

C-19755

REGULAR ARBITRATION OPINION AND AWARD

In the Matter of the Arbitration) GRIEVANT: Class Action
between the)
National Association of Letter) POST OFFICE: Tri-City/Glenwood,
Carriers, AFL-CIO) Illinois
and the)
United States Postal Service) CASE NO.: J94N-4J-C 98052115

BEFORE: Clarence R. Deitsch, Arbitrator

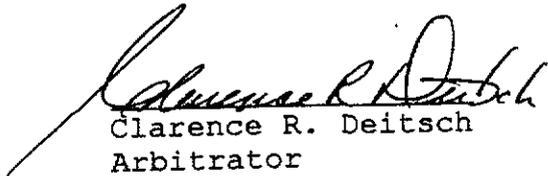
APPEARANCES: For the Postal Service: Mr. Rich Little
Acting Manager, Labor Relations
Central Illinois District
Bedford Park, IL 60499-9441

For the Union: Mr. Jim Ballou
Vice President
South Suburban Merged Branch 4016
National Association of Letter Carriers
Flossmoor, IL 60422

PLACE OF HEARING: United States Post Office/Facility
701 Holbrook Road
Glenwood, Illinois

DATE OF HEARING: July 22, 1999

AWARD: GRIEVANCE DENIED/DISMISSED
July 30, 1999


Clarence R. Deitsch
Arbitrator

**THE CREATION AND POSTING FOR BID
OF A FULL-TIME VEHICLE OPERATIONS
MAINTENANCE ASSISTANT POSITION**

The Issues

DEITSCH, Arbitrator--Whether the United States Postal Service violated the National Agreement (i.e., Articles 19 and 41) by not creating and posting for bid a Vehicle Operations Maintenance Assistant (VOMA) position at Tri-City? If so, the remedy requested is that the Service create and post said position in accordance with the National Agreement.

Stipulated Evidence (Joint Exhibits)

1. Joint Exhibit #1: The 1994-1998 National Agreement between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO.
2. Joint Exhibit #2: The Grievance Chain.
3. Joint Exhibit #3: The Joint Contract Administration Manual (JCAM), Introduction, Preface, and Article 15.

Relevant Contract 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 methods, means, and personnel by which such operations are to be conducted.

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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. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

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ARTICLE 41

LETTER CARRIER CRAFT

Section 1. Posting

- A. In the Letter Carrier Craft; vacant craft duty assignments shall be posted as follows:
 - 1. A vacant or newly established duty assignment not under consideration for reversion shall be posted within five working days of the day it becomes vacant or established. . .
- A. Other Positions

City letter carriers shall continue to be entitled to bid or apply for all other positions in the U.S. Postal Service for which they have, in the past, been permitted to bid or apply, including the positions listed below and any new positions added to the list:

SP 2-188 Examination Specialist

SP 2-195 Vehicle Operations-Maintenance Assistant

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B. Method of Posting

1. The notice inviting bids for Letter Carrier Craft assignments, and to such other assignments to which a letter carrier is entitled to bid, shall be posted on all official bulletin boards at the installation where the vacancy exists, including stations and branches, as to assure that it comes to the attention of employees eligible to submit bids. Copies of the notice shall be given to the local Union. When an absent employee has so requested in writing, stating a mailing address, a copy of any notice inviting bids from the craft employees shall be mailed to the employee by the installation head.
2. Posting and bidding for duty assignments and/or permanent changes in fixed non-work days shall be installation-wide, unless local agreements or established past practice for sectional bidding or other local method is currently in use.
3. The notice shall remain posted for 10 days, unless a different length for the posting period is established by local negotiations.
4. Information on notices shall be shown as below and shall be specifically stated:

- (a) The duty assignment by position title and number (e.g., Key or Standard).
- (b) PS salary level.
- (c) Hours of duty (beginning and ending), including in the case of a utility or T-6 duty assignment, the hours of duty for each of the component routes.
- (d) The fixed or rotating schedule of days of work, as appropriate.
- (e) The principal assignment area (e.g., section and/or location of activity).
- (f) Invitation to employees to submit bids.
- (g) Physical requirement unusual to the assignment.
- (h) If city carrier route is involved, the carrier route number shall be designated. If a utility or T-6 duty assignment is involved, the route number of the utility or T-6 duty assignment and the route numbers of the component routes shall be designated.
- (i) Date of last inspection and date of last adjustment.

[see Memo, page 178]

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Background and Facts

Following the consolidation of the Glenwood, Flossmoor, and Homewood, Illinois Post Offices in November,

1995, Ms. Lolita D. Rice, Postmaster, Homewood, Illinois wrote a letter to Ms. Cynthia Kellogg, Manager of Human Resources, Central Illinois District, "requesting that a Vehicles Operations Maintenance Assistant be established for. . ." the Tri-City Facility. The letter was dated March 18, 1996. The position was never created and posted. In October of 1997, the Union filed a class action grievance challenging the Service's failure to create and post this so-called VOMA position. The grievance was processed through the grievance procedure without resolution and is now properly before the Arbitrator for final resolution.

Positions of the Parties

The following positions were taken by the Union and the Employer, respectively, in a hearing before the Arbitrator on Thursday, July 22, 1999 at the Tri-City Post Office, located at 701 Holbrook Road, Glenwood, Illinois. At this hearing, both Parties were afforded a full opportunity to present all relevant evidence and arguments. The record of evidence in this matter was declared closed at hearing's end.

UNION

The position of the Union is simple and straightforward. The Postmaster at Homewood, Illinois, Ms. Lolita D. Rice, deemed the Vehicle Operations Maintenance Assistant (VOMA) position necessary and requested its establishment by letter addressed to Ms. Cynthia Kellogg, Manager of Human Resources, Central Illinois District, and dated March 18, 1996. The Tri-City Post Office has met the qualifying criteria for a full-time VOMA position as detailed in all relevant handbooks and manuals. Despite this overwhelming evidence for creation of the position, the Service has failed to establish the position, thereby violating all relevant handbooks and manuals--and the National Agreement.

For the foregoing reasons, the Union requested the Arbitrator to sustain the grievance and to order the Postal Service to establish the VOMA position and to post it for bid in accordance with Article 41 of the National Agreement.

EMPLOYER

The position of the Postal Service is even more succinct and to the point. The authority to establish and to staff the VOMA position belongs solely to Management

under the Management Rights Clause of the National Agreement. While the labor agreement and relevant handbooks and manuals may specify the qualifying criteria for the position and the manner in which it will be posted, bid, and ultimately filled, the ultimate decision as to whether the position will be established remains Management's decision under Article 3 of the National Agreement. Exercising its authority under the Management Rights Clause, Management chose not to create and post the position. And the Union failed to proffer any contractual provision that Management violated in exercising its managerial prerogative under Article 3 not to create and staff the VOMA position.

For all the foregoing reasons, the Postal Service requested the Arbitrator to deny and to dismiss the grievance as nonmeritorious.

Discussion

It is incumbent upon the Union to prove the truth of the matter that it has affirmed, namely, that the Postal Service violated Articles 19 and 41 of the National Agreement by not creating and posting for bid a full-time, Vehicle Operations Maintenance Assistant (VOMA) position. The quantum of proof customarily required in contract cases

such as this for the Union to meet its burden of proof is "a simple preponderance of the evidence." This standard will be used to resolve the instant contract dispute.

The evidence is persuasive that the Postal Service did not violate the contract by failing to establish and then to post the VOMA position. While local management (i.e., Postmaster Lolita D. Rice) saw a need for the position and the Tri-City Post Office met the criteria necessary for such a position, these were not sufficient conditions for the establishment and posting of said position. In the jargon of mathematical logic, these were "necessary" but not sufficient conditions for the creation of the position. The contract, by way of the Management Rights Clause of Article 3, rests/reserves exclusive responsibility for establishment of the position with Management. True, the Service must adhere to procedural criteria in creating and posting the position but it is ultimately the Service's "call" as to whether the position will be created. In the instant case, the Service had determined, prior to the opening of the Tri-City Post Office, that vehicle maintenance for the consolidated facility would be handled in Bedford Park, Illinois--as is its right and prerogative under the Management Reserved Rights Doctrine (i.e., Management Rights Clause).

Stated differently, it's Management's call as to whether the position comes into existence; but once created, it is governed by relevant contract provisions including pertinent handbook and manual language. Stated still another way, the Union failed to discharge its burden of identifying those provisions the Service's lack of action allegedly violated. The grievance is accordingly dismissed/denied as nonmeritorious.

Award

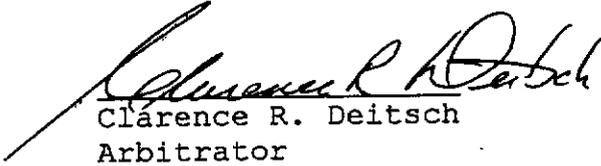
After a careful review and examination of the Parties' stipulations, the evidence, the facts, and the circumstances of this case, the following award is made:

1. The Class Action Grievance is found to be nonmeritorious. The Employer's motion to deny and to dismiss the Grievance is sustained.

GRIEVANCE DENIED/DISMISSED

2. The Parties are hereby directed to compensate the Arbitrator for his fee and expenses in accordance with the applicable provision(s) of the National Agreement.

Dated this 30th day of July, 1999 at Yorktown, Indiana.


Clarence R. Deitsch
Arbitrator