

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Kevin B. Rachel, Labor Counsel; Jeffery A. Meadows, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Anton J. Hajjar, Attorney; Divya Vasudevan, Attorney (Murphy Anderson, PLLC)¹

Place of Hearing: American Postal Workers Union, 1300 L Street, N.W., Washington, D.C.

Hearing Dates: May 5-6, 2015

Date of Award: August 17, 2015

Relevant Contract Provisions: MOU Re Delivery and Collection of Competitive Products; Articles 1, 5 and 7

Contract Year: 2010-2015

Type of Grievance: Contract Interpretation

¹ The National Association of Letter Carriers and the National Mail Handlers Postal Union had observers at the hearing; neither union chose to intervene.

SUMMARY OF AWARD

The MOU Re Delivery and Collection of Competitive Products, entered into between the Postal Service and the National Association of Letter Carriers, does not infringe upon any jurisdictional rights of the American Postal Workers Union to the delivery and collection of competitive products. Accordingly, the Postal Service did not violate its Agreement with APWU by entering into the MOU.



Stephen B. Goldberg, Arbitrator

August 17, 2015

I. INTRODUCTION

The American Postal Workers Union (APWU or Union) challenges a Memorandum of Agreement (MOU) between the Postal Service and the National Association of Letter Carriers (NALC) that arose out of the Postal Service – NALC negotiations leading to their 2011-2016 National Agreement. Those negotiations culminated in an Interest Arbitration Award that included the MOU. APWU and the Postal Service agree that the MOU, despite being included in an Interest Arbitration Award, is to be treated no differently, in terms of the APWU challenge to its validity, than would an MOU adopted by the Postal Service and NALC without having been submitted to arbitration.

The MOU in question provides:

MOU Re: Delivery and Collection of Competitive Products²

The parties are aware that the Postal Service is discussing arrangements with suppliers of retail products to have the Postal Service collect and deliver such products both within and outside of normal business hours and days.

The parties recognize the value to the Postal Service, its customers and the public of utilizing a city letter carrier work force for the collection and delivery of such products.

Accordingly, the [Interest Arbitration] Board awards the following:

The collection and delivery of such products which are to be delivered in city delivery territory, whether during or outside of normal business days and hours, shall be assigned to the city letter carrier craft. The Postal Service will schedule available city letter carrier craft employees in order to comply with the previous sentence. However, the parties recognize that occasionally circumstances may arise where there are no city letter carrier craft employees available. In such circumstances, the Postal Service may assign other employees to deliver such products, but

² The Postal Accountability and Enhancement Act of 2006 divides Postal Service products and services into the market dominant category (most recognizably First Class Mail), and competitive products and services. (Footnote supplied.)

only if such assignment is necessary to meet delivery commitments to our customers.

The parties will monitor whether the city carrier assistant employees authorized by Article 7, Section 1.C of the National Agreement are sufficient to permit the Postal Service to meet the fundamental changes in the business environment, including, but not limited to, flexible windows which may be necessary to develop and provide new products and services. Additional CCAs may be jointly authorized based on such review.³

II. ISSUE PRESENTED

According to the Union, the issue is whether the Postal Service is permitted to unilaterally grant exclusive jurisdiction to the NALC over the delivery and collection of competitive products, as the Union asserts it has done under the MOU. The Postal Service states the issue to be whether the MOU conflicts with a jurisdictional entitlement of the APWU.

It is my view that, unless APWU has a valid jurisdictional claim to the delivery and collection of competitive products, the Postal Service does not violate the Agreement by unilaterally assigning that work to NALC. Hence, the core issue, as stated by the Postal Service, is whether the Union has a valid jurisdictional claim to the disputed work.⁴

III. SUMMARY OF RELEVANT EVIDENCE

At the time the MOU was entered into, the Postal Service was engaged in testing a competitive product called Metro Post. The Metro Post program, introduced in San Francisco in 2012, provides that Postal Service employees using a Postal Service van will pick up products ordered from on-line retailers and, depending on volume, deliver those products directly to the customer or to the

³ CCAs (City Carrier Assistant Employees) are non-career bargaining unit employees whose terms of employment are similar to those of Postal Support Employees, the non-career bargaining unit workforce established by the 2010 APWU-Postal Service National Agreement. (Footnote supplied.)

⁴ As originally presented, the case also contained a claim by the Union that the Postal Service violated Article 1.5 (New Positions) by entering into the MOU. The Union withdrew that claim without prejudice.

San Francisco Processing and Distribution Center (P&DC). In either event, products are to be delivered to the customer on the day they are ordered. Deliveries are to take place on weekdays between 4:00 p.m. and 8:00 p.m., and on weekends between 4:00 p.m. and 7:00 p.m. Pursuant to the MOU, both the pickup and delivery of products are to be performed by city letter carriers, represented by NALC.⁵

The Union emphasized that it is not seeking the assignment of any particular Metro Post work to APWU-represented employees. Rather, it contends that the MOU, which was entered into between NALC and the Postal Service, is invalid on its face because it violates the rights of APWU bargaining unit employees – clerks and motor vehicle service employees - to a share of the work of delivering and collecting competitive products. Hence, the bulk of the relevant evidence relates not to the assignment of work under Metro Post, which the Union cites as an example of the harm resulting from the MOU, but to the jurisdictional claims of members of the city letter carrier craft, the clerk craft, and the motor vehicle craft to the collection and delivery of competitive products.

A. Carrier Craft

There are approximately 200,000 career and non-career city letter carriers. Their primary function is the delivery and collection of mail on pre-defined sequential routes, typically during normal business days and hours

Carrier delivery work is not limited to pre-defined sequential routes. There are full-time parcel post routes on which carriers are responsible for a geographic area, but the delivery route is determined when the parcels come in, based on the carrier's knowledge of the area. There are full-time "firm" carriers who deliver high volumes of mail to different enterprises, such as government agencies, and have no prescribed line of travel. Carriers also pick up packages at customers' homes and businesses in response to customer requests. Carriers delivered

⁵ Metro Post met with limited success in San Francisco. At the time of the hearing (May 2015), it was being tested in New York City (Manhattan) and Arizona.

special delivery mail when that service existed, and they also deliver Express Mail both within and outside of a carrier's normal route.

B. Clerk Craft: Special Delivery Mail

The APWU claim that the clerk craft has a right to share in the delivery and collection of competitive products is based on the work performed by the special delivery messenger craft and the 1997 merger of the special delivery craft union with the APWU.

Special delivery mail, which originated in the Postal Service in approximately 1885, provided delivery priority. Special delivery messengers sequenced and delivered such mail, both during and after normal delivery hours, as well as on Sundays and holidays. City letter carriers also delivered special delivery mail, both in locations where special delivery messengers worked and where they did not. Special delivery messengers only existed in the comparatively few locations where postal management established special delivery units. In 1993, for example, special delivery units existed in approximately 300 of 35,000 postal facilities. Special delivery messengers and city letter carriers had similar position descriptions.

The 1970 introduction of Express Mail, which the Postal Service guarantees will be delivered no later than a specified time on the day following its being mailed, gradually eroded the use of special delivery – from over 100 million pieces in 1970 to fewer than 250,000 per year by the early 1990s. No craft was given jurisdiction over the delivery of Express Mail. Special delivery messengers were used, along with city letter carriers, to deliver Express Mail as special delivery mail declined.

Special delivery messengers ceased to exist as a separate position and a separate craft in 1997. At that time, the Postal Service and the APWU agreed to merge the remaining special delivery employees into the clerk craft, establishing a clerk-messenger position, which performed such special delivery messenger duties as remained, in addition to normal clerk distribution duties. Clerk-messengers were not assigned exclusive jurisdiction over any delivery work.

In 2010, the APWU and the Postal Service entered into an MOU pursuant to which the Postal Service agreed to the establishment of a new position – Delivery/Sales Service and Distribution Associate (DSSDA) - that combined the limited delivery functions of the clerk-messenger position with the functions of the sales services and distribution position. Postal Service records showed that as of April 29, 2015, there were 40 employees nation-wide in the new DSSDA position and 168 employees in the pre-existing clerk-messenger position.

C. Motor Vehicle Services (MVS) Craft

As previously noted, the Metro Post program, at least in its San Francisco phase, contemplated that Postal Service employees using a Postal Service van would pick up products ordered from on-line retailers and, depending on volume, deliver those products directly to the customer or to the San Francisco Processing and Distribution Center.

Javier Pineres, Assistant MVS Division Director, testified that the principal function of motor vehicle service drivers is the transportation of bulk quantities of mail between postal facilities, typically driving heavy trucks, sometimes vans. MVS drivers also pick up mail at mailing concerns, which he described as businesses that do a heavy volume of package mailing. He further testified that assigning letter carriers to pick up and deliver competitive products from on-line businesses could be an encroachment on motor vehicle service job duties . . . “That’s some of the work we do. Normally, a letter carrier . . . would not be doing this, especially if it’s on Sunday or if it’s not a prescribed route.” On cross-examination, however, Mr. Pineres conceded that letter carriers, too, pick up packages from mailing concerns. Normally they do so on a prescribed route, but not always.

IV. DISCUSSION

A. Clerk Craft

APWU concedes that the collection and delivery of mail on pre-determined sequential routes within a fixed geographic area, typically during normal business

days and hours, is primarily the work of the city letter carrier craft. However, APWU asserts, the expedited delivery of mail outside pre-determined sequential routes and outside normal business days and hours – the work treated by the MOU - is work normally performed by the clerk craft, and therefore is work to which clerks have a legitimate jurisdictional claim. This claim, according to APWU, rests on the 1997 merger of the special delivery messenger craft into the clerk craft, and the history of special delivery messengers providing non-sequential expedited delivery, both within and outside normal business days and hours.

APWU does not claim exclusive, or even primary, jurisdiction over the delivery and collection work assigned by the MOU to the carrier craft. Rather, it claims, this constitutes shared work, some portion of which should be assigned to clerks. Accordingly, the Union asserts that the Postal Service was prohibited from unilaterally granting exclusive jurisdiction over the work to city letter carriers, to the detriment of APWU-represented employees.

By way of remedy for the Postal Service's asserted violation of the rights of APWU-represented employees, the Union requests the Arbitrator to invalidate the MOU and to direct the Postal Service to bargain with APWU over the delivery and collection of competitive products.

As the Postal Service points out, and the Union does not deny, there is a lengthy history of jurisdictional disputes among the various craft unions and between the Postal Service and those unions. There are also numerous decisions of National Arbitrators dealing with such disputes. Among the most important of these decisions are the "West Coast" arbitration, Nos. AW-NAT-5753, A-NAT-2946, A-NAT-5750 (Garrett, 1975); the "Sioux City" arbitration, No. N-C-4120 (Garrett, 1974), and the "Regional Instruction 399" arbitration, No. AD-NAT-1311 (Gamser, 1981).

The above cases stand for the proposition that as a result of Articles 1 and 7 of the National Agreement, as well as the Postal Service's history of recognizing and negotiating with separate crafts, the Postal Service cannot arbitrarily transfer work between crafts. Specific work assignments at a local office carry jurisdictional protection for the craft performing the work. Work historically

performed by one craft generally should remain with that craft as part of maintaining the craft's basic identity. However, there is no well-defined body of work to which each craft is strictly entitled, and there is much work that is available to be performed by different crafts. Moreover, jurisdictional principles are flexible enough to recognize that as work changes or evolves, additional considerations may come into play – most notably the need for craft assignments to be consistent with an efficient and effective operation of the Postal Service.

The above-cited decisions, which established now well-accepted principles for deciding disputes when the Postal Service has transferred work from one craft to another, do not deal with the situation here presented, in which the Postal Service has made an assignment of new work – the collection and delivery of competitive products - not previously performed by either of the competing unions. The arbitration decision most on point in providing guidance in that situation, as both parties acknowledge, is that of Arbitrator Richard Mittenthal in the Express Mail arbitration, Case Nos. H7S-3A-C 24946; H0C-NA-C 14 (1994).

As previously noted, the Postal Service did not award jurisdiction over the delivery of Express Mail to any craft. Rather, it allowed local management to assign delivery of Express Mail by the most economical means available, taking into account the Postal Service commitment to deliver such mail within a defined period of time. City letter carriers were generally given priority in the delivery of Express Mail based on management's view that city letter carriers were typically more cost-effective than were special delivery messengers. As of 1994, 65 percent of Express Mail was delivered by city letter carriers, 31 percent by special delivery messengers, and 4 percent by other Postal Service employees.

Beginning in 1978, APWU filed a series of grievances asserting that special delivery messengers should have exclusive jurisdiction over all Express Mail delivered in an "expedited" fashion, by which it meant Express Mail not delivered on a regular carrier route during normal business days and hours. In 1992 two such grievances proceeded to hearing before Arbitrator Mittenthal.

Arbitrator Mittenthal denied the grievances, rejecting the APWU claim that special delivery messengers were entitled to exclusive jurisdiction over the

delivery of all Express Mail other than that delivered as part of a letter carrier's normal route. His decision was based on a number of factors, the most relevant being: (1) Special delivery messengers were not the only delivery personnel who made "expedited" deliveries, and were not the only postal employees who delivered special delivery mail. Thus they had no entitlement to exclusive jurisdiction of expedited delivery work. (2) Special delivery messengers were employed in only the relatively few postal installations at which management chose to establish a special delivery unit. Other employees, particularly city letter carriers, were used to deliver special delivery mail in the vast majority of installations that did not have special delivery messengers. (3) Express Mail was a new product to which the special delivery craft had no historic ties. That craft never had a recognized jurisdiction over Express Mail.

As APWU points out in its brief (p. 4) in the instant case:

The critical craft distinction the APWU tried but failed to establish was that the jurisdiction of the city letter carrier craft was sequential delivery of mail on prescribed carrier routes, and that of Special Delivery Messengers was expedited delivery in a geographical area. . . Although it was understood and accepted that no craft had jurisdiction over Express Mail, the APWU argued that the way in which it was delivered was critical. The effort was unsuccessful in large part because city letter carriers also delivered mail outside prescribed routes and sometimes in an expeditious manner.

In light of APWU's inability to succeed on its claim to exclusive jurisdiction of the collection and delivery of Express Mail in an expedited fashion outside prescribed routes on normal business days and hours, it is clear that any effort by APWU to obtain exclusive jurisdiction over the collection and delivery of competitive products based on the argument that special delivery messengers had jurisdiction over expedited delivery in a geographic region would appear doomed to failure. Perhaps in recognition of that reality, APWU does not here claim exclusive, or even primary, jurisdiction over the expedited collection and delivery of competitive products. Instead, relying on the same arguments it presented to Arbitrator Mittenthal in support of its claim to exclusive jurisdiction

over expedited collection and delivery of Express Mail outside regular carrier delivery routes and times, it here argues that it is entitled to “shared jurisdiction” over the expedited collection and delivery of competitive products. It asserts that the Postal Service violated Articles 1 and 7 by assigning that work to the city carrier craft, and violated Article 5 by making that assignment without bargaining with APWU.

The concept of shared jurisdiction is not unknown in the Postal Service. Work which is capable of being performed by members of two or more crafts, and which has not historically been assigned solely to one of those crafts is frequently shared between competing crafts. This is particularly the case with new work. When new work does not fall within the core jurisdiction of one of the crafts competing for that work, and each of those crafts has a history of performing similar work and is capable of performing the new work, the Postal Service is free, in the exercise of its Article 3 management rights, to provide that the work shall be shared in the manner it deems most efficient and cost-effective. That is what it did with respect to Express Mail and that is what it has done here with respect to competitive products. Primary jurisdiction has been assigned to the letter carrier craft, but other crafts have the opportunity to share in that work, albeit on a limited basis.⁶

⁶ The Postal Service appears to deny that it has assigned either exclusive or primary jurisdiction of the delivery and collection of competitive products to the city letter carrier craft. It states (Brief, p. 28): “The MOU simply creates an obligation to assign a certain segment of new delivery work to city carriers.” I find it reasonably clear, however, that the Postal Service has determined that primary jurisdiction over the disputed work lies with the city letter carrier craft. Thus, the MOU states:

The collection and delivery of such products which are to be delivered in city delivery territory, whether during or outside of normal business days and hours, shall be assigned to the city letter carrier craft. The Postal Service will schedule available city letter carrier craft employees in order to comply with the previous sentence.

This assignment is not exclusive, however, as the MOU goes on to provide:

However, the parties recognize that occasionally circumstances may arise where there are no city letter carrier craft employees available. In such circumstances, the Postal Service may assign other employees to deliver such products, but only if such assignment is necessary to meet delivery commitments to our customers.

According to the Union, its share of the work in question is insufficient.

It points out (Brief, p. 11):

The Postal Service's opportunity to make non-NALC assignments is very limited; the Competitive Products MOU states that "the parties recognize that **occasionally** circumstances may arise where there are no city letter carrier craft employees available. In such circumstances, the Postal Service may assign other employees to deliver such products, but **only if such assignment is necessary to meet delivery commitments to our customers.**" To assure that this exception will always be extremely rare, Article 7.2.C.2 [of the Agreement between NALC and the Postal Service] allows the Postal Service to hire up to 8,000 CCAs above the cap in Article 7.2.C.1, as long as the number of such city carrier assistants who are employed in any reporting period does not exceed 8% of the total number of full-time career city carriers in that District. The NALC and Postal Service have waived the latter limitation several times in memoranda addressing Sunday delivery.⁷

Implicit in the Union's argument that under the MOU the clerk craft receives too limited a share of the collection and delivery of competitive products is the assumption that the clerk craft has a contractual claim to a greater, albeit undefined, amount of this shared work. That assumption must be rejected. The source of the Postal Service freedom to assign the collection and delivery of competitive products to either letter carriers or clerks lies in its Article 3 right to maintain the efficiency of its operations and to determine the methods, means, and personnel by which its operations are to be conducted. To be sure, that right is subject to other provisions of the Agreement, but, as Arbitrator Mittenthal's Express Mail decision suggests, and as the Union here concedes, there are no union jurisdictional rights that require that exclusive, or even primary, jurisdiction be assigned to the clerk craft. It follows that the Postal Service is free to assign this new work to either letter carriers or clerks, in whatever manner the Postal Service deems most efficient. That may be equal sharing; it may be, as the Postal Service determined here, a primary assignment of the work to the letter carrier craft with a lesser share to other crafts. In neither case is there a contractually-

⁷ The bold-facing of certain words in the above excerpt is contained in the Union's brief, not in the MOU itself.

based claim that supports an APWU assertion that the clerk craft share of this new work is insufficient.

APWU next argues that the MOU entered into between the NALC and the Postal Service had a detrimental effect on work opportunities for the clerk craft. It states (Brief, page 5):

It is a fundamental rule of labor relations in general and specifically of the relationships among the Postal Service and the various crafts represented by several different postal unions that it is impermissible to negotiate a contractual provision bilaterally when another craft is affected.

In support of this argument, APWU cites a number of Postal Service decisions, including those in Case No. Q06C-4Q-C 09250752 (Goldberg, 2012) and Case No. H94N-4H-C 96090200 (Snow, 1998). It asserts that the premise underlying the Goldberg decision is that parties may not enter into bilateral agreements affecting employees in another bargaining unit. Similarly, it relies on Arbitrator Snow's statement that "If promises to one craft infringe on the rights of another, the Employer is obligated to negotiate the authority to implement such rights within the craft whose rights are being infringed."

Arbitrator Snow did not, however say, as the Union does here, that promises to one craft that *affect* another craft must be negotiated with the latter, but rather that promises to one craft that *infringe on the rights* of another craft must be negotiated with the latter. The difference is significant. Many employer-union agreements affect employees in another unit with which the employer also bargains, but they are not invalid for that reason. It is only if the employer enters into an agreement with one union that infringes the contractual rights of another union with which the employer also bargains that the employer may be found to have acted impermissibly. I have not found the MOU in this case to infringe on the rights of employees in the clerk craft. Indeed, I have found the very opposite – that the work assignments contained in the MOU do not infringe on the rights of

employees in the clerk craft. Hence, Arbitrator Snow's decision is of no assistance to APWU in this case.

As for the Goldberg decision, it was not, contrary to the Union's assertion, based on the premise that parties may not enter into a bilateral agreement *affecting* employees in another bargaining unit. APWU argued in that case that the Layoff Protection MOU it had entered into with the Postal Service applied to employees who had left the APWU bargaining unit and were employed in a bargaining unit represented by a different Postal Service union. In rejecting the Union's argument, I pointed out:

[I]t may be difficult or impossible for an employer to comply with a commitment to provide enforceable rights to an employee entering another bargaining unit with which the employer has a collective bargaining contract without either *violating the contract rights of employees in the transferee unit* or being forced to engage in unproductive conduct in order to comply with its commitments under both contracts.

It is evident that my concern in that case, as here, was not with contracts that *affect* employees in a different bargaining unit, but solely with contracts that *violate the contract rights* of employees in a different unit. That, as has been pointed out, is not the situation in this case.⁸

The Union's final argument in support of its clerk craft claim, based on the testimony of Lamont Brooks, Assistant Director Clerk Craft Division, and Pete Coradi, Clerk Craft National Business Agent, is that the work of collection and delivery of competitive products more closely resembles the work of special

⁸ The other Postal Service arbitration decisions relied upon by APWU are similarly distinguishable, since in each of them the arbitrator found not merely that an agreement between the Postal Service and one of its craft unions affected employees represented by another union, but that the agreement infringed upon the contractual rights of the latter. See Case No. Q06N-4Q-C 12114440 (Nolan, 2014); Case No. Q06M-6Q-1 2288977 (Das, 2014).

delivery messengers than it does the work of city letter carriers. Inasmuch, however, as APWU does not challenge the right of the Postal Service to assign the collection and delivery of competitive products on a shared basis, and as I have concluded that the proportion of that work to be assigned to the letter carrier craft and the clerk craft lies within the Postal Service's Article 3 discretion, the allegedly closer resemblance of this work to that of special delivery messengers than to that of letter carriers is irrelevant.

B. Motor Vehicle Service (MVS) Craft

The principal work of motor vehicle service drivers is the transportation of bulk quantities of mail between postal facilities. According to Mr. Pineres, they may also pick up large quantities of mail from "mailing concerns" - businesses that have a heavy volume of package mailing - but letter carriers also do this work. Mr. Pineres was not asked, and did not testify, whether motor vehicle service drivers also deliver to customers packages picked up from businesses with a heavy package mail volume.

The MOU is silent with respect to the transportation of bulk quantities of competitive products between postal facilities. It assigns that work neither to letter carriers nor to Motor Vehicle Service drivers. And, to the extent that the MOU can be interpreted as assigning the pickup of large quantities of competitive products from businesses and the delivery to customers of those products by letter carriers, it is not clear from the evidence whether that work, which has at least occasionally been performed by letter carriers, has ever been performed by motor vehicle service employees. Under these circumstances, I cannot find that the MOU is invalid on its face because it infringes on the jurisdictional rights of the motor vehicle service craft.

V. AWARD

The MOU Re Delivery and Collection of Competitive Products, entered into between the Postal Service and the National Association of Letter Carriers, does not infringe upon any jurisdictional rights of the American Postal Workers Union

to the delivery and collection of competitive products. Accordingly, the Postal Service did not violate its Agreement with APWU by entering into the MOU.

A handwritten signature in black ink, appearing to read 'S. B. Goldberg', written over a horizontal line.

Stephen B. Goldberg, Arbitrator

August 17, 2015