C-24768

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	[ ]	Grievant: Class Action
between	[ ]	Post Office: Flint, Michigan
UNITED STATES POSTAL SERVICE	[ ]	Arb. No.: J94N-4J-C 98009292
and	[ ]	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	[ ]	

BEFORE: Steven Briggs

APPEARANCES:

For the U.S. Postal Service: Jonathan A. Saperstein, Esq.

For the Union: Keith E. Secular, Esq.

Hearing Dates/Places:

March 12, 2002
October 31, 2002

USPS Headquarters
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Date of Award: October 31, 2003

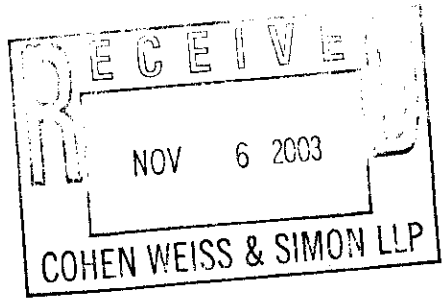
Relevant Contract Provision: Articles 3, 41.3.O

Contract Year: 1994-1998

Type of Grievance: Contract Interpretation

Award Summary: A route change of greater than 50% does not constitute an abolishment under Article 41.3.O of the National Agreement.

Steven Briggs



BACKGROUND

In its pursuit of efficiency the United States Postal Service (the Postal Service; the Employer; the USPS) generally attempts to design and maintain city mail delivery routes so that letter carriers can case and deliver mail within an eight hour shift. To achieve that objective it periodically adjusts routes in each delivery unit. At times the Postal Service even eliminates certain routes entirely in order to approximate an eight-hour letter carrier workload across the remaining ones.

In 1997 the National Association of Letter Carriers (the Union; the NALC) alleged in a grievance that the Postal Service had violated Article 10 of an applicable Local Memorandum of Understanding (LMOU) when it reportedly changed two routes by 50% and thereafter failed to post routes held by employees junior to those whose routes had been changed. The LMOU Article allegedly violated incorporates the relevant provisions of the National Agreement's Article 41.3.O.

The parties were unable to settle the matter themselves through discussions at various steps of their grievance process, and the Union ultimately advanced it to national level arbitration. The parties mutually appointed Steven Briggs to hear and decide the case. National level arbitration hearings were held on March 13 and October 31, 2002, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective positions. The

hearings were transcribed. The parties filed post hearing briefs with the Arbitrator on or about April 30, 2003, whereupon the record was closed.

STIPULATED ISSUE

At the March 13, 2002 hearing the parties stipulated that the following issue is before the Arbitrator for decision:

> Does a change in a letter carrier's route of greater than fifty (50) percent constitute an abolishment of the route under Article 41, §3.O of the National Agreement?

ADDITIONAL STIPULATION

In an April 25, 2003 letter to the Arbitrator, Attorney Saperstein reported that the parties had entered into the following additional stipulation:

> The National Association of Letter Carriers (NALC) has over 2600 local branches that represent city letter carriers who work out of thousands of Postal Service installations nationwide. Each of the NALC branches represents letter carriers at one or more Postal Service installations. While it is possible that each of the 2600 local branches could negotiate local memoranda of understanding (LMOU) with local Postal Service management at each of the installations where local branches represent letter carriers, in actuality small local union branches that have only a few members may not have negotiated LMOUs. Neither party has a data base that would allow them to determine how many LMOUs actually exist. Nonetheless, the parties agree that most branches with 25 or more members have LMOUs. There are 772 branches with 25 or more members. Accordingly, the parties conservatively estimate that at a minimum there are 772 LMOUs, although that number is likely to be larger.

PERTINENT NATIONAL AGREEMENT PROVISIONS

ARTICLE 3 – MANAGEMENT RIGHTS

The Employer shall have the exclusive right, 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;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

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;

E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

. . .

ARTICLE 15 – GRIEVANCE-ARBITRATION PROCEDURE
Section 4. Arbitration

A. General Provisions

6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.

ARTICLE 30 – LOCAL IMPLEMENTATION

A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1994 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below or, as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective local memorandum of understanding.

B. There shall be a 30-day period of local implementation to commence February 1, 1996 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1994 National Agreement:

1. Additional or longer wash-up periods.

. . .

22. Local implementation of this Agreement relating to seniority, reassignments and posting.

ARTICLE 41 – LETTER CARRIER CRAFT
Section 3. Miscellaneous Provisions

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

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

That provision may, at the local NALC Branch's request during local implementation, be made applicable (including the right to delete it) to selected delivery units within an installation. For purposes of applying that provision, a delivery unit shall be a postal station, branch or ZIP code area. Any letter carrier in a higher level craft position who loses his/her duty assignment due solely to the implementation of that provision shall be entitled to the protected salary rate provisions (Article 9, Section 7) of this Agreement.

THE PARTIES' POSITIONS

Employer Position

The Postal Service maintains that a change in a letter carrier's route of greater than fifty (50) percent does not constitute an abolishment of the route. Its principal arguments in support of that position may be summarized as follows:

1. The structure and language of the National Agreement demonstrate that the term "abolished" as used in Article 41.3.O refers to the elimination of a route, not merely to changes in it.
2. According to *Webster's New World Dictionary,* the commonly accepted meaning of "abolish" is "to do away with completely ..." Nothing in the National Agreement or in Article 41.3.O suggests that the parties assigned any other meaning to that term.
3. Although Article 41.3.O specifies posting obligations when routes are "abolished," others in Article 41.1 deal with

posting obligations when routes are modified. The general contrast between those two provisions is telling. Unlike the Article 41.1 provisions, Article 41.3.O contains no reference to the specific type or amount of changes that would trigger a re-posting obligation.

4. Had the parties mutually intended that a percentage change in a route would create an obligation to post assignments for bidding, they could have reduced that intent to writing at the bargaining table.

5. The American Postal Workers Union (APWU) was the NALC's bargaining partner between 1971 and 1994. It used the negotiations process to expand the circumstances when changes to a duty assignment for clerk craft employees would require the Postal Service to re-post that duty assignment. (See, for example, Article 37.3.A.4.c, 1978-1981 Agreement between the USPS and the APWU, NALC, and Mail Handlers Unions.)

6. Many of the area arbitrators who have considered the same question presented here have held that Article 41.3.O is not triggered when a route is modified, even by a substantial amount. And a number of them have recognized that a contrary holding would require redefinition of the term

"abolish" --- a change that can only be made at the bargaining table.

7. A ruling for the Union in this case would damage the integrity of the bargaining process and have significant operational consequences. The application of such a ruling would raise a number of questions about how to determine when a 50% change in a route is defined. Should the Arbitrator unilaterally compare geographic territories, delivery points, functions performed, or a combination of those factors to determine whether the 50% trigger has been reached? Those are precisely the types of questions the parties themselves would explore at the bargaining table, should they decide to negotiate a provision similar to what the Union essentially seeks in these National Arbitration proceedings.

8. The cost of abolishing a route creates a domino effect when a senior carrier who held it displaces a junior carrier on another route. That junior carrier then must bid on a new assignment, and so on, until all the assignments are filled. When such displacements occur, there is "a reasonable period" during which the carrier must become familiar with a new route (See Article 41.3.F). Therefore, a ruling for the

Union would create for the Employer costs it did not contemplate at the bargaining table.

9. The Union's claim that the term "abolished" as used in Article 41.3.O means a change in a route of 50% or more is fatally undermined by its own words and actions. For example, in the article "When Is A Route Abolished" in the Summer 1999 *NALC Activist,* the Union discussed the circumstances when, in its view, a route is abolished under Article 41.3.O. It rejected the notion that the term "abolished" could be defined by a fixed percentage change in a route, stating:

> Certainly life would be simpler if there existed a flat statement about exactly when routes should be considered abolished --- for example, if 50 percent of the route is changed. However no such standard exists. (USPS Exhibit 2, at 7).

The above quote was published in 1999, three years after the grievance in this case was filed in 1996. What the Union told its members in 1999 is directly contrary to what it has told this National Arbitrator in 2002.

10. During 1990 contract negotiations the Union proposed modification of Article 41.3.O to redefine "abolished" by reference to a percentage change in a route. In its September 11, 1990 proposal the Union sought to "[d]efine abolished [as used in Article 41.3.O] as meaning when 25%

or more of an assignment has been changed." (USPS Exhibit 3) That proposal was rejected by the Postal Service.

11. Although the language of Article 41.3.O and the Employer's application of it have remained unchanged since 1978, this is the first time the Union has advanced its current interpretation of it in a National Arbitration. The belated nature of the Union's challenge undermines the validity of its position.

12. A February 6, 1987 pre-arbitration resolution settled three grievances involving "the realignment of T-6 routes at the Wichita Falls, Texas Post Office (NALC Exhibit 4). In that settlement the parties agreed that "[I]f a local Memorandum of Understanding contains the Article 41.3.O language and changes in T-6 strings [assignments] are so great that the assignments are abolished, they should be reposted in accordance with Article 41.3.O." That pre-arbitration settlement is not applicable here, since it applies to the "realignment of T-6 positions" in specific locations. "T-6 positions" are held only by carrier technicians, a separate job category under the National Agreement, and one which involves more taxing responsibilities than those held by city letter carriers. The fact that the Postal Service agreed to use the re-posting requirements of Article 41.3.O in limited and

specific circumstances applicable to changes in T-6 assignments does not in any way compel a finding that it also agreed Article 41.3.O would be triggered as a general matter when routes are modified by 50%.

13. The T-6 pre-arbitration settlement does not support the Union's claim here, because it contains no express standard to determine when T-6 assignments --- not to mention routes generally --- are abolished and Article 41.3.O is triggered.

14. The Union's reliance on Arbitrator Jonathan Dworkin's area arbitration award is similarly misplaced. (See USPS and NALC, Case No. C8N-4B-C 34114, Feb. 11, 1983; NALC Exhibit 5.)

15. The Union introduced 41 LMOUs to show that the parties have a past practice of applying Article 41.3.O when 50% or more of a route has been changed. That argument must fail, for several reasons. First, the LMOUs fail to establish the existence of any past practice relevant to this case. The evidence did not establish a practice that is common or that occurred with the acquiescence of Postal Service officials at the National level. Second, it has been estimated that there are about 772 LMOUs across the country; the Union produced only 41 here to support its past practice argument. Moreover, only eight of those 41 LMOUs provide that Article

41.3.O would be triggered when a specified percentage change in a route takes place.

16. The LMOUs upon which the Union relies contain percentage change provisions ranging from 25% to 60% to trigger a re-posting obligation. Moreover, those provisions contain a variety of different formulae to determine when the triggering percentage has been reached. Given that variance, it is difficult to understand how those LMOUs support the Union's claim that a route is abolished when 50% of deliveries are changed.

17. The Union claims that one of the purposes of Article 41.3.O is "to protect the choice of assignment of a senior carrier." (Tr. 26) But that purpose is served by the Article 41.1 provisions which require the Postal Service to post assignments when they have been changed in certain enumerated ways. In contrast, Article 41.3.O serves a far narrower purpose --- to protect the senior carrier who no longer has an assignment from being involuntarily reassigned to a residual position.

18. If the Union wanted to provide carriers with additional protection against undesirable changes to their routes, it could have pursued the APWU's strategy of expanding

through collective bargaining the circumstances when changes to an assignment would trigger a posting obligation.

19. In its grievance process responses the Postal Service observed that the route had not been abolished and rejected any claim that a 50% change in a route was the same as an abolishment. And, in its Step 4 decision denying the grievance, the Postal Service noted that there was no contractual support for the position that some specified percentage change of a route assignment was equivalent to a route abolishment or otherwise triggered the posting requirements of Article 41.3.O.

20. With the Union's consent, the Postal Service also makes the following proffer:

> If called as a witness for the Postal Service, Sheila Myers would testify that she had been the advocate in Case No. E94N-4E-C 98021349. In addition, Ms. Myers would also testify that she worked as a Labor Relations Specialist in the Seattle, WA district from September 1994 until September 1998, that she represented the Postal Service in the area arbitration (Case No. E94N-4E-C 98021349) as part of the normal duties of her position, that she transferred to headquarters as a Government Relations Representative in September 1998, and that she was working in the Postal Service's Government Relations Department in Postal Service headquarters when the award issued (sic). Finally, Ms. Myers would also testify that she did not contact headquarters personnel regarding the 1998 area arbitration or any matters at issue in that arbitration.

21. The grievance should be denied.

Union Position

The Union asserts that a change in a letter carrier's route of greater than fifty (50) percent does not constitute an abolishment of the route. Its main arguments in support of that position are summarized in the following numbered paragraphs:

1. In its Step 4 decision the USPS did not argue that "abolished" can only mean completely eliminated. At Step 3 it noted that "a large portion of the route remains intact." Had the Postal Service taken the position at Step 4, as it did at arbitration, that "abolished" can only mean completely eliminated, it would have argued at Step 4 that factual determinations were unnecessary because since the routes continued to exist at least in part, they had not been abolished.

2. In its April 30, 1998 Step 4 decision the USPS asserted that "[t]he issue in this dispute is clearly a factual one," and that "[w]hether or not the route(s) in this particular grievance underwent proper or normal adjustment, or if, in fact, the route was abolished or extinguished, rather than adjusted, is clearly a factual matter and should be remanded for regular arbitration for application of the Article 41.3.O provisions." (NALC Exhibit 1) By contending at Step 4 that resolution of the case was a factual matter, when the parties had agreed

that the routes continued to exist in part, the USPS was not, and could not have been arguing that "abolished" means completely eliminated.

3. Article 15 requires that throughout the grievance procedure the USPS must articulate its position on a grievance. More specifically, at §2 it mandates that the Step 4 decision "include an adequate explanation of the reasons therefor." Because the Postal Service has a contractual obligation under Article 15 to set forth its arguments during the grievance proceedings, national level arbitrators have held that its failure to assert a particular argument in a grievance decision constitutes waiver of its right to assert the argument in arbitration. See USPS, Helena, Montana and NALC, Branch 220, Case No. N8-W-0406 (Mittenthal, 1981); USPS and NALC, Case No. H8N-5B-C 17682 (Aaron, 1983); USPS and APWU and NALC (Intervenor), Case No. H4-NA-C 72 (Das, 1997).

4. Because the USPS failed to take the position at Step 4 that "abolished" can only mean completely eliminated, it waived the point. Therefore, the only question properly before the Arbitrator now is what extent of change, less than 100 percent, constitutes abolishment of a route.

5. As regional arbitrators have recognized, the intent behind Article 41.3.O is to protect valuable seniority and bidding rights.

6. NALC witness Alan Apfelbaum explained that "the most important function of seniority for any letter carrier is their right to bid on an assignment." He noted as well that carriers bid on routes based on various factors, including the type of route and how much walking or driving it requires. (See generally, Tr. 29-34)

7. Article 41.3.O language in an LMOU allows the carrier on an abolished route to exercise his seniority to bid on a new route. It makes sense to interpret the term "abolished" to include not just complete elimination, but also major change to a route. Exercising seniority to secure a preferred route would be meaningless if the carrier had to continue working the route after it had been changed dramatically.

8. When substantial changes have been made to a route, it is no longer the route selected by a senior carrier through the bidding process.

9. The USPS acknowledged in a binding Step 4 agreement on T-6 letter carriers that an assignment may be "abolished" within the meaning of Article 41.3.O even when not completely eliminated. T-6 letter carriers deliver a string of

five different routes --- one each day. The 1987 Step 4 agreement provides that while "[c]hanging one route in a T-6 string is not a cause for reposting" under Article 41.3.O, T-6 assignments must be reposted when "changes in T-6 strings are so great that the assignments are abolished." (NALC Exhibit 4, at ¶1 and ¶3) Although the T-6 agreement does not specify the threshold of change at which a T-6 assignment is deemed abolished, it clearly contemplates that some extent of change short of 100 percent would be sufficient. Not only does the Step 4 agreement apply to T-6 letter carriers, but it also sets forth a binding interpretation of the very contract language at issue here, namely, the term "abolished" in Article 41.3.O.

10. In a December 27, 2002 decision, Arbitrator Dennis Nolan sustained the NALC's position in a national level interpretive dispute based solely on a prior Step 4 settlement. He observed that "Step 4 agreements normally constitute binding interpretations of the National Agreement." (USPS and NALC, Case No. B94N-4B-C-97027260 (Nolan, 2002), at 6.

11. Numerous LMOUs also undermine the Postal Service's position that "abolished" can only mean completely eliminated. Each of those submitted in these proceedings as

NALC Exhibits 13A through 13NN sets forth threshold amounts of change to a route --- varying from 20 to 60 percent --- that management has agreed triggers reposting (either mandatory, or at the option of the affected route holder). Although not all of those LMOUs expressly link the percentage threshold to the Article 41.3.O language, Apfelbaum's uncontroverted testimony established that under them the percentage thresholds have generally been interpreted by the local parties as requiring the reposting of all routes more junior to the one changed, pursuant to Article 41.3.O.

12. In support of the foregoing assertion Branch President Steve Wooding testified that on at least 13 occasions the Tacoma LMOU threshold has triggered rebidding of all more junior routes pursuant to Article 41.3.O. NALC Regional Administrative Assistant Ernie Kirkland testified that the Lexington, Kentucky 49-percent threshold has been triggered twice, requiring reposting of more junior routes. And Branch 176 President Jerry Kerner testified that the Baltimore, Maryland LMOU has a 40 percent threshold for triggering Article 41.3.O repostings. Although these LMOUs constitute a small portion of the total number of LMOUs in existence, they show that USPS management has on

numerous occasions agreed to a local practice that deems a route to be abolished for purposes of Article 41.3.O, even when less than the entire route has been changed.

13. The Employer argues that it would be improper for an arbitrator to hold that "abolished" can mean less than completely eliminated because it never agreed to that definition at the bargaining table. But that argument wrongly assumes that absent a negotiated definition of the term, the default definition can only be "completely eliminated." That definition is too narrow, for it embraces an unnecessarily cramped view of what route selection means to carriers. It also ignores the T-6 Step 4 agreement, numerous regional awards, and numerous LMOUs, all of which contemplate "abolished" to include changes of less than 100 percent.

14. If the Postal Service wanted "abolished" to mean "completely eliminated" and nothing less, it should have bargained for and obtained NALC's agreement to such a rigid definition. It has not done so.

15. It is true that in the 1973-1975 National Agreement it negotiated with the NALC, the APWU and other unions, the Postal Service agreed with the APWU to negotiate on the local level what constituted a sufficient change in an assignment

to require reposting. But that APWU provision does nothing to advance the Employer's case here. Clearly, the NALC could also have agreed to negotiate a definition of "abolished," either on the local or national level. But the question here is how "abolished" should be interpreted in the absence of any negotiated definition.

16. The posting provisions of Article 41.A.5 and 41.A.6 have no bearing here. As the Employer admitted, they are "entirely separate" from its obligation to post routes under Article 41.3.O. The USPS cited Article 41, presumably, to show that triggers requiring reposting can be negotiated. But that point is not in dispute.

17. The Employer also argued that reposting routes under Article 41.3.O hurts productivity. If the principles of contract construction yield an interpretation that has an adverse impact on productivity, the Arbitrator must nonetheless issue an award consistent with that interpretation. He is not free to meet the Employer's productivity concerns by bending the contract.

18. Even if productivity were considered, Union witness Steve Wooding testified that in Tacoma, Washington, where the LMOU requires reposting when more than 60 percent of a route is changed, the reposting system works smoothly and

does not impair operations. And NALC Regional Administrative Assistant Ernie Kirkland testified that in Lexington, Kentucky, where the LMOU has a 49 percent threshold, reposting after a route has been substantially changed promotes efficiency because carriers use their seniority to choose routes for which they are best suited. Requiring carriers to continue working routes that have been changed substantially may hurt productivity because they may no longer be suited to the altered routes.

19. Once the conclusion has been reached that the term "abolished" contemplates changes to a route of less than 100 percent, the question then becomes what percentage should trigger reposting. Arbitral precedent shows that a 50 percent threshold would be most appropriate, as a change of more than 50 percent means that most of the route the carrier selected no longer exists. See USPS, Hazel Park, Michigan and NALC branch 3893, Case No. C8N-4B-C 34114 (Dworkin, 1983); USPS, Santa Fe, New Mexico and NALC, Case No. E94N-4E-C97114139 (Zigman, 1998); USPS, Seattle, Washington and NALC, Case No. E94N-4E-C 98024240 (Ames, 1999); USPS, Corpus Christi, Texas and NALC, Case No. G90N-4G-C 95071238 (Larson, 1996); and

USPS, Santa Fe, New Mexico and NALC, Case No. E94N-4E-C98000880 (Zigman, 1998).

20. The 50 percent threshold is also consistent with many local agreements reached between the NALC and USPS. The Union's Exhibits 13A through 13NN provide examples of 40 LMOUs setting triggering percentages between 20 and 60 percent.

21. It is perfectly proper for the Arbitrator to interpret the term "abolished" in Article 41.3.O and, in doing so, to adopt a specific definition that provides clear guidance to the parties and to regional arbitrators. Moreover, a national level award setting a particular percentage threshold would make it far easier to resolve future disputes over route abolishment.

22. The Union's 1990 negotiations proposal sought to define "abolished" as changed by 25 percent or more. The NALC does not seek a 25 percent threshold here. Rather, it asks the Arbitrator to determine, as an interpretive matter, that any route changed by more than 50 percent has been "abolished" within the meaning of the existing contract language.

23. The 1999 NALC newsletter article cited by the Employer and which states that no 50 percent standard exists for deeming a route to be abolished merely recognizes the fact that

neither the National Agreement nor any national-level arbitration award defines the term "abolished." Nothing in that article is inconsistent with the NALC's position in this case: that, given the need to interpret the term "abolished," it would be appropriate for an arbitrator to define the term as meaning changed by more than 50 percent.

24. Even if the Arbitrator declines to define "abolished" as changed by over 50 percent, he should still rule that a substantially changed route may be deemed "abolished," even if the changes do not amount to complete elimination.

25. The Arbitrator should decide that a changed route may be deemed "abolished" within the meaning of Article 41.3.O even if the route has not been completely eliminated. Moreover, the Award should define "abolished" to mean changed by over 50 percent. And finally, the Arbitrator should remand the grievance in the present case for further proceedings consistent with the Award.

OPINION

Introductory Comments

The nature of my job as the Arbitrator in this labor agreement interpretation dispute is to identify and enforce the mutual intent of those who negotiated the provision at issue. More specifically, I must determine what the parties meant by the term "abolished" when they included it in Article 41.3.O of their Agreement.

The conventional approach to deciding agreement interpretation conflicts is to look first to the contract language at issue. If it is clear and unambiguous, so then is the intent of its negotiators. Clear and unambiguous agreement provisions speak for themselves. They have but one reasonable interpretation.

If the negotiated language is less than perfectly clear, however, it then becomes appropriate to examine bargaining history and past practice evidence for illumination of the negotiators' mutual intent. And here, since the parties' long application history under Article 41.3.O includes many regional arbitration awards, it is advisable for the undersigned Arbitrator to review those non-binding awards as part of the effort to resolve any ambiguity the Article might contain. Indeed, both parties have submitted regional awards for that purpose.

The Agreement Language Itself

It is generally assumed that the negotiators responsible for constructing labor agreement provisions are sophisticated, informed professionals. That assumption is particularly valid in this case, given the extraordinary size of the bargaining unit and the depth and breadth of the parties' labor relations expertise. Those who interpret and apply the language of a USPS/NALC agreement can therefore rest assured that its negotiators understood the common meaning of the words they selected for inclusion in each of its provisions. Readers of a USPS/NALC contract can also be confident that if its architects mutually intended for a word or phrase to take on a meaning other than the conventional one, they would have noted that specialized connotation in the agreement itself or in a memorandum of understanding or letter of intent appended to it. Moreover, given the undeniable importance of seniority and bidding rights to the NALC, the care and attention its negotiators would have paid to the construction of §41.3.O is beyond question.

The conventional meaning of the term "abolish" is reflected in the following dictionary definitions:

- to do away with; put an end to; to destroy totally[1]
- formally put an end to (a system, practice, or institution)[2]

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[1] *Random House College Dictionary, Revised Edition* (New York: Random House, 1975), p. 4.
[2] *The New Oxford American Dictionary* (New York: Oxford University Press, 2001), p. 4.

- to put an end to; to do away with; to annul or make void; to demolish, destroy or annihilate (it is usually said of institutions, customs or practices)[3]

It is clear from the foregoing definitions that the term "abolish" denotes a complete demise. Destroying a practice "totally" or putting an "end" to it or "annihilating" it implies that there is nothing left. None of the legitimate, well-respected dictionaries quoted above suggest that the word "abolish" has a secondary meaning consistent with the one advanced by the Union in these proceedings.

The parties agreed in §41.3.O that when a letter carrier route or full-time duty assignment of an employee other than a junior one is "abolished" at a delivery unit, the routes or full-time duty assignments of employees junior to the carrier whose route or full-time duty assignment was "abolished" shall be posted for bid. The concept embraced by that terminology seems very straightforward. Carriers have a seniority-based contractual right to bid on routes or full-time duty assignments held by less senior carriers whenever their own routes or full-time duty assignments are completely eliminated. If the parties had mutually intended for route or duty assignment "modification" beyond a certain threshold to trigger the posting of others held by less senior employees,

[3] *The Compact Edition of the Oxford English Dictionary* (London: Oxford University Press, 1971), p. 25.

surely they would have said so in the text of §41.3.O.[4] Moreover, it is likely that they would have specified the extent to which modification would have to take place (e.g., "substantial" or "significant") in order for the posting requirement to become operational. But the sophisticated, experienced negotiators who crafted §41.3.O did none of those things. They simply used the word "abolished" to set in motion the posting mechanism noted in the Section.

The language of §41.3.O itself provides a strong endorsement of the Employer's position in this case. The term "abolished" is quite powerful, and its common meaning is consistently reflected across a representative sample of the conventional dictionaries available. As noted, that common meaning supports the Employer's interpretation of the Section.

While other provisions of the parties' Agreement relate tangentially to the issue under consideration (Management Rights, for example), none of them deal specifically with seniority rights when a route or full-time assignment has been abolished.[5] Section 41.3.O directly impacts the parties' respective rights and obligations when such abolishment occurs,

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[4] That conclusion is supported by language negotiated by the APWU, a bargaining partner of the NALC between 1971 and 1994. In the 1978-1981 Agreement between the Postal Service and those two unions, the APWU secured language to expand the circumstances under which changes to clerk craft would prompt the reposting of related duty assignments. If the NALC and the Postal Service had mutually intended for route or duty assignment changes to trigger reposting of any sort, they could have negotiated language to confirm that intent.

[5] Section 41.1 discusses posting requirements when certain changes (e.g., starting times, days off) have been made to letter carrier routes. The existence of that language lends further support to the Employer's argument that §41.3.O contemplates the complete elimination of a route or full-time duty assignment.

and its meaning must be the primary force driving the outcome of the present dispute.

But is §41.3.O clear and unambiguous? Review of the regional arbitration awards submitted by both parties suggests that it is not. Those awards have gone both ways, with some supporting the Employer's position and some solidifying the Union's. The arbitrators who rendered those decisions are, without exception, well-respected labor relations neutrals whose arbitration expertise has garnered the parties' mutual respect. Given their divergence on the proper interpretation of §41.3.O, it could not possibly be clear and unambiguous. I therefore turn to bargaining history and past practice evidence to help determine what the parties mutually intended when they agreed upon the language of that Section.

Bargaining History

During the negotiations which led to the parties' 1990-1994 Agreement the Union proposed to "Define 'abolished' as meaning when 25% or more of an assignment has been changed." If the parties had mutually intended for "abolished" to mean changes of 50% or more, there would have been no need for the Union's 1990 proposal. In any event, the Postal Service rejected it. Since the Union unsuccessfully attempted at the bargaining table to define "abolished" by means of a 25% change threshold, it would be highly inappropriate to grant the Union's present

quest for a 50% change threshold. Indeed, doing so would be adding something to the Agreement that is simply not there. Put another way, a party should not be allowed to obtain a particular provision in the process of interpretation that it failed to obtain in negotiations.[6]

However, the Union argues, it does not seek a 25% threshold here; rather, it wants the Arbitrator to determine, as an interpretive matter, that any route changed by more than 50% has been "abolished" within the meaning of the existing contract language. But any such conclusion must be an outgrowth of a mutual intent reached by the parties themselves during contract negotiations. It would be wholly inappropriate for an arbitrator to attach to ambiguous labor agreement language a meaning not grounded in the parties' own meeting of the minds at the bargaining table. And there is simply no evidence in the record before me to suggest that the parties' negotiators even discussed using a percentage threshold, let alone agreed upon a 50% figure.

Support for the above conclusion is found in the Union's own newsletter, the *NALC Activist.* That newsletter is published for the Union's Branch Leaders. An article entitled "When Is A Route Abolished" appeared in the Summer 1989 issue. It contained the following statement:

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[6] See Hill and Sinicropi, *Evidence in Arbitration* (Washington, D.C.: Bureau of National Affairs, 1987), p. 356 – 357. For further support of that principle, see Prasow and Peters, *Arbitration and Collective Bargaining: Conflict Resolution in Labor Relations* (New York: McGraw-Hill, 1983), pp. 205 – 208.

> Certainly life would be simpler if there existed a flat statement about exactly when routes should be considered abolished --- for example, if 50 percent of the route is changed. However, no such standard exists.
>
> In some cases the NALC branch has negotiated such a percentage that is stated in the LMOU. However, even in these cases, disputes between the union and management can develop over what, exactly, has changed in the route --- geographic territory, number of deliveries, time, and so on.[7]

Since the Union has advised its Branch leaders that the parties have not negotiated a 50% threshold to define the term "abolished" as it appears in §41.3.O, it would be an abuse of my authority as the Arbitrator in this case to insert that standard into the National Agreement now, with a ruling for the Union. Arbitrators interpret language negotiated by the parties themselves. We do not impose upon those parties new definitions of terms they have embraced at the bargaining table --- especially when those definitions are not consistent with the terms' commonly accepted meanings.

Past Practice

When a union and employer have mutually accepted a certain application of ambiguous agreement language consistently, over a long period of time, that application illuminates what can reasonably be construed to have been their mutual intent when the language was negotiated. Here, however, no such consistent application exists.

[7] USPS Exhibit 2, p. 7.

Clearly, one grievance settlement does not constitute an unwavering practice. For that reason the Arbitrator is not persuaded by the 1987 Wichita Falls pre-arbitration T-6 grievance settlement that the Union's interpretation of §41.3.O should be upheld in this national arbitration proceeding. Besides, even if the T-6 settlement were reflective of a consistent practice, it would not justify what the Union seeks here – the addition by an arbitrator of a 50% threshold to §41.3.O.

Likewise, the 40 or so LMOUs submitted by the Union do not constitute evidence of a consistent, longstanding and mutually accepted way of doing things. Only a minority of those LMOUs set forth a specific percentage change that would trigger the posting requirements of §41.3.O. Those percentages range from a low of 25% to a high of 60%, and the formulae by which they are applied vary as to just how the percentages are measured. For example, there is reference to "territorial" changes, to changes in "the duties," and to the "average number of deliveries." And the Union did not submit any of the remaining 730 or so LMOUs estimated to be in existence, thereby calling into question whether those it did enter into the arbitration record constitute a representative sample. On balance, the Arbitrator is just not convinced from the evidence that the parties have developed a mutually-accepted, longstanding national practice of interpreting the term "abolished" in §41.3.O to mean something less than total elimination of a route or full-time duty assignment.

Additional Considerations

As part of its comprehensive and robust support of the grievance the Union argued that the Employer's Step 4 response did not reflect the position it ultimately took during these arbitration proceedings. That is, the Union claims, the Employer did not argue in Step 4 that "abolished" means completely eliminated. The Union also points out that a party's failure to assert a particular argument in a grievance process decision constitutes a waiver of the right to advance that argument in arbitration.

The Arbitrator has carefully considered the Union's arguments about the Employer's Step 4 decision, but does not find them to be persuasive. It seems abundantly clear from that decision in its entirety that the Postal Service did indeed distinguish between changes to a route and its total elimination, and did indeed contend that §41.3.O does not contemplate the former. It also argued at Step 4, just as it has done in these proceedings, that it would exceed an arbitrator's authority to decide that a certain percentage change to a route constitutes its abolishment. The following quotes from the Employer's April 30, 1998 Step 4 decision are illustrative:

> ...; there is no contractual support for the view that a certain percentage or even substantial change to a route assignment is equivalent to "abolishment," and subject to the provisions of Article 41.3.O, as the union suggests.
>
> The contract language is clear and unambiguous. The benefit established by Article 41.3.O has specifically defined scope and purpose (sic) when a route is "abolished" – not adjusted. Whether or not the route(s) in this particular grievance underwent proper or normal adjustment, or if, in

> fact, the route was abolished or extinguished, rather than adjusted, is clearly a factual matter ... Notwithstanding, it is also management's position that to negotiate or determine what percentage of an assignment constitutes the term "abolishment" is beyond the scope of an arbitrator and is a matter to be addressed in the collective bargaining process.

It seems evident from the foregoing excerpts that the Employer's position in these arbitration proceedings is essentially the same as the one it articulated in the written Step 4 decision.

Both parties also submitted regular arbitration awards in support of their respective positions. Those awards do not set national level precedent. Nevertheless, they can be instructive. The undersigned Arbitrator has reviewed the regular arbitration awards submitted by the parties, and concludes from the conflict between and among them that experienced arbitrators may at times see things differently. Such differences of opinion are often explained by the fact that no two arbitration records are alike. Here, for example, the record contains bargaining history evidence that strongly bolsters the Employer's interpretation of §41.3.O. None of the regional arbitrators whose awards were cited by the Union had the luxury of considering such evidence.[8]

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[8] *USPS, Hazel Park, Michigan Post Office and NALC, Branch 3893*, Case No. C8N-4B-C 34114 (Dworkin, 1983); *USPS and NALC*, Case No. G90N-4G-C 95071238 (Larson, 1996); *USPS and NALC*, Case No. E94N-4E-C971144139 (Zigman, 1998); *USPS and NALC*, Case No. E94N-4E-C98000880 (Zigman, 1998); *USPS, Tacoma Washington and NALC*, Case No. E94N-4E-C 98021349 (Ames, 1999); *USPS, Seattle, Washington and NALC*, Case No. E94N-4E-C 98024240 (Ames, 1999); *USPS and NALC*, Case No. E94N-4E-C 98113433 TA1C98 (Render, 2000); *USPS and NALC*, Case No. E94N-4E-C 99233917 AAC7 GTS 14304 (Herring, 2001); *USPS and NALC*, Case Nos. E94N-4E-C 96078864; and E94N-4E-C 96078865 (Hales, 1999).

But of all the evidence in the record before me, the strongest support for adoption of the Employer's position is the language of §41.3.O itself. The plain and commonly accepted meaning of the term "abolished" is complete elimination. If the experienced negotiators who agreed to include that word in §41.3.O mutually intended for it to connote something different, they surely would have --- or indeed they should have --- inserted additional language to explain that intent. Absent such language, there is no justification in the record for the Arbitrator to construe the term "abolished" to mean a change or amendment to an route or full-time duty assignment that continues to exist in part after the change. And there was no reason during the negotiations which led to §41.3.O for the Employer to insist on additional language defining that term. It has a straightforward, commonly accepted meaning --- one that does not include mere changes or amendments. It logically follows that it would be contractually improper for the Arbitrator to create a new definition for that term now. Grievance arbitrators are contract readers, not contract writers.[9]

[9] The parties themselves recognized that principle in §15.4.A.5 when they admonished

AWARD

After detailed study of the record in its entirety, including all of the evidence and argument submitted by both parties, the Arbitrator has decided that a change in a letter carrier's route of greater than fifty (50) percent does not constitute an abolishment of the route under Article 41, §3.O of the National Agreement. The grievance is hereby remanded to the parties for further proceedings consistent with this Award.

Signed by me at Hanover, Illinois this 31st day of October, 2003.

Steven Briggs

arbitrators not to alter, amend or modify the Agreement.