrant their spending a great deal of time trying to agree upon what they would do should the situation arise. Moreover, if one did arise and the Employer believed it should make a change — as it did here — it could exercise its rights as retained in Article 3 to make it. . . . [Pp. 5-6]

[Because the POM provisions do not apply to city-to-rural conversions], in order to prevent the Employer from doing as it did in this case the Union has the obligation to point to language in the [National Agreement] or the manuals to support its position. It has relied on §610 and §630 to support its position. But it must agree the language there is silent on this kind of a "conversion". . . .

If [the Union] can make such a showing the grievance should be sustained. However if it cannot show either by clear language in the POM or by a past practice in the relationship of the parties on matters such as this its grievance must be denied.

The undersigned is of the opinion, and so finds, the POM simply does not cover the situation at hand. And despite Dr. Holly's observation that logic directs one to conclude it should be included there he is not persuaded that such inclusion was intended by the parties.

Finding nothing in the NA or the POM to support the Union's claim he is constrained to find that the grievance should be denied. [P. 7]

V. The Parties' Positions.

Part VII discusses the detailed arguments made by the parties. To avoid duplication, I will therefore limit this section to very brief statements of the parties' broadest arguments.

A. The USPS's Position.

The essence of the Postal Service's position in this case is that, under the governing authorities, it may convert deliveries from city to rural service so long as it does not transfer whole bid assignments and so long as it acts for legitimate operational reasons such as squaring off boundaries, eliminating commingling, and improving efficiency. The one thing that the authorities agree on is that the Employer has some right to transfer some work for good reasons. This is a far fairer position than the NALC's attempt to ban all work transfers.

B. The NALC's Position.

The NALC argues that the Postal Service's authority is far more limited. Under the Agreement, the relevant National awards, and the Charters memorandum, the Postal Service may convert deliveries from city to rural service only when there is no net change in deliveries between the affected unions and only when both local unions agree. The NALC therefore asks for a ruling that Management's justifications for the Cary and Placerville conversions are facially invalid. It asks that the grievances be remanded to the parties for further discussion and possible arbitration of procedural and remedial issues.

C. The NRLCA's Position.

The NRLCA's primary argument is that the Oakton/Vienna award controls the outcome of this case. If it is necessary to go beyond that argument, the NRLCA challenges the NALC's denial of any residual management prerogative; asserts that the Garrett awards and the Charters memorandum do not control this case; claims that under standard principles of contract law, the NALC's conduct and the parties' course of dealings and course of performance have modified the collective bargaining provisions on which the NALC now relies; and maintains that the doctrine of laches bars the NALC's grievances.

VI. Discussion.

A. Introduction

Stripped to its core, this dispute concerns the Postal Service's desire for the freedom to change some deliveries from city to rural to achieve operational efficiencies such as neater geographical divisions and lower costs. For the moment, the NALC opposes the Postal Service's objective while the NRLCA supports it. Naturally the unions' positions reverse when the Postal Service uses efficiency as a justification for switching deliveries from rural to city. These

grievances involve only city-to-rural conversions, so this opinion covers only those situations. Different considerations, in particular past practices and POM provisions, may apply to the more common case of rural-to-city conversions.

Resolving these disputes has been a difficult chore for arbitrators because there is no clear controlling authority. The governing statute, regulations, contracts, and precedents recognize the principle of craft integrity but also recognize that there are no sharp lines between the crafts. Changes in demographic patterns over the last few decades have exacerbated jurisdictional conflicts between the two crafts involved in this case, the city and rural carriers. Earlier in this century the differences between them were marked: city was city, rural was rural, and rarely did the twain meet. As cities produced suburbs and suburbs swallowed farmland, the twain did meet, often and everywhere. Not only did cities poach on rural areas, the nature of the work performed by both crafts changed. Where city carriers were assigned to thinly-settled suburban areas, they had to become more mobile to reach delivery sites. Where rural carriers found themselves covering newly-sprouted developments, they had to dismount.

The result, as all parties recognize, was that it has become impossible to distinguish carrier craft jurisdictions either by settlement density or by the methods of performing the work. What remains is a struggle over turf rather than principle. That is a purely factual observation, not a judgmental one. As long as the carrier unions remain legally separate, each will necessarily protect current jobs and seek new ones. Moreover, in the absence of clear dictates from Congress, there is no simple way to decide in any given case which union's members have the right to perform the work. The three parties largely accept certain general principles but differ whenever the Postal Service or an arbitrator tries to give those principles concrete application.

Indeed, the futility of translating principle into practice drives some to avoid the effort. In the Oakton/Vienna case, for example, two of the best arbitrators in the country were compelled to describe attempts to establish objective criteria as "highly mischievous" because arbitrators could not possibly predict the impact the criteria would have in other locations. As a result, the most that any arbitrator can do is to state or restate the general principles and then apply them to the instant grievances. If they perform that task well, their decisions should help the parties resolve some other pending disputes. If they do it poorly, their decisions may only invite more grievances. Ultimate answers to complex questions, as Arbitrators Mittenthal and Zumas recognized, "are best left to the bargaining table." Any jurisdictional arbitration award will therefore be but one step on what promises to be a very long road.

B. Background

1. Conversions in General

As cities expanded into formerly rural territory, there was a widespread assumption that mail deliveries, like other aspects of the newly developed regions, would be absorbed by the encroaching city. That is the way most of the changes went, and that is what the Postal Service's

first regulations and instructions on conversions between crafts covered. The problem with that approach, from the NRLCA's view, is that it operates like a ratchet: the NALC would always gain deliveries at the expense of the NRLCA. The NRLCA's predictions (in its brief at 38) that the NALC's position would cause the NRLCA to "wither and die" and would bring about "the potential end of rural delivery in America" are overwrought, but it is undeniable that the number of rural carriers would shrink with their territory, like the wolf and the moose. Accordingly, the NRLCA vigorously challenges most rural-to-city shifts.

From the NALC's point of view, however, merely leaving existing boundaries intact posed a different problem. As people spilled out of cities and into their suburbs, the number of city deliveries might decline while the number of rural deliveries grew. Accordingly, the NALC occasionally seeks to extend its coverage to new territory, as it did in the Oakton/Vienna dispute.

Until relatively recently, city-to-rural conversions barely reached the Postal Service's radar screen. There was never an express ban on the practice but hardly anyone thought it generally appropriate. Farms could become cities but cities did not become farms. The idea that rural carriers could poach on existing city routes just did not arise, except in the rare case of a territorial trade-off to smooth boundary lines. [The Postal Service did issue a Regional Instruction in 1968 that prohibited extension of rural service to city patrons (NALC Ex. 31), but it never incorporated that instruction in the POM. That Instruction thus serves only as a statement of the Postal Service's policy at the time and does not control the present grievances.]

For the most part, the Postal Service tried to avoid conversions because they inevitably antagonized one or another of its unions. As David Charters, the former Director of the Postal Service's Office of Grievance Procedures, testified in the Oakton/Vienna case, the result was "sort of a bias" against conversions (NALC Ex. 43, p. 30). The safest course for the risk-averse Postal Service bureaucrat would be to maintain the status quo. But at this point a new consideration enters the picture. The Postal Service is supposed to operate efficiently. When the Postal Service was more of a political agency and faced little competition, it could sacrifice efficiency to other goals. As the Postal Service faced more competition and more concern in Congress over its budgetary problems, efficiency rose in the hierarchy of values. The Postal Reorganization Act (PRA) of 1970 reflected Congress's desire that the Postal Service act more like a business and less like a patronage provider.

Efficiency, however, often conflicts with stability. Where city and rural deliveries mingle, the status quo may not be the most efficient way to deliver the mail. Changing delivery patterns from city to rural or from rural to city, though, prompts the very jurisdictional disputes the Postal Service usually tries to avoid.

From the Postal Service's point of view, there is only one route out of this dilemma. If it had clear authority to assign deliveries in the most efficient fashion, it could satisfy Congress without the risk of second-guessing by arbitrators or judges. The first challenge, therefore, was to establish its power. Authority for rural-to-city conversions has long been available in the Postal

Operations Manual (POM), Section 611.321 of which specifies the criteria to be employed (USPS Ex. 9). That section's four criteria all deal with efficiency. So long as the Postal Service can demonstrate the existence of one or more of those criteria, rural-to-city conversions are proper, subject only to the NRLCA's right to grieve and arbitrate any given change.

2. City-to-Rural Conversions

a. The Sioux Falls Decision and the Charters Memorandum

The more difficult problem is converting territory from city to rural delivery. Because there were no regulations on point, the Postal Service initially justified its rare city-to-rural conversions on its statutory and contractual management rights. An early effort along those lines led to Arbitrator Sylvester Garrett's landmark Sioux Falls decision. As part of a broader reorganization of delivery services in the Sioux Falls area, the Postal Service transferred certain city routes to rural delivery in order to create positions for six displaced rural carriers. In the end, about 800 deliveries went from city to rural delivery and about 50 went from rural to city. The NALC apparently claimed that the Postal Service could never assign city deliveries to rural carriers. The Postal Service defended the grievance by arguing that the delivery crafts were indistinguishable and that in any event the Service had the authority to decide the type of delivery to be provided, and therefore the craft of the employees making the deliveries.

After a careful examination of the parties' bargaining history and of the National Agreement, Arbitrator Garrett rejected both extremes. He found that Management retained full authority to assign work except as limited by Article VII, Section 2-A, which in relevant respects reads the same today as it did in 1974. He sustained the grievance, however, because Section 2-A allowed "the type of reassignment of work here in issue" only "to maximize full-time employment opportunities and provide necessary flexibility" — and even then, only after a "studied effort" to accomplish those goals by combining work *within* crafts. Because the Postal Service met neither requirement, the conversion was improper.

Arbitrator Garrett wisely limited his ruling as closely as possible to the facts before him. His holding held Management to the words it had agreed to in the National agreement — that is, that the Postal Service would combine work of different crafts into a single job only for the stated purposes and only after the stated efforts to explore alternatives. The facts of that case differ widely from the facts here. Most notably, the changes in Sioux Falls involved the shift of entire bid positions in order to employ some displaced rural carriers. These grievances involve the transfer of a much smaller number of deliveries for very different reasons. As a result, Arbitrator Garrett's holding does not answer the issue posed by these parties.

Three parts of the Sioux Falls opinion do provide useful guidance. First, the National Agreement and other authorities include the principle of craft integrity. Even without a specific work-preservation guarantee, the Agreement's recognition clause and the parties' bargaining history show that the Postal Service is not free to ignore craft lines when assigning work. Article

VII, Section 2-A, on which Arbitrator Garrett so heavily relied, is just one example of that principle. Second, when navigating dangerous waters like these, every arbitrator should follow his advice to resolve jurisdictional disputes primarily by relying on "established practice in each Post Office in assigning work to one or the other of the craft bargaining units" (p. 17). To put it differently, work performed by rural carriers presumptively belongs to rural carriers, and work performed by city carriers presumptively belongs to city carriers. This is only a presumption, but Management must offer a sound reason and persuasive evidence if it is to overcome that presumption. Third, Article VII means what it says.

The Sioux Falls decision left open the question of what authority, if any, the Postal Service had for city-to-rural conversions in other circumstances and for other reasons. Because of the pressing nature of that question, the NALC President, Jim Rademacher, and the Director of the Postal Service's Office of Grievance Procedures, David Charters, met with Arbitrator Garrett. The only record of that meeting entered into evidence in this case is a memorandum from Charters to Regional Directors of Labor Relations dated June 9, 1975 (NALC Ex. 11) [referred to in this Opinion as the Charters memorandum]. According to that memorandum, a "basic premise" emerged from the meeting that "no significant amount of work that has traditionally been done by city letter carriers may be transferred to rural carriers (absent a material change in the nature of the work) except through the provisions of Article VII, Section 2.A." Perhaps more importantly, Charters wrote that "Service improvements, efficiency, or cost are, under the Agreement, not legitimate factors for consideration in making determinations of this nature." When city-to-rural conversions seem advisable for other reasons such as squaring off boundaries, Charters wrote, "such changes may be accomplished through exchanges of territory provided there is no significant net transfer of stops from city carriers to rural carriers, and also provided that both the NALC and NRLCA locals agree to the changes."

If the Charters memorandum binds the Postal Service today, it would obviously and easily resolve these and most of the other pending grievances. The parties therefore spent a good deal of effort debating the nature of his memorandum.

The Charters memorandum is not a provision of the NALC Agreement, nor is it a memorandum of agreement or a letter of intent. It is signed only by one party and it merely purports to record an interpretation. There is no evidence that Arbitrator Garrett or President Rademacher ever read it, let alone endorsed it. Furthermore, it is only an internal Postal Service document from an official in charge of grievances to labor relations regional directors. It thus is not as reliable or as binding as a formal agreement would be. The Postal Service and the NALC know how to write binding agreements when they want to. For reasons that do not appear in the record, they chose not to do so here. Finally, and more importantly for the present tripartite arbitration, the NRLCA was not a party to the meeting that resulted in the Charters memorandum or to the arbitrations that led up to it. Whatever the status of the memorandum in later disputes between the USPS and the NALC, it cannot control disputes between the USPS and the NRLCA or between the NALC and the NRLCA.

Nevertheless, the Charters Memorandum does reflect a reasonably authoritative contemporaneous reaction to the Sioux Falls award. It is therefore helpful but not controlling. To the extent it differs from or expands upon the Agreement or the relevant National level awards, it merely states the opinion of one high Postal Service official. It is worth noting that as late as 1980, the Postal Service issued a Step 4 decision that relied on the Charters memorandum as authoritative (NALC Ex. 30), and even at the arbitration hearing in this case the sole Management witness, Robert West, explained that the Postal Service still used the memorandum as a general guideline when making city-to-rural conversions. Despite those instances of reliance on the memorandum, the arbitration award that the Charters memorandum purports to interpret banned inter-craft work conversions only in certain limited circumstances, and those circumstances are not the ones at issue in these grievances. While the memorandum demonstrates that the Postal Service chose in 1975 to adopt a more restrictive stance on city-to-rural conversions, it remained free to change that stance.

b. The Oakton/Vienna Decision

The most recent and most persuasive arbitration decision that bears on the issue of city-to-rural conversions is the 1994 National level award of Arbitrators Mittenthal and Zumas in the Oakton/Vienna case. Like this case, Oakton/Vienna involved tripartite arbitration. Unlike this one and unlike Sioux Falls, the Oakton/Vienna case began as a work-acquisition claim by the NALC. Rather than merely protesting city-to-rural conversions, the NALC sought to take certain deliveries away from the NRLCA on the basis that demographic shifts had made formerly rural territory urban. Although Oakton/Vienna is a type of rural-to-city conversion case, the principles used to resolve it apply equally strongly to city-to-rural conversions.

The arbitrators relied heavily on Arbitrator Garrett's interpretation of Article VII in Sioux Falls and on his interpretation of Article I in his later 1975 West Coast decision (NALC Ex. 12). In his West Coast award, which involved neither the NALC nor the NRLCA, Arbitrator Garrett held that Article I protects the basic integrity of the separate craft units and "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." Arbitrators Mittenthal and Zumas found that the West Coast award applies to the NALC and NRLCA because in 1975 the same National Agreement covered all four unions.

In light of those two awards, the arbitrators found that the prime factor in determining craft jurisdiction was past practice:

> 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. [P. 42]

Applying that principle to the NALC's work-acquisition claim, the arbitrators denied the grievance. The past practice of using rural carriers to serve the disputed territory governs at least until the "work is changed to such an extent that the 'established practice' can no longer be said to have persuasive force" (p. 52).

Because the Oakton/Vienna dispute differed in a critical respect from the present grievances — it represented a grab for new work rather than an effort to retain current work — it does not answer the questions posed in this case. The NRLCA's brief asserts flatly at p. 4 that

> When NALC lost *Oakton/Vienna*, it lost this case also. *Oakton/Vienna* controls this case, and the judgment and words of Messrs. Mittenthal and Zumas are dispositive.

The matter is not so simple. That case simply held that one union could not take over work long performed by members of a second union simply because the work is similar to that performed by the grieving union's members. The arbitrators did not address, and had no need to address, the question of whether and when Management could assign work from one union's jurisdiction to that of another. That remains an open question.

For immediate purposes, the most important aspects of the Oakton/Vienna award are its use of Arbitrator Garrett's decisions as providing crafts with a shield against most jurisdictional incursions and its endorsement of past practice as the surest guide to jurisdictional rights. Like their predecessor, Arbitrators Mittenthal and Zumas recognize that a party seeking to change a long-standing allocation of work can overcome the presumption in favor of the status quo only by producing a very strong justification. Whether that party is the NALC or the Postal Service matters not at all.

c. Other Relevant Authority

The remaining arbitral authority is of less relevance. One more decision by Arbitrator Garrett does shed some light on his West Coast decision, however. In an NALC grievance arising in the Miami area over a jurisdictional dispute with the APWU, Arbitrator Garrett in 1977 distinguished his West Coast award as involving the transfer of entire bid assignments from one craft to another (USPS Ex. 7). The Miami/Hollywood case, in contrast, involved "only a minor reassignment of work," and Article I incorporates not only the history of bargaining on a craft basis but also "a long history of day-to-day administration of the Postal Service." By making that distinction, he opened up some room for Postal Service innovation short of transfers of entire bid assignments. If Arbitrator Garrett's Sioux Falls and West Coast decisions provided crafts a shield against jurisdictional incursions, his Miami/Hollywood decision significantly trimmed that shield's size.

Some regional arbitration awards, notably J. Fred Holly's 1983 Venice, Florida decision (NALC Ex. 44) interpreted the POM provisions on rural-to-city conversions as applicable to city-

to-rural conversions. With due respect to those awards, they rest on the fundamentally flawed assumption that the Postal Service's failure to include city-to-rural conversions in the POM was simply an oversight. Absent some strong evidence of the "oversight," the better interpretive principle is that the POM covers only the listed situations. Perhaps the same principles should as a matter of logic or efficiency govern city-to-rural conversions, but that is not what the POM says. The Postal Service's later 1996 decision (USPS Ex. 5) to add express provisions on city-to-rural conversions demonstrates that the earlier section did not cover the situation. Because the new provisions far postdate the instant grievances and because they are the subject of a separate pending dispute, they do not govern this decision. I make no finding on their effect, if any, on grievances arising after their effective date.

C. The NRLCA's Procedural Objections

Apparently to the surprise of the NALC, the NRLCA's brief raised two procedural objections to these grievances. It argued that the parties' alleged "usages," "course of dealing," and "course of performance" amounted to a waiver of any right the NALC might have to assert its interpretation of the collective bargaining agreement, and it claimed that the grievances were barred by the doctrine of laches. The USPS's reply brief scrupulously avoided endorsing these NRLCA arguments.

Whatever merit the NRLCA's first argument might have is vitiated by the lack of evidence about the details of the parties' practices and by the rarity of city-to-rural conversions. The record contains no proof that the NALC ever (to quote the NRLCA's brief at 31)

> conducted itself in such manner and permitted the Postal Service a course of performance which warrant the reasonable construction of the contract language and the Charters Memorandum leaving the Postal Service free to assign or convert deliveries and routes to the rural delivery in the exercise of its Article 3 prerogatives.

Any waiver of contractual rights must be knowing, and there is not the slightest evidence that the NALC knowingly gave up any right to challenge city-to-rural conversions.

The second argument is even more technical. The legal doctrine of laches holds that an unreasonable delay in asserting one's rights can bar a belated claim if it severely prejudices another party. The NRLCA's brief (at 35, n.21) asserts that the length of time before the parties scheduled this case for arbitration while many other grievances were pending constitutes such an unreasonable delay. Apart from the parties' reservation of factual issues for later decision, the brevity of the record in this case makes it impossible to credit the NRLCA's argument. The record simply does not show the reasons for the delay in scheduling, so I cannot blame it on the NALC.

More importantly, the doctrine of laches concerns only a failure to assert one's rights in the first instance. The NALC apparently did assert its rights by promptly filing grievances over many city-to-rural conversions. That is certainly true of the only grievances before me. In litigation, rules of procedure specify how, and how quickly, a suit must progress once it is filed. In arbitration, the counterpart would be the time limits spelled out in a collective bargaining agreement's grievance article. One party's claim that another party violated those time limits would amount to a procedural arbitrability challenge. No party has suggested that the NALC violated the relevant provision of its collective bargaining agreement, Article 15, in processing these two grievances. There is thus no basis for holding that the NALC was guilty of an unreasonable delay.

D. Application

The best way to approach this case is by recognizing how narrow the issue presented really is. Two potentially large blocks of conversion cases are outside the scope of this case. First, it has been clear ever since Arbitrator Garrett's Sioux Falls, West Coast, and Miami/Hollywood decisions that the Postal Service has no authority to transfer whole bid positions from one craft to another for operational reasons except in conformity with Article 7, Section 2.A. Second, some cases of minor adjustments are too small to rise to the level of a contract breach. Moving a few deliveries from one craft to another for some legitimate operational reason, without a significant impact on the number of jobs or amount of income available to members of the losing craft, falls within Arbitrator Garrett's category (in his Miami/Hollywood decision) of "minor reassignments of work" justified by the Postal Service's "long history of day-to-day administration." Those routine minor adjustments are a logical part of Management's rights, protected by Article 3 of the Agreement.

These grievances present problems falling between those extremes because they involve the conversion of a sizeable number of deliveries without transferring entire bid assignments. Wherever the exact line between "a few" and "a sizeable number" of deliveries might fall, the 136 converted deliveries in Cary amounts to more than "a few." The number of converted deliveries in Placerville was even larger. The relevant number for the purpose of this classification is the *total* number of deliveries converted from one craft to another, not the *net* figure. If there is little or no net change, the possibility of a mutually satisfactory agreement increases, but the lack of net change does not eliminate either union's contractual right to its present work.

Within that middle ground, the primary controlling authorities are the parties' collective bargaining agreements. As interpreted by Arbitrators Garrett, Mittenthal, and Zumas, Article 1 (in both agreements) embodies the principle of craft integrity and Article 7 (in the NALC agreement) applies to conversions of work from one craft to another as well as to the combining of work from different crafts into a single position. Article 3 (in both agreements) protects Management's rights, "subject to the provisions of this Agreement"; in other words, it gives Management no power to overturn craft jurisdictions protected by the other articles. The

touchstone in all these cases is past practice. As the Oakton/Vienna award put it at p. 52, "the customary way of doing things is the most realistic guide to jurisdiction."

To summarize, in any jurisdictional dispute prompted by conversion of a sizeable number of deliveries from city to rural service, the union whose members have long performed the work presumptively retains the right to that work. However worthy in the abstract, operational justifications (such as a desire to square boundaries, eliminate commingling, and improve efficiency) do not by themselves overcome that presumption. The only exception to this rule is the one announced by Arbitrators Mittenthal and Zumas on the same page, "when work is changed to such an extent that the 'established practice' can no longer be said to have persuasive force."

The NALC challenges the Postal Service's city-to-rural conversion of 136 deliveries in Cary and 455 in Placerville that have been within its jurisdiction for many years. Because the Postal Service alleges neither that the work in question has changed enough to eliminate the "established practice" nor that it has satisfied the provisions of Article 7, it has failed to overcome the presumption in favor of NALC jurisdiction. The grievances must therefore be sustained.

Enforcing this long-standing principle does not unduly bind the Postal Service in these middle-ground situations, nor does it freeze in amber any current inefficient practices. The Postal Service has many ways to achieve the efficiencies expected by Congress. It can seek authority from Congress to make unilateral changes; it can negotiate changes in the National agreements; it can use its managerial powers to raise productivity within craft assignments; it can comply with the provisions of Article 7, Section 2.A. of the NALC agreement; and it can try to breathe life into the 1975 Memorandum of Understanding on jurisdictional disputes (NALC Exhibit 7). There may be other possibilities as well. The only thing that the Postal Service may *not* do, in light of its contractual commitments, is unilaterally shift a sizeable number of deliveries from city to rural service in violation of a still-viable established practice.

E. Remedy

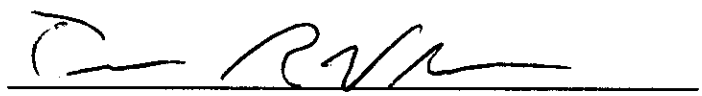
The parties limited their evidence to the narrowest possible issue. They did not even open the subject of the proper remedy. I shall therefore announce the remedial principle — that Management must restore the challenged deliveries to NALC jurisdiction and make whole any employees harmed by the conversions — and will remand the case to the parties. I shall retain jurisdiction to resolve any remedial disputes the parties are unable to answer.

AWARD

1. The grievances are sustained. The Postal Service violated the NALC agreement by unilaterally converting a sizeable number of deliveries in Cary, North Carolina and Placerville, California from city to rural service.

2. The Postal Service is directed to restore the challenged deliveries to NALC jurisdiction and to make whole any employees harmed by the conversions.

3. The parties are directed to negotiate over the implementation of this award. I shall retain jurisdiction to resolve any remedial disputes the parties are unable to answer.



Dennis R. Nolan, Arbitrator and Mediator

December 23, 1998
Date

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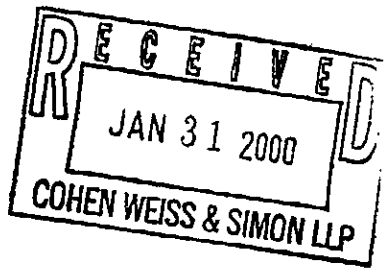

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Re: USPS/NALC/NRLCA National Level Jurisdictional Arbitration
Grievances W4N-5H-C 40995 and S1N-3P-C 41285

Gentlemen:

I have your submissions, the last of which arrived on January 3, and have carefully considered them. Because the issue presented is so narrow and your positions on that issue so clear, I am taking the liberty of responding with a letter rather than with a full Opinion and Award. All parties joined in the reconsideration proceeding, so there is no issue of my authority to rule on the NRLCA's motion.

First, a clarification. Paragraph 2 of my Award was never intended to preclude presentation of factual and procedural issues bearing on the remedy for the Placerville and Cary cases. To the contrary, those matters are precisely the types of "remedial disputes" over which I retained jurisdiction in Paragraph 3.

That said, the submissions convince me that even the brief statement of guiding principle enunciated at page 23 and paragraph 2 exceeded the parties' expectations. The NALC's valiant attempt to justify that extension after the fact is ingenious but unpersuasive. While it is true that submission of a case to an arbitrator normally includes the implicit authority to craft a remedy, the parties are free to depart from normal practice. That is what they did here. And while it is true that

the NALC's opening statement asked for "rules of decision" and that the other parties did not object to that formulation, in context the phrase clearly refers to substantive rather than procedural rules of decision. Because that is what the other parties also wanted, there was no need for them to challenge the NALC's statement.

In short, the parties asked for a ruling on the merits and nothing more. I shall therefore grant the NRLCA's motion to strike Paragraph 2 of the Award and the reference on page 23 to the "remedial principle." As amended, Paragraph 3 of the Award becomes Paragraph 2, and the second sentence of the last paragraph on page 23 will read: "I shall therefore remand the case to the parties." The rest of the Opinion and Award remain intact.

Thank you for your attention. I apologize for putting you to this extra work, and look forward to being of service again.

Cordially yours,

Dennis R. Nolan
Arbitrator and Mediator