C-27022

Regular Arbitration Panel

In The Matter of Arbitration	Class Action Grievance
between	Post Office: Sheboygan, WI
United States Postal Service	
and	USPS Case No.: J01N-4J-C 06223911
National Association of Letter Carriers, AFL-CIO	NALC Case No.: 102-013 CA

Before: Linda DiLeone Klein

Appearances

For the Postal Service: Nels Petersen
For the Union: Rich Anderson

Place of Hearing: Sheboygan, Wisconsin

Date of Hearing: February 16, 2007

Date of Award: March 23, 2007

Relevant Contract Language: Article 8

Contract Year: 2001-2006

Type of Grievance: Contract

Award Summary: The grievance is granted as set forth herein.

Linda DiLeone Klein

ISSUE

Did the Postal Service violate Article 8 when requiring non-Overtime Desired List (OTDL) employees to work mandatory overtime due to the "window of operations" prior to utilizing overtime desired list employees to the fullest extent? If so, what is the appropriate remedy?

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 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. (The preceding

Article, Article 3, shall apply to Transitional Employees.)

Article 8
Hours of Work
. . .

Section 5: Overtime Assignments

When needed, overtime work for full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

. . .

C.1 (RESERVED)

C.2.a. When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.

b. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list.

c. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly.

d. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days.

D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

E. Exceptions to C and D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

F. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and

2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment. [See Memo, pages 160-164]

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

This Memorandum of Understanding represents the parties consensus on clarification of interpretation and issues pending national arbitration regarding letter carrier overtime as set forth herein. In many places in the

country there has been continued misunderstanding of the provisions of Article 8 of the National Agreement; particularly as it relates to the proper assignment of overtime to letter carriers. It appears as if some representatives of both labor and management do not understand what types of overtime scheduling situations would constitute contract violations and which situations would not. This Memorandum is designed to eliminate these misunderstandings.

1. If a carrier is not on the Overtime Desired List (ODL) or has not signed up for Work Assignment overtime, management must not assign overtime to that carrier without first fulfilling the obligation outlined in the "letter carrier paragraph" of the Article 8 Memorandum. The Article 8 Memorandum provides that ". . . where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime." Such assistance includes utilizing someone from the ODL when someone from the ODL is available.

2. The determination of whether management must use a carrier from the ODL to provide auxiliary assistance under the letter carrier paragraph must be made on the basis of the rule of reason. . . .

3. It is agreed that the letter carrier paragraph does not require management to use a letter carrier on the ODL to provide auxiliary assistance if that letter carrier would be in penalty overtime status.

Date: December 20, 1988

MEMORANDUM OF UNDERSTANDING BETWEEN THE
UNITED STATES POSTAL SERVICE AND
JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Article 8

Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists to protect the interests of those employees who do not want to work overtime, and the interests of those who seek to work limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties to agreement.

The new provisions of Article 8 contain different restrictions than the old language. However, the new language is not intended to change existing practices relating to use of employees not on the overtime desired list when there are insufficient employees on the list available to meet the overtime needs. For example, if there are five available employees on the overtime desired list and five not on it, and if 10 workhours are needed to get the mail out within the next hour, all ten employees may be required to work overtime. But if there are 2 hours within which to get the mail out, then only the five on the overtime desired list may be required to work.

The parties agree that Article 8, Section 5.G.1., does not permit the Employer to require employees on the overtime desired list to work overtime on more than 4 of the employee's 5 scheduled days in a service week, over 8 hours on a nonscheduled day, or over 6 days in a service week.

Normally, employees on the overtime desired list who don't want to work more than 10 hours a day or 56 hours a week shall not be required to do so as long as employees who do want to work more than 10 hours a day or 56 hours a week are available to do the needed work without exceeding the 12-hour and 60-hour limitations.

In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime. (Emphasis added)

In the event these principles are contravened, the appropriate correction shall not obligate the Employer to any monetary obligation, but instead will be reflected in a correction to the opportunities available within the list. In order to achieve the objectives of this memorandum, the method of implementation of these principles shall be to provide, during the 2-week period prior to the start of each calendar quarter, an opportunity for employees placing their name on the list to indicate their availability for the duration of the quarter to work in excess of 10 hours in a day. During the quarter the Employer may require employees on the overtime desired list to work these extra hours if there is an insufficient number of employees available who have indicated such availability at the beginning of the quarter.

The penalty overtime provisions of Article 8.4 are not intended to encourage or result in the use of any overtime in excess of the restrictions contained in Article 8.5.F.

JOINT STIPULATIONS

1. There is no past practice argument in this case.

2. The referenced UMPS settlement is not binding in this office. It is merely representative of the remedy granted in prior Article 8 cases.

3. This is not a "representative" grievance/case. Any grievances previously held in abeyance will not be considered untimely.

4. If the grievance is granted, there shall be a "general remedy", with a remand to the local parties for implementation of any monetary award.

The Arbitrator shall retain jurisdiction of this matter for ninety days.

FACTS AND CONTENTIONS

The instant grievance was initiated based upon the events of March 23, 2006, and it concerns the manner in which overtime was assigned to employees on the overtime desired list and to employees not on the overtime desired list as well.

According to Management, at the time of the events in question, there were fifty-five full time letter carriers and nine part time flexible letter carriers on staff to cover forty-seven routes. Also according to Management, "nine full time carriers were unavailable for any work, due to a combination of approved annual and sick leave . . . two of the carriers on sick leave were unscheduled and one was on maternity leave". Additionally, three carriers were on light duty; two could do only "mounted" routes and one could only perform office work.

Furthermore, per the record, the curtailed mail report for the preceding day, March 22, 2006, reflected that 44.75 feet of flats had been curtailed that day.

On March 23, 2006, only thirty-four full time carriers and eight PTF carriers were available to deliver mail on the forty-seven routes in the Station.

According to Management, seven of the full time carriers were on the overtime desired list; all seven were scheduled to report at 7:00 a.m. According to the record, two PTF carriers also reported at 7:00 a.m.; three PTFs reported at 7:30 a.m.; one reported at 9:30 a.m., and two began at 10:00 a.m. Also according to Management, "six of the forty-seven routes were split that day, which would require a minimum of thirty-six hours of street time and twelve hours of casing time - at least forty-eight hours to be split between seven ODLs and eight PTFs".

As a result, employees on the ODL were scheduled for overtime and twenty-two carriers not on the list were "forced" to work overtime, including one carrier who was mandated to work his non-scheduled day. Five carriers on the ODL worked for twelve hours; two employees, carriers Moe and Barts, worked slightly less than twelve hours. PTF Houle worked more than twelve hours, as did PTF Fisher. PTF Hopper worked twelve hours. Five PTFs worked less than twelve hours.

Of the non-ODL carriers who were forced to work overtime, one worked slightly more than twelve hours, five worked twelve hours, and sixteen worked less than twelve hours; one non-ODL carrier worked 8.51 hours on his non-scheduled day. Only eight of the non-ODL carriers who were forced to work overtime returned to the Station before 16:45. Three carriers who were forced to work

overtime returned at approximately 6:00 p.m. Eight non-ODL carriers clocked out after 5:30, while at least five ODL carriers clocked out at 5:30 p.m.

According to Management, returning to the Station by 4:30 is a "goal" for the efficiency of the Service. Returning by 4:30 p.m. allows for the carrier to meet the 1645 "dispatch of value". There is a truck which is scheduled to depart Sheboygan at 1645 for the Milwaukee plant in order to meet the daily target of processing or cancelling 80% of the mail by 8:00 p.m. Mail leaving Sheboygan on the 1840 truck cannot meet the goal set by the Service for the Milwaukee cancellation operation; failure to meet this goal may result in the delay of mail returning to the Station for delivery the following day, says Management. The drive from Sheboygan to Milwaukee takes approximately one hour and ten minutes.

In addition to the issue of "non-OTDL mandatory work", this case involves the establishment of the "window of operations" and the "dispatch of value" by the Postal Service.

According to Management, as far back as June 2005, the local parties discussed having carriers back at the Station by 1700 hours; the discussions also referenced the implementation of a window of operations and a set time for the dispatch of value. During a Labor-Management meeting held in mid-October 2005, it was noted that "the dispatch of value was established as the 1645

transportation (4:45 p.m.), and earlier start times for all carriers was presented to the NALC".

Also on October 19, 2005, the Manager of Customer Service wrote to the various local Unions and notified the three bargaining units as follows:

> During the Joint Labor Management meeting at the Sheboygan Post Office on October 14, 2005 the need for operational change was discussed. This is to serve notice to each labor union represented at the Sheboygan Post Office that both rural and city letter carriers will have start times at 0730 effective November 5, 2005.
>
> With the District Policy to have letter carriers off the street by 1700 (1630 Nov.-Mar.) and to have uncancelled letters to the plant timely to meet operational needs, the dispatch of value is therefore the 1645 departure to the Milwaukee plant. This will entail a change to the start times of most letter carriers and rural carriers to 0730. This will enable carriers to be completed with their duties by 1600. As changes are made in the morning operations, management's long term objective will be to establish start times for carriers beginning at 0700.
>
> The management of the Sheboygan WI Post Office is requesting that any input, concerns or suggestions from the labor unions be communicated in writing no later than October 26, 2005 for consideration prior to a final decision on these matters. Submit your input to the general clerk before 1800 on that date. If you have questions or need additional information please contact me.

The NALC did not respond to this letter, says Management. In fact, says Management, the established window of operations and dispatch of value did not even become an issue until the events of March 23, 2006, at which time it became necessary to force employees not on the ODL to work overtime "off their work assign-

ments" along with those on the ODL. Thereafter, a grievance was initiated.

On March 28, 2006, the NALC met with the Manager of Customer Service at Informal Step A of the grievance procedure to discuss the "forcing" of non-ODL carriers on March 23, 2006. The written positions of the parties at this Step are as follows:

NALC

> I had an informal Step A meeting with Supervisor Ed Palladino regarding the forced overtime on March 23, 2006. I explained that the OTDL carriers under Article 8 Sec. 5 of the National Agreement must work 12 hours if carriers not on the OTDL work off their assignment. We agreed that 22 carriers were forced including Ken Meinolf who was scheduled on March 22nd to work his non-scheduled day on March 23rd. Supervisor Ed explained that they started the OTDL carriers early at 7:00am based on mail volume and he said that they don't have to work them past 10 hours due to the dispatch to value truck which leaves at 4:45pm. I explained by looking at the curtailed mail report from March 22nd that there was 44.75 feet of flats-more than enough to keep the 7 carriers from the OTDL busy. I also mentioned that only 8 carriers of the 22 forced made it back by 4:45pm. There is a 6:40pm dispatch clean-up truck which would have allowed for the OTDL carriers to work until 6:30pm. The OTDL carriers worked from 7:00am until 5:30pm on March 23rd.
>
> There is no doubt there had to be some forcing on March 23rd. With the curtailed volumes on March 22nd, the 7 carriers on the OTDL could have started at 6:30am and with the 6:40pm clean-up truck, these carriers could have worked 12 hours and there would not have been a grievance. Management chose to ignore Art.8 Sec.5 of the National Agreement. As a remedy I am asking that all carriers (OTDL and forced) affected by this violation of Art.8 Sec.5 be made whole according to UMPS agreement 102-102.

USPS

Unions Issue

Did management violate Article 8.5.D&G by not working the employees on the OTDL to Twelve hours?

Unions Remedy

Pay Employees on the OTDL for the difference of hours worked up to 12 hours.

Managements Response

All available OTDL carriers and available PTFs were scheduled as early as possible. Assignments were provided to these employees in the morning to enable the OTDL and PTF carriers to be off the street by 1700, as mandated by the District, and remain on the clock until 1730. Additional assignments remained. Those assignments were given to carriers not on the OTDL. The window of operation at the Sheboygan Post Office for mail delivery is 0700-1700. Committed mail is not available at the carriers' case prior to 0700. The dispatch of value has been agreed to by both Management and the Local Union as the 1645 transportation to the plant.

The Memorandum of Understanding on page 159 of the Collective Bargaining Agreement as related to Article 8 provides the guidance in paragraph 2 as to how overtime may be assigned. It states, "if there are 5 available employees on the OTDL and 5 not on it, and if 10 hours are needed to get the mail out within the next hour, all 10 employees may be required to work overtime. But if there are 2 hours within which to get the mail out, then only the 5 on the OTDL may be required to work."

There was not an operational necessity to have OTDL or PTF carriers remain on the clock past 1730 to case any standard or non committed mail that was curtailed or delayed. It is Managements right to control the mail flow as provided for in Article 3.C&D.

It is Management's contention that All OTDL and PTF carriers were maximized to the fullest extent. The grievance is denied.

There were further discussions of the instant case at the local level, and additional grievances on the same issue were filed in April, May and June 2006. As a result, on July 7, 2006, the local parties entered into the following Step A Informal-Settlement Agreement:

Window of Operations & Administration of Overtime

July 7, 2006	DECISION:	Hold in Abeyance at Informal A	
	LOCAL NOs:	102-013 CA	102-036 CA
		102-037 CA	102-039 CA
		102-045 CA	102-046 CA
		102-047 CA	102-048 CA
	GRIEVANT:	Class Action	
	OFFICE:	Sheboygan, WI 53081	
	CAD CODE:	41.4860, 08.4000	

Pursuant to the terms and obligations as set forth in the current National Agreement, management and union designees met and discussed the above referenced case(s). Without prejudice to the position of either party in this or any other case, and with the understanding that this agreement establishes no precedent, the subject grievance(s) are remanded to the Informal Step A of the Dispute Resolution Process, and held in abeyance in accordance with the terms and conditions listed below.

The parties agree that the window of operation for the delivery unit in Sheboygan, WI is determined by service commitments, and management of the 24 hour mail processing clock, including the availability of committed or delayed mail and the Dispatch of Value of collection mail to the Milwaukee P&DC, which is Sheboygan's servicing plant.

For those and other reasons, the Window of Operations for the delivery unit opens not earlier than 07:00, and closes with the Dispatch of Value, currently 16.45, as that is the last dispatch which allows for mail to arrive and be processed at the plant prior to the 20:00 target for completion of 80% of cancellations. In addition, both management and the union agree that it is a safety

concern that we plan for carriers to be off the street prior to 17:00, as much as possible. Further, it is understood that the percentage of uncanceled mail arriving at the Milwaukee Mail Processing & Distribution Center (P&DC) can have a direct effect our ability to get mail to the letter carriers in the A.M. operation thereby forcing them to start later, leave later, return later, etc. The Final Dispatch, or cleanup dispatch (18:40 departure from Sheboygan, 19:55 arrival at P&DC) arrives at the plant after the deadline, or critical entry time to the cancellation unit, and contributes to late processing of mail, which negatively affects the 24 hour mail processing cycle, and subsequently our delivery operation on the following day. For that reason, the uncanceled mail dispatched from Sheboygan on the cleanup trip must be minimized, in order to minimize the impact on both the P&DC and our own next day delivery processes. [sic]

For all these reasons, the parties have agreed to hold the listed grievances (and all such related grievances which may be generated prior to the settlement of this issue) in abeyance until a mutually agreeable procedure can be developed for this office which allows for carrier safety, excellent customer delivery service, positive contribution to the 24 clock and P&DC mail processing operations, and proper administration of Overtime in accordance with Article 8. It is understood that the use of Penalty Overtime should be minimized, as it is by name and definition a premium which is paid as a penalty for working employees in excess of 10 hours per day, over 8 hours on a N/S day, or overtime on the 5th day in a single week. The parties also agree that the "Rule of Reason" applies to providing auxiliary assistance of up to ½ hour on a carrier's own route, i.e. it is usually more efficient to have the carrier work his/her own overtime than it is to send assistance which requires preparation of the 'bump' plus travel time to and from the 'bump'.

Additionally, the parties have agreed to hold future grievances concerning maximization of the ODL until after the finalization of the route adjustments made due to the recent Route Count and Inspection (RCI). Our expectation is to work toward such an agreement with an expected resolution date during the month of September, 2006,

after completion of the 60-day look back portion of the RCI.

The local parties met again in mid-September 2006, at which time Management denied the grievance. When the Step B Team met later in September, they remanded the matter to the local parties for further discussion. Per the record (Joint Exhibit #2, Page 7), a Formal Step A meeting was held on October 12, 2006, however, the parties were unable to resolve the issue. The "B" Team received the case file on October 20 and issued their decision on November 2, 2006; the "B" Team declared an "impasse" in this matter.

The Union's position at Step B includes the following:

> The union contends management willfully and arbitrarily mandated non-OTDL employees to work overtime off of their assignment prior to utilizing all available overtime personnel in accordance with Article 8.
>
> The union contends that management does not have the authority under Article 3 to implement a window of operations that renders Article 8 meaningless. Article 3 states:
>
> > ARTICLE 3 MANAGEMENT RIGHTS
> > The Employer shall have the exclusive right, <u>subject to the provisions of this Agreement</u> and consistent with applicable laws and regulations:
>
> Article 3, per the language of this initial statement, prevents management from taking any action that is in contradiction to a provision of the National Agreement. The union does not dispute that management may make the determination to have all carriers back from the street in time to make a certain truck dispatch when that can be accomplished in accordance with other provision of this agreement. As stated in Article 3 above. To accomplish this in accordance within the provisions of Article 8, Sections 5.D & G:

8.5.D If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employees.

G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week.

In the instant dispute, management mandated numerous employees not on the overtime desired list to work overtime, while not utilizing those overtime desired list employees, citing a "window of operations". Management claims the union was aware of this window and had no objections to it until now. The union disputes this contention as management even states the union "has expressed some concerns over its application". The union contends that philosophically, as management puts it, they do not disagree with a policy that returns all carriers from the street at 5:00 pm or whatever time is desired, as long as management properly staffs the facility to accomplish this "goal".

. . .

The instant case involves only one day but identifies well over 100 other dates involving the same issue. Ninety-nine (99) of these incidents are within the last four months. This is clearly not a case of management establishing a window that is attainable by a properly staffed installation but were forced to mandate non-overtime employees on a one time basis due to unforeseen circumstances. Section 312.1 of the Employee and Labor Relations Manual requires management to properly plan and staff a facility.

. . .

In summary, the union contends that management failed to properly staff a facility to reach their goal of returning carriers from the street by "their" window of operations and improperly mandated no overtime employees

to work overtime on a regular basis in violation of Article 8 to accomplish this goal. The grievance should be sustained and the workforce be made whole accordingly.

Management's position at Step B includes the following:

MANAGEMENT POSITION:

Management contends that the Union is usurping its authority in trying to force management into hiring full time employees in the Sheboygan Post office. This is an authority the Union does not have. The case file clearly shows that management is well within its contractual rights to establish a window of operation. There is no dispute in the instant file that management is not in violation of this window and is scheduling based on legitimate and valid reasons of operational necessity. The case file establishes that the window has been in place and the union well aware of its operation since June of 2005. The case file documents that the Union has had knowledge of and continual discussions of the window with a targeted goal for increased volumes of un-canceled mail. Management well documents within the case file the need for the window and that the window is consistently met allowing the plant operation the opportunity to make operational goals. The Union argues management violated Article 8 by mandating employees not on the ODL. However, Arbitrator Mittenthal (H4C-NA-C03 1/91) found that scheduling of non-ODL carriers in order to meet an attainable goal such as is documented in the case file is justified:

> A "window of operation" justifies simultaneous scheduling of ODL and non-ODL carriers even before ODL carriers have been maximized.

Arbitrator Mittenthal emphasized that such scheduling must be based on legitimate and valid reasons of operational necessity. The case file establishes the legitimate and valid reasons for such scheduling. Likewise, Arbitrator Aaron (H8N-5B-C17682 4/83) included a caveat to the above award that gave the Service the right to go off the ODL list for "good cause".

> This discretion to go off the ODL, albeit with "good cause" gives management the flexibility necessary to maintain efficiency of the operation.

. . .

Thereafter, the grievance was appealed to arbitration and heard on February 16, 2007.

The Union does not contest Management's right to establish a window of operations and other related service goals, however, the Union maintains that Management's right to do so is subject to and limited by the remaining provisions of the collective bargaining agreement, including Article 8.5.G. Clearly, this case involves more than a carrier working overtime on his/her own route. Carriers who did not indicate their desire to work overtime were mandated to work beyond the ending time of their regular tours on March 23, 2006; this was the case even though the carriers on the ODL had not been maximized to a twelve hour day.

The Union insists that the issue here does not involve staffing per se; however, the Postal Service cannot be permitted to violate the overtime provisions of the contract by simply asserting that meeting the window of operations and the dispatch of value justifies bypassing the provisions of Article 8.5.G. Carriers on the ODL were "available" to work after 4:30 p.m. or 5:00 p.m. despite the "operational window"; the Service is using this service goal as an "artificial means to simultaneously schedule non-ODL

carriers into forced overtime". On the day in question, certain non-ODL carriers worked more hours than at least two ODL carriers; the non-ODL carriers were also working outside their assignments for ten hours or more while PTFs were working ten hours or less. The Union submits that a review of the record will show that only eight non-ODL carriers met the operational window and dispatch of value on March 23, 2006; in fact, many non-ODL carriers returned to the Station after the ODL carriers.

The Union submits further that the manner in which the window of operations was implemented was designed to get through arbitration that which could not be attained through negotiations.

Additionally, claims the Union, the Postal Service in Sheboygan was relying on the sixty hour service week provision and ignoring the twelve hour day provision of Article 8.5.G.

The Union also points out that the Postal Service never argued that the circumstances of March 23 constituted an emergency under Article 3.F.

The Union asks that the grievance be granted together with the remedy sought for both ODL and non-ODL carriers: "Management should not be permitted to violate the provisions of the National Agreement in order to meet a service goal", adds the Union.

The Postal Service contends that it properly established a window of operations and a dispatch of value after discussing these

goals with the Union and after seeking any input the Union may have had. Once the window of operations and dispatch of value were properly established, they were consistently applied, adds the Employer.

Both the window of operations and dispatch of value were based upon the arrival of mail from Milwaukee in Sheboygan in the morning and the requirement to have 80% of the mail back to Milwaukee for cancellation by 8:00 p.m. Although there is a later truck which also goes from Sheboygan to Milwaukee, it arrives too late to reach the goal of having 80% of the mail cancelled by 8:00 p.m. Any such delay adversely impacts "downstream operations and the flow of mail through the 24 hour clock", says Management.

Management also claims as follows:

> To accept what the Union is trying to impose has consequences on the business. As you will hear in testimony, the carriers regularly begin at 7:00 AM. If we were to maximize the volunteers up to 12 hours prior to simultaneously schedule Non-OTDL on days where it is necessary, this could easily result in mail deliveries running as late as 7:30 PM. This is a disservice to our customers and a wasteful business practice serving only the interests of the Union with no regard for the proper administration of postal business.

The Postal Service asks the Arbitrator to consider the following findings by Arbitrator Wooters in Case No. B01N-4B-C 04027979.

. . .

Nor do I believe that Article 8.5 G requires management to abandon its goal of getting all collection mail on the last dispatch at 6:00 p.m. That management does not always meet this goal does not mean that it has to be sacrificed intentionally if the alternative would be requiring a non-volunteer to work.

. . .

The parties to this arbitration have raised very significant issues relative to the scope of inquiry under a claim of violation of Article 8.5 G. In particular, the Union seeks to challenge staffing decision or policies inasmuch as it asserts that an insufficient number of available carriers is causing or exacerbating problems in securing compliance with Article 8.5 G.

Also, the Union asserts that the established window of operations is not a bone fide operation reason for failing to comply with the same provision.

I agree with the Union that management may not establish a window of operations for the sole purpose of avoiding its responsibilities under Article 8.5 G. An arbitrary or invidious motivation may make what otherwise would be a proper exercise of management rights into a contract violation.

In this case, however, the evidence is that the window of operation is largely determined by the arrival of incoming mail from the processing plant in the morning and the dispatch of collection mail from the station in the evening. The evidence is that these events are not within the control of local management but are instead determined by the operational parameters at the mail processing plant.

Management does not disagree with the Union contention that having additional staffing would make scheduling, including compliance with Article 8.5 G, easier. This does not mean, however, that management violates Article 8.5G when tight staffing limits the number of available ODL carriers.

. . .

The Postal Service insists that Article 8.5.G. must be read and interpreted together with the remaining provisions of Article 8, as well as Article 3; simultaneous scheduling of overtime is permitted thereunder, claims Management.

The Postal Service asks that the grievance be denied; Management's "actions in this case were justified and done with sound business reasons in mind".

OPINION

The evidence establishes that in October 2005, the Postal Service advised the Union of the need for a 1645 dispatch of value in order to meet operational and customer requirements in Sheboygan and at the Milwaukee plant. The Union was also apprised of the District policy to have carriers off the street by 1700 between April and October and by 1630 from November through March. This was the "window of operations". When the Union received this information in October 2005, there was no grievance initiated as a challenge thereto. Although the Union did not grieve Management's established window of operations and dispatch of value in October 2005 when they were first presented, the Union did not forfeit its right to challenge the application of the policies and goals when overtime scheduling to meet the "defined window" resulted in what they perceived to be a violation of Article 8.5.G.

In a similar case heard by Arbitrator Duda (J98N-4J-C 02185762), this same issue was addressed as follows:

> First, the Union had no duty to grieve the May 31, 2000 announcement of a window of operations. The Service argues ". . . Laches applies to this case, as the Union sat on their rights and chose not to dispute the window of operations in May of 2000 [and] has now forfeited any rights with respect to the establishment of a window of operations or in scheduling overtime to meet that defined window." The subject grievance does not deny a Management right to schedule overtime or to establish a "window of operations." Rather, the grievance claims Management violated Subsection 8.5.G. of the Labor Agreement in the manner it scheduled the overtime it determined necessary.
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> Even if the Union had agreed to the window of operations, as claimed by Management, the Union was not thereby barred from later protesting subsequent specific applications with which it disagreed. Neither the subject window, nor any covered in the various arbitration decisions submitted, contained a provision requiring the Union to forfeit any of the overtime administration provisions in Section 8.5 of the Labor Agreement.

This Arbitrator agrees with the above conclusions. The Union has the right to grieve the application of Article 8 even though the window of operations and dispatch of value were not specifically contested. As stated by the Union in its opening statement,

> This hearing isn't about whether or not management may establish a Window of Operation. The Postal Service can implement operational windows, service goals, or any other program, so long as its implementation does not violate the provisions of the National Agreement. Management has a right to manage <u>within the confines of the National Agreement.</u>

In a similar case, this Arbitrator concluded as follows about the window of operations (see I94N-4I-C 97122042):

> After evaluating the evidence presented at the hearing and after considering the conclusions of other Arbitrators on the matter of a "Window of Operations", this Arbitrator is of the opinion that Management has the right to establish an operational window or a service goal in order to effectuate the timely delivery of mail as well as the timely dispatch of mail brought back to the station by carriers. In this case, the operational window was put in place to address customer complaints pertaining to the timeliness and consistency of mail delivery. The concept and implementation of an operational window has generally been accepted by Arbitrators to be a reasonable exercise of the rights of Management under Article 3.
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> Pursuant to Article 3, Management has the right to maintain the efficiency of operations and to determine the method, means and personnel by which those operations will be conducted; the exercise of Management's right to direct the work force is, however, "subject to the provisions of this Agreement", including Article 8. Article 8 gives Management the further right to determine when overtime is needed; only after that determination is made do the remaining provisions of Article 8.5 apply.
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> The dispute which arises here is in essence a "clash" between the right of Management to maintain the efficiency of its delivery operations and the application of the overtime provisions which have been negotiated and agreed upon by the parties.

The Arbitrator is also persuaded by the conclusions of Arbitrator LaLonde (B01N-4B-C 05090671) pertaining to the window of operations:

> The Service contention that it has very wide authority under the management rights provisions of Article 3 when it comes to the application of a WOO is an overly broad claim that is not supported on the record or within the language of Article 3 itself. The significant aspect of

Article 3 that cannot be ignored is the requirement that the exercise of management rights must be subject to and constrained by the provisions of the National Agreement.

The issues surrounding the use of a WOO rest on its application by the Service and the conditions under which a WOO does or does not give authority to the Service to force overtime for non-ODL carriers. Related to this is the degree to which a 5 p.m. delivery deadline built into a WOO creates a situation that gives the Service authority to force non-ODL carriers into overtime situations because to use ODL carriers for the overtime would place these individuals beyond the 5 p.m. return cut off.

The Service contends that the establishment of a WOO meets the Service's obligation to provide improved customer service especially in the delivery of mail to its consumers. The WOO, with its last delivery time of 5 p.m., was established to ensure that its customers would not receive mail deliveries later than 5 p.m. thus addressing customer service needs for timely delivery of the mail. However, the Service itself admitted that the WOO is not an absolute but a target or goal to be striven for whenever possible. In reality what this means is that there have been situations when mail was delivered after the 5 p.m. cutoff for delivery established in the WOO. On one hand, the Service argues that the 5 p.m. cutoff for delivery is an absolute in the sense that the Service interprets that to mean that most if not all ODL carriers would simply not be "available" to take overtime where it would involve extending mail delivery beyond 5 p.m. but at the same time admits that 5 p.m. is not a "bright line" dividing point but merely a goal. This contradiction weakens the Service's position on the question of non-ODL forced overtime and reinforces the Union's position relative to the controlling nature of Article 8.5 on overtime rights and protections.

As it regards the instant case, there are several contradictions in testimony which weaken Management's case despite its right to establish a window of operations. For example, at the Informal Step A, Management cited a 0700-1700 window of operations,

with a 1645 dispatch of value; when a carrier returns after 1645, the dispatch of value will automatically be missed and mail will go to Milwaukee on the 1840 truck and thereby miss the 8:00 p.m. cancellation operation goal.

Additionally, at arbitration, the Postmaster also testified about returning to the Station by 1700, which thereby misses the dispatch of value. Clearly, the conclusion to be drawn is that meeting the 1645 dispatch of value is not an absolute; it is a service goal which is not always met. Yet when it comes to scheduling overtime, 1645 appears to take on greater significance to Management.

There was additional testimony from the Postmaster which raises concern about the relationship of the window of operations, the dispatch of value and the scheduling of overtime. The Postmaster testified about having various Managers in the facility in the last five years; he referred to the resultant turmoil and inconsistency in operations. Significantly, the Postmaster stated that a full count and inspection was needed since this had not been done for ten years; he acknowledged that certain routes were overburdened in early 2006.

The Arbitrator is also concerned about the testimony of the Customer Service Supervisor who scheduled the overtime in question on the morning of March 23 when three carriers called in for

unscheduled sick leave; this was in addition to the carriers on annual leave and those who could not perform "walking" street duties.

Although it cannot be denied that March 23 was a "rough" day and that mandatory overtime could not be avoided entirely, this Supervisor stated that she would maximize those on the ODL and assign delivery duties to PTFs "to the extent that they met the dispatch of value". The Supervisor added that she utilized the ODL to the fullest while allowing for the carriers to return to meet the dispatch of value. She clearly stated that she used the ODL up to ten hours and if they returned in less than ten hours, she assigned them to case mail.

On cross examination, the Supervisor testified that if she has to force non-ODL carriers off their routes, she first maximizes the ODL and PTFs to ten hours "so that giving ten hours daily to the ODL gives them a sixty hour week". She added that the office does not use penalty overtime before requiring a non-ODL to work overtime on a non-scheduled day or off his/her route. On re-direct examination, she stated that on March 23, there were not enough carriers on the ODL to get the mail out without working non-ODL carriers at the same time.

The Manager of Customer Service added to the contradictions regarding the 1645 dispatch of value even though carriers were to

be off the street by 1700. He also stated that all ODL carriers were to be used to the fullest extent possible as long as the dispatch of value was met, "but not for twelve hours" . . . "twelve hours would decrease the amount of mail for the 1645 dispatch of value". When asked why the ODL carriers were used for ten hours rather than twelve hours, the Manager stated that it was "done in an effort to provide the best service". He added that non-ODL carriers were "forced before using ODL carriers for twelve hours to meet service needs within a limited time period".

When the above testimony of Management is viewed as a whole, it becomes apparent that March 23, 2006 presented a situation where mandatory overtime to some degree was unavoidable due to the three carriers who called in for unscheduled sick leave. However, this situation was not "unforeseen". Even before the morning of March 23, Management knew that certain routes were overburdened and that it had been approximately ten years since the last full count and inspection. As of the afternoon of March 22, Management was aware of curtailed mail for that day; however, no ODL carrier was scheduled early to case that mail and the three PTFs who were scheduled at 9:30 a.m. and 10:00 a.m. were not called in early, even though six carriers had scheduled leave and three carriers could not walk on their routes. Management knew on the morning of March 23 that overtime would be needed, yet only five of the seven

ODL carriers worked twelve hours; two ODL carriers and five PTFs worked less than twelve hours. Twenty-two carriers who had expressed their desire not to work overtime were forced to do so even though it was apparent that various ODL carriers and PTFs could have been assigned additional work prior to such forcing. Management ignored its obligation under Article 8.5.G and under the Letter Carrier paragraph of the Memorandum. Per this paragraph, even when the overtime is on the non-ODL's own route, Management is obligated to seek auxiliary assistance rather than force the non-ODL carrier to work overtime. It logically follows that Management has an equal obligation to do the same when the assignment is off the non-ODL's route.

Although Article 8.5.D. gives Management the right to require non-ODLs to work overtime if the ODL list does not provide sufficient "qualified" people, Management in Sheboygan pre-determined that the list was insufficient on March 23 based solely on the 1645 dispatch of value which, for all intents and purposes, could not have been met by all carriers that day; in fact, only eight of the twenty-two forced carriers met that goal. Additionally, several non-ODLs were out on the street later than ODL carriers. It appears to the Arbitrator that Management relied on the window of operations/dispatch of value to utilize the provisions of Article 8.5.D. rather than fulfill its obligation

under Article 8.5.G. and the "Letter Carrier Paragraph" of the above-cited Memorandum.

As stated by this Arbitrator in Case No. I94N-4I-C 97122042,

> Management, by the manner in which it applied the 4:30 P.M. Window of Operations, created an artificial "insufficiency" of qualified ODL employees and thereafter relied on that "insufficiency" to justify implementing the provisions of Article 8.5.D. The Postal Service appears to have determined that any time an ODL employee had to be scheduled for overtime and if that assignment would extend beyond 4:30 P.M., there was automatic justification for concluding that sufficient qualified ODL carriers were not available and that non-ODL carriers would therefore be forced to work the overtime. It appears to the Arbitrator that Management applied the 4:30 P.M. Window in a manner which circumvented the provisions of Article 8.5.G.
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> Article 8.5.D. sets forth the exception for scheduling overtime pursuant to Article 8.5.G. In this case, the application of the 4:30 Window resulted in Article 8.5.D. being implemented when overtime was necessary even though the ODL employees had not been worked to the extent set forth in Article 8.5.G. Although simultaneous scheduling of overtime for ODL and non-ODL employees is permitted under certain circumstances, the 4:30 Window was implemented in a manner whereby the application of Article 8.5.D. became the rule rather than the exception. The use of non-ODL employees should be limited to legitimate and/or time critical situations where the ODL does not provide sufficient qualified employees. In this case, it cannot be held that the 4:30 Window was a time critical situation on such a regular, continuous, routine basis.

The above conclusions apply to the instant case as well. Additionally, Management erroneously concluded that ODL employees were unavailable if they could not return to the Station by 1630 or 1645. Yet, for some unexplained reason, non-ODL carriers who

exceeded that time frame were "available". This is an unreasonable position, especially in view of the testimony which indicates that overtime was scheduled based on a sixty hour week and a ten hour day; this manner of scheduling ignores the twelve hour day provision.

The following awards were found to be persuasive in the decision-making process here:

Case No. W4N-5C-C 42082
Arbitrator Levak

> Further, in order to find in favor of the Service, the Arbitrator would have to conclude that the Beverly Hills management-imposed 4:30 p.m. Operational Window is binding on the Union and somehow overrides the overtime language of the National Agreement. That conclusion, too, is not possible. Such a unilaterally imposed managerial objective, however, soundly grounded in good business practice, cannot override express employee rights granted by the National Agreement. Article 3, Management Rights, allows some unilateral action, but does not aid the position of the Service, since this case involves clearly expressed specific employee rights.

Case No. S4N-3U-C 1272
Arbitrator LeWinter

> The matter here is not whether the window is desirable, nor whether it is the best approach for the parties. I have no jurisdiction to make such decisions. My authority is derived from the collective bargaining relationship as it defines the enforceable contract obligations of that relationship. When, as here, a party claims that the contract is violated, any practice which contravenes the contract must fall before it. A practice may affect a decision as to remedy, but it cannot vary the terms of the contractual obligations. Therefore, if the Union's claims as to the contractual requirements of Article 8 conflict with the window, the window policy must fall before the contract.

Case No. E90N-4C-C 92021627
Arbitrator Britton

Determinative of this matter, is whether the overtime used on November 29, 1991 was in accordance with Article 8 and the Memorandum of Understanding in the National Agreement. Specifically applicable hereto is the language of Article 8, Section 5.G of the National Agreement. Therein, it is expressly provided that full-time employees not on the"Overtime Desired" list may be required to work overtime" . . . only if all available employees on the . . . "list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week." In adopting this language, the parties have clearly expressed their intent to condition the working by Non-ODL employees on overtime on ODL employees working up to twelve (12) hours, and avoiding, as much as possible, requiring that employees perform overtime service contrary to their indicated desires.

. . .

While the Arbitrator is fully cognizant of the concerns of the Employer in this regard, he, nonetheless, cannot rightfully agree that these objectives can properly be achieved by unilaterally ignoring the language of Article 8, Section 5.G of the National Agreement.

Case No. B01N-4B-C 05090671
Arbitrator LaLonde

Another aspect of the application of the WOO to overtime situations is that the overriding customer service concern appears not to be the prime motivation for the WOO as the Service made a point of claiming. In un-refuted testimony, the Union pointed out that a subsequent directive at the Hamburg office now informed carriers that there was to be a 5 p.m. (or earlier) time set not for mail delivery for customer service needs but to have carriers "back in the facility". The malleable nature of what a WOO is designed for and where the walls are moving, concerning its application, gives credence to the Union's concern that the cumulative and ongoing effects are to continue to reduce the authority of Article 8.5 ODL protections particularly as it applies to the protections against forced overtime.

The Service points to Arbitrator Mittenthal's Award (H4C-NA-C 30) legitimizing the use of simultaneous scheduling. What is important to note in this case is that Arbitrator Mittenthal made a point to emphasize that any such simultaneous scheduling must be based on legitimate and valid reasons of operational necessity. Arbitrator Aaron (H8N-5B-C 17682) indicated that the use of non-ODL carriers must be for "good cause". The Service interprets these requirements to allow it to claim that good cause and operational necessity can be met basically whenever the Service unilaterally determines it to be so. Based on the record and the submissions contained within the respective briefs of the Parties, this would represent a one-sided right to interpret Article 8.5 utilizing a self-serving definition of what the requirements mean. The record before this Arbitrator and the clear and unambiguous language of the National Agreement do not support such an interpretation.

The decision of Arbitrator McConnell (N4N-1R-C 3367), referenced by the Union and occurring shortly after the 1984 Memorandum, is instructive in this matter and one for which this Arbitrator finds much to concur. Arbitrator McConnell noted that management rights provisions of Article 3 did not apply in the overtime situations presented because:

> These situations were not 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.
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> . . .
>
> And it is Management's responsibility to meet its manpower needs without violating the agreement.
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> . . .
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> Protection of the right of employees not to work overtime is a guarantee under the agreement.

What is critical here is the reinforcement of the understanding that the utilization of non-ODL carriers should be in situations where there are "unforeseen circumstances" or circumstances that call for "immediate

action" all of which are premised in the fact that these would be none recurring situations.

. . .

Conscious staffing decisions on the part of the Service have implications for the number of individuals handling overtime assignments when coupled with the creation of WOOs. Neither of these actions negate the inherent contractual rights under article 8.5 regarding the utilization of ODL and non-ODL carriers. The use of non-ODL carriers for forced overtime in situations that are not unforeseen or not of an emergency nature clearly violates the language and intent of the National Agreement.

. . .

Article 8.5 and the Article 8 Memorandum recognize the rights of those employees who wish to work overtime as well as the rights of those who elect not to work more than eight hours. The exercise of Management's rights under Article 3, including the establishment of a window of operations, must be consistent with the provisions of Article 8.5 and the cited Memo. In this case, Management relied on its right to establish a window of operations to "create" an insufficiency of qualified ODL carriers and thereby justify mandating those who did not want to work overtime. However, all carriers are entitled to the protection of Article 8.5.

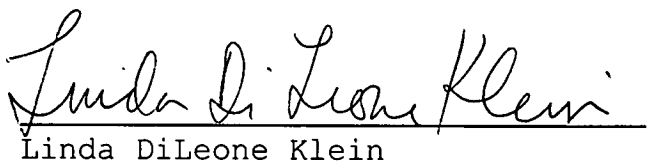
Management had alternatives to the forcing of non-ODL employees on March 23; ODL carriers could have reported earlier to handle the curtailed mail; three PTFs could have reported earlier, especially since at least six carriers had scheduled leave and

three could not deliver mail on foot; and the new Postmaster could have implemented the count and inspection process as soon as he learned how long it had been since the last inspection. There were alternatives to the "course of action which contravened Article 8.5.G."; although the circumstances of March 23 necessitated the forcing of certain non-ODL carriers, that action should not have been taken until all ODL carriers had been maximized to the fullest extent and until all other avenues, including the assignment of PTFs, had been explored in order to protect the interests of those who did not wish to work overtime.

Under the circumstances of this case, it must be held that Management lacked good cause to schedule non-ODL employees for overtime on March 23 prior to utilizing the ODL carriers to the fullest extent and prior to scheduling PTFs to carry mail as well. The Postal Service erroneously relied on the window of operations and the dispatch of value to justify forcing the non-ODL carriers to work overtime prior to maximizing the ODL carriers; it was obvious that the goals pertaining to the window of operations/ dispatch of value could not be met that day. It is also apparent that the scheduling was based on a ten hour day for the purpose of avoiding the twelve hour work days agreed to in Article 8.5.G.

AWARD

The grievance is granted based upon Management's violation of Article 8 on March 23, 2006. As set forth in Stipulation 4, this case is remanded to the parties for formulation and implementation of an appropriate remedy for all affected carriers. The Arbitrator shall retain jurisdiction of this matter for ninety (90) days.



Linda DiLeone Klein