PITTSBURGH REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	:	Grievant: Class Action
between	:	
UNITED STATES POSTAL SERVICE	:	Post Office: Pittsburgh, PA P&DC
and	:	USPS Case C98C-1C-C 01019331
AMERICAN POSTAL WORKERS UNION	:	APWU Case No. 2003131

BEFORE:	Elliot Newman, Arbitrator
APPEARANCES:	
For the U.S. Postal Service:	Stephen W. Bushelman
For the Union:	Desmond J. Neurohr
Place of Hearing:	Pittsburgh, PA P&DC
Dates of Hearing:	July 13, 2006, September 7, 2006, December 14, 2006
Record Closed:	March 5, 2007
Date of Award:	April 9, 2007
Relevant Contract Provision:	Article 7
Type of Grievance:	Contract

Award Summary

The class action grievances are sustained. The Postal Service violated Article 7.1.B.1 by hiring casual clerks at the Pittsburgh, PA P&DC in lieu of full and part-time clerks from March 25, 1994 until August 20, 2004.

Elliot Newman, Arbitrator

Procedural History

The Pittsburgh Metro Area Postal Workers Union, Affiliated with the American Postal Workers Union, AFL-CIO ("APWU" or "Union") and the United States Postal Service ("Employer" or "Service") have a dispute regarding whether the Service violated Article 7.1.B.1 when it utilized casual employees in lieu of full time and part time employees. Grievance No. C98C-1C-C 01019331 (APWU #2003131) is the representative, lead case.

The associated cases, which are all "casual in lieu of" grievances, are: (1) APWU #9401462, filed at Step 2 on April 19, 1994, which the parties on December 6, 2000 agreed to "hold in abeyance pending outcome of National Level Q98-C-4Q-C 0076426" (Joint Exhibit 3b); (2) APWU #9401463, filed at Step 2 on April 19, 1994, which the parties on December 6, 2000 agreed to "hold in abeyance pending outcome of National Level Q98-C-4Q-C 0076426" (Joint Exhibit 3c); (3) APWU #9600047, filed at Step 2 on January 5, 1996, which the parties on December 6, 2000 agreed to "hold in abeyance pending outcome of National Level Q98-C-4Q-C 0076426" (Joint Exhibit 3d); (4) APWU #9600048, filed at Step 2 on January 5, 1996, which the parties on December 6, 2000 agreed to "hold in abeyance pending outcome of National Level Q98-C-4Q-C 0076426" (Joint Exhibit 3e); (5) APWU #9600049, filed at Step 2 on January 5, 1996, which the parties on December 6, 2000 agreed to "hold in abeyance pending outcome of National Level Q98-C-4Q-C 0076426" (Joint Exhibit 3f); (6) APWU #9601378, filed at Step 2 on June 12, 1996, which the parties on December 6, 2000 agreed to "hold in abeyance pending outcome of National Level Q98-C-4Q-C 0076426" (Joint Exhibit 3g); (7) APWU #9601379, filed at Step 2 on June 12, 1996, which the parties on December 6, 2000 agreed to "hold in abeyance pending outcome of National Level Q98-C-4Q-C 0076426" (Joint Exhibit 3h); (8) APWU #9702739, filed at Step 2 on October 6, 1997, which the parties on December 5, 2000 "held pending outcome of National Level Q98-C-4Q-C 0076426" (Joint Exhibit 3i); (9) APWU #9703434, filed at Step 2 on December 10, 1997, which the parties on December 6, 2000 agreed "will be settled based on the National Arbitration for #Q98-C-4Q-C 0076426" (Joint Exhibit 3j); (10) APWU #9801413, filed at Step 2 on May 8, 1998 (Joint Exhibit 3k); and (11) representative case USPS #C98C-1C-C 01009481 (APWU #2002937) which was combined with twenty-eight other grievances, the parties agreeing on December 28, 2000 and February 13, 2001 that: "It is understood that all facts, evidence, contentions and remedies contained in that grievance(s) shall be included within the issues represented in the representative case. It is further understood that the combined cases shall not be individually appealed to arbitration but the representative case shall serve as the appeal to arbitration for all the attached grievances." (Joint Exhibit 3l).

On June 2, 2006, Union President Charles A. Pugar wrote to the Postal Service regarding the first day of hearings scheduled for July 13, 2006, stating in pertinent part:

> "Please be advised and notify the appropriate Labor Relations Specialist/Advocate that the pre-scheduled cases on the above referenced schedule are but two cases in an ongoing series of no less than fourteen Lead/Held in abeyance active grievances since at least 1994 contending that the USPS is in violation of Article 7.1.B.1 regarding the Installation's Clerk Craft. All cases have been jointly consolidated and collectively discussed with USPS Area Level Specialists over the preceding year.
>
> The APWU intends on presenting the entire period in dispute, which will involve

selection and submission of other representative case(s)....

Should you or the USPS advocate have any questions or concerns, and/or wish to schedule to review our files, please contact my office at your earliest convenience.

This notification is intended to preclude any perceivable disputes at the hearing as to what is exactly before the arbitrator. Your response, or lack thereof, will be so noted...." (Union Exhibit 1).

Pursuant to due notice, hearings were held on July 13, 2006, September 7, 2006 and December 14, 2006 in Pittsburgh, Pennsylvania at which time both parties were afforded a full opportunity to present testimony, examine and cross-examine witnesses and introduce documentary evidence in support of their respective positions. The parties summed up their positions in writing after the conclusion of the hearing. The matter is now ready for final disposition.

Cited Portions of the Contract

ARTICLE 7 EMPLOYEE CLASSIFICATIONS

Section 1. Definition and Use

B. Supplemental Work Force

1. The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees.

2. During the course of a service week, the Employer will make every effort to insure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to casuals.

3. Starting in the fiscal year commencing September 16, 1995, the number of casuals who may be employed in any accounting period, other than accounting periods 3 and 4, shall not exceed 6.6% of the total number of career employees covered by this Agreement and shall not exceed on average 5.6% of the total number of career employees covered by this Agreement during a fiscal year, exclusive of accounting periods 3 and 4.

4. Casuals are limited to two (2) ninety (90) day terms of casual employment in a calendar year. In addition to such employment, casuals may be reemployed during the Christmas period for not more than twenty-one (21) days.

Background and Discussion

Threshold Issue - Scope of Consideration

There is a threshold issue regarding whether as requested by the Union, the lead grievance, Case No. C98C-1C-C 01019331 (APWU #2003131), should incorporate

all the other case numbers along with their corresponding time frames and total hours (see Joint Exhibits 3b through 3l, along with Joint Exhibits 4 and 17) to be heard and adjudicated together. On the other hand, the Postal Service asserts that the case should be circumscribed to the timeframes and grievance specified in Case No. C98C-1C-C 01019331 (APWU #2003131).

It is clear from the pre-arbitration settlements of the associated cases that the parties recognized that their Article 7.1.B.1 disputes would be controlled by Arbitrator Shyam Das' National Level Award in Case No. Q-98C-4Q-C 00100499 (August 29, 2001). The cases were "held pending" without disposition or scheduling. Each case is a class action grievance filed by the Union on behalf of the Clerk Craft employees in the Pittsburgh P&DC. Each Step 2 appeal lists an alleged violation of Article 7.1.B.1 of the National Agreement. Each case specifically alleges that casual employees are being employed "in lieu of" career employees. There was an understanding between the local parties that the "casual in lieu of" grievances were a series of appeals over the same alleged continuous violations, ongoing since 1994. This is shown by the parties' efforts to consolidate the cases. and the uniform resultant pre-arbitration agreements, without distinction, to "hold" such cases "pending Das" as each case contained the common theme of an alleged violation of the "casuals in lieu of" language of Article 7.1.B.1.

Union President Charles Pugar testified that anyone who was personally involved with the "casual in lieu of" grievances since 1994 (as he was) knew that all the cases would be heard together in arbitration. He stated that this was an "integral component" of the pre-arb process for all of the grievances. Mr. Pugar testified that he told Postal Service Representative Steve Cook that all the "casual in lieu of" grievances would be set aside and arbitrated together. This is verified by the lengthy time period of coverage of Joint Exhibit 4 (supplemented by Joint Exhibit 17) provided by Mr. Cook to the Union. These documents provide information pertinent to the "casual in lieu of" grievances from 1994 to the present. These documents also establish the parties' mutual understanding that the entire period from 1994 to the present was encompassed by the grievances entered as Joint Exhibits 3a through 3l.

It is also clear that Mr. Pugar, through his letter dated June 2, 2006, reiterated to the Postal Service the Union's intent to arbitrate all of the accumulated and held "casual in lieu of" grievances, without any subsequent objection by the Postal Service (Union Exhibit 1). Further, representative "casual in lieu of" case USPS #C98C-1C-C 01009481 (APWU #2002937), which was part of the submission to the arbitrator (Joint Exhibit 3l), was combined with twenty-eight other grievances, the parties agreeing on December 28, 2000 and February 13, 2001 that: "It is understood that all facts, evidence, contentions and remedies contained in that grievance(s) shall be included within the issues represented in the representative case. It is further understood that the combined cases shall not be individually appealed to arbitration but the representative case shall serve as the appeal to arbitration for all the attached grievances." (emphasis supplied).

In support of its position that the grievances should not be consolidated and adjudicated together, the Postal Service presented the testimony of Eastern Area Specialist Richard Acker. Mr. Acker testified that the Eastern Area was looking at all cases pending adjudication throughout the entire area in an effort to resolve as many as possible. He added that among those, there was a special emphasis on "casual in lieu of" cases as they had the greatest potential for a high monetary liability. Mr. Acker

emphasized that while the "casual in lieu of" cases were viewed as having a high potential liability, this in no way was to be construed to mean that the Postal Service violated Article 7.1.B. Rather, this was simply a forecasting of the potential liability should the Postal Service subsequently be found in violation of the National Agreement. Mr. Acker met with Union President Pugar in an attempt to reach a global settlement of all "casual in lieu of" grievances then pending in the Pittsburgh, PA District. They went through the reports of casual hours beginning in 1995 (see Joint Exhibit 4) but were not able to reach a settlement. Mr. Acker testified that there were no discussions to the effect that if there was no settlement, all of the "casual in lieu of" grievances would be combined into one case. Mr. Acker also testified that there was nothing in writing where the Postal Service agreed to combine all the cases.

The Postal Service's reliance on Mr. Acker's testimony fails to adequately rebut the Union's evidence. Mr. Acker was not involved in the processing of the instant grievances prior to mid-2005, and his role was limited to an attempt to reach a global resolution of all the grievances. This attempt was unsuccessful, which means that the grievances would be arbitrated in accordance with the parties' prior understanding as related by Mr. Pugar that as all the grievances had been held pending the Das Award (see Union Exhibits 3b-3l), and as the Das Award had been issued, all the grievances would then proceed together to arbitration.

Accordingly, even absent a document signed by the Union and the Postal Service, an agreement to adjudicate all the "casual in lieu of" grievance at one time is shown by: (1) their holding the cases pending the Das Award; (2) after the Das Award, the Postal Service providing documentation from 1994 to the present that mirrors the Union's 1994 to the present grievances; (3) the agreement in representative Case No. #C98C-1C-C 01009481 (APWU #2002937) wherein the parties stated: "It is further understood that the combined cases shall not be individually appealed to arbitration but the representative case shall serve as the appeal to arbitration for all the attached grievances."; and (4) the clear notification of the Union to the Postal Service, which was not objected to by the Service, that all of "the casual in lieu of" grievances would be arbitrated at one time in one forum.

Merits

The issue on the merits is whether the Service violated Article 7(1)(B)(1) of the National Agreement, as interpreted by the May 29, 1986 Downes Memorandum and the National Award by Arbitrator Shyam Das in Case No. Q-98C-4Q-C 00100499 (August 29, 2001), by the manner in which casual employes were hired in the Clerk Craft at the Pittsburgh, PA P&DC and if so, what shall the remedy be?

A resolution of this issue requires a review of Article 7(1)(B), with references to arbitral decisions at the National Level which have interpreted it. Of course, decisions of the National Panel on issues of contract interpretation are binding on regional arbitrators. Case No. H7C-3D-D 13422 (Arbitrator Carlton J. Snow, July 25, 1991, at page 17). The National Arbitration Panel is responsible for finally resolving national interpretive issues of general application. This is the purpose of Article 15, Section 5(D)(1). To provide nationwide consistency in the application of the National Agreement, interpretations by the National Panel become incorporated into the Agreement, as if they were the result of the parties own bargaining. In the "pecking order", it is incumbent on Regional Arbitrators to follow the lead of the National Panel, and not to substitute their own judgment.

By way of historical background, Arbitrator Nicholas H. Zumas in National Arbitration Award H1C-4K-C 27344/45 (November 21, 1985) stated:

> "Casual employees are non-career employees who, as part of the Supplemental Work Force, perform duties assigned to bargaining unit positions on a limited term basis. They are not restricted to straight time worked, and may perform overtime. And as provided in Article 7, Section 1, these casual employees 'may be utilized as a limited term supplemental work force, but may not be employed in lieu of full-time or part-time employees'
>
> There is no restriction as to how such casual employees may be 'utilized' (assigned), except that the Service is required to 'make every effort to insure [sic] that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to casuals.' It is also clear, as the Service contends, that the provision that casual employees 'may not be employed in lieu of full or part-time employees' relates to the number of casual employees that may be hired and to the limited duration of their employment. The term 'employed' means hired and not, as the Union contends, the manner in which they are assigned ('utilized') to perform work. The correctness of this interpretation becomes even more obvious when the parties referred to 'utilized' and 'employed' in different contexts, in the same sentence." (at p. 9)

Zumas found that the only actual restrictions on the employment (hiring) of casuals in lieu of full or part-time employees, referred to in Article 7(1)(B)(1), were specified in Article 7, Section (1)(B)(3) and (4). Section B(3) sets forth a national percentage limitation on the employment of casuals, while Section B(4) states that casuals are limited to two 90 day terms in a calendar year, as well as a period of not more than twenty-one days during the Christmas period. There is no doubt that "employed" as used in Article 7(1)(B)(1) and (3), and "employment" as used in Section B(4), mean hiring of casuals, and not utilization and assignment of casuals.

However, contrary to the Zumas Award, the parties thereafter incorporated in Fourth Step settlements (for example) in Cases H4T-3A-C 19419 and H4C-1L-C 26758, the following language derived from a May 29, 1986 Memorandum of William J. Downes, the Service's then Director of the Labor Relations Department of the Office of Contract Administration:

> "Generally, casuals are utilized in circumstances such as heavy workload or leave periods; to accommodate any temporary or intermittent service conditions; or in other circumstances where supplemental workforce needs occur. Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate."

The Downes Memorandum became the centerpiece of the definitive National Award by Arbitrator Das interpreting Article 7, Section 1.B regarding the use of casuals in lieu of full or part-time employees. The issue in Arbitrator Das' case was: "Whether Article 7, Section 1.B requires that the Postal Service utilize casual employees as a limited term supplemental work force in circumstances such as a heavy workload or leave

periods; to accommodate temporary or intermittent service conditions; and in other circumstances where supplemental workload needs occur; and requires that they not be employed in lieu of full or part-time employees." (at page 1)

In his Findings, Arbitrator Das noted that: "The fundamental issue in this case is whether Article 7.1.B.1 imposes a limitation on casuals other than the limitations in paragraphs 2, 3, and 4 of Article 7.1.B." (at page 33). Arbitrator Das then stated where he agreed with Zumas, and more importantly for this case, where he disagreed. Arbitrator Das agreed that: (1) "Article 7.1.B.1 does not limit the type of work that casuals who have been properly employed may be assigned to perform on any given occasion or require that priority be afforded to career employees in the assignment of work, except as specifically provided in Article 7.1.B.1" (at page 33)[1] ; and (2)". ..the word 'employed' in Article 7.1.B.1 means 'hired', in contrast to 'utilized' or 'assigned'." (at pages 34, 39).

Arbitrator Das flatly disagreed that Zumas constituted a controlling National precedent that supported the Postal Service's position that the "may not be employed in lieu of" language in Article 7.1.B.1 meant only that casuals could not be employed or hired except under the strictures of paragraphs 3 and 4 of Article 7.1.B (at page 34). In particular, he found that the following opinion in Zumas was not properly considered to be precedent: "It is also clear, as the Service contends, that the provision that casual employees 'may not be employed in lieu of full or part-time employees' relates to the number of casual employees that may be hired and to the limited duration of their employment." (at page 40).

Arbitrator Das left no doubt that Zumas was not the correct interpretation of Article 7.1.B.1 regarding the hiring of casuals in lieu of full and regular part-time employees: "That was not an issue properly before Arbitrator Zumas. His stated opinion on that issue was not necessary or even germane to his decision denying the grievance before him, which challenged only the assignment of casuals, not their hiring. His stated opinion on that issue also was contrary to existing National Arbitration precedent, which he did not cite, let alone attempt to distinguish. He offered no convincing analysis for his stated opinion on that issue." (at page 34). Particularly referring to the Downes Memorandum, Arbitrator Das continued: "And, as the Unions have stressed, the parties entered into a series of Step 4 agreements after *Zumas* that adopt a different interpretation of Article 7.1.B.1; one that is consistent with the National Arbitration precedent that preceded *Zumas*." (at page 34, see also page 40).

Arbitrator Das reaffirmed the holding in Gamser I that Article 7.1.B.1 imposes a restriction or requirement on the purpose for which casuals are hired that goes beyond the percentage cap and duration of appointment limitations (at page 36). Arbitrator Das then specifically endorsed the Downes Memorandum as the appropriate interpretation of Article 7.1.B.1:

> "Although couched in terms of 'utilization' of casuals, it is apparent that [Downes] is not directed at the specific assignments given to casuals on a day-to-day basis, but to the employment, that is, hiring, of casuals. As the last sentence states:

[1] This was reiterated by Arbitrator Das at page 39 of his Award where he stated that Zumas was properly considered precedent regarding its "...holding that Article 7.1.B.1 did not restrict the utilization of casuals, who have been properly employed, to perform overtime assignments, or, more broadly, any particular category of assignments, provided the Postal Service complies with the requirement of Article 7.1.B.2 regarding the utilization of part-time flexibles."

> 'Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate.' This is entirely consistent with the National precedent in *Gamser I* that Article 7.1.B.1 restricts the Postal Service from hiring casuals 'instead of, in place of, or in substitution of' career employees, and provides that casuals can only be hired for the purpose of being 'utilized as a limited term supplemental work force.' The Downes Memorandum put some flesh on the bones of Article 7.1.B.1...." (at page 43)

As particularly pertains to a case such as this at the regional level alleging a violation of the "casual in lieu of" provision of Article 7.1.B.1, Arbitrator Das concluded that: (1) whether a violation exists in the local obligation is to be determined by conditions existing at a particular time at a particular postal facility, separate and apart from the casual ceiling in Article 7.1.B.3 (at pages 46-47); and (2) if "...the Postal Service has a genuine need at a particular time at a particular location for a limited term supplemental work force, rather than career employees, then there is no violation of Article 7.1.B.1. The formulation of this provision in the jointly endorsed Downes Memorandum specifically encompasses, without limitation, 'other circumstances where supplemental work force needs occur.' And, as the Postal Service observes, the Union has the burden of proving a violation of Article 7.1.B.1" (at page 48).

Finally, Arbitrator Das did not designate his Award as being prospective only, stating: "This decision serves to clarify, on a National Arbitration basis, the proper interpretation of Article 7.1.B.1. It does not create 'new law" or depart from the 'old law'. To the extent the Postal Service has chosen to rely on its interpretation of *Zumas*, it has done so knowing full well that it might not be successful..."(at page 48).

In view of all of the foregoing, Arbitrator Das' Award stated:

> 1. Article 7.1.B.1 of the APWU National Agreement....establishes a separate restriction on the employment of casual employees, in addition to the other restrictions set forth in other paragraphs of Article 7.1.B.
>
> 2. The Postal Service may only employ (hire) casual employes to be utilized as a limited term supplemental work force and not in lieu of (instead of, in place of, or in substitution of) career employees.
>
> 3. The following formulation in the May 29, 1986 Downes Memorandum sets forth a jointly endorsed understanding as to the circumstances under which it is appropriate to employ (hire) casual employees to be utilized as a limited term supplemental work force consistent with Article 7.1.B.1:
>
> > Generally, casuals are utilized in circumstances such as heavy workload or leave periods; to accommodate any temporary or intermittent service conditions; or in other circumstances where supplemental workforce needs occur. Where the identified need and workload is for other than supplemental employment, the use of career employes is appropriate."

As noted by Arbitrator Das, the burden of proof in "casual in lieu of" cases rests with the Union. This is the commonly accepted and appropriate standard in contract interpretation cases, and Arbitrator Das did not place a higher, or new, or different burden of proof on the Union than would have existed before his Award. Arbitrator Das' statement on the burden of proof means that the Union must present a case

sufficient on its face, being supported by at least the requisite minimum of evidence, to prevail in the absence of contradictory evidence (i.e. a *prima facie* case). In the face of such a *prima facie* case, the burden would then shift to the Postal Service to present such contradictory evidence so that it would prevail.

This shifting burden of proof has been consistently applied by Regional Arbitrators in post-Das Article 7.1.B cases. Arbitrator Leroy Bartman in Case No. G87C-1G-C 89017300 (April 8, 2004) stated: "This being a contract issue the burden to present a prima facie case rests with the Union. Once they have done so the burden to present an affirmative defense shifts to the Postal Service. In this matter, the Arbitrator finds that the Union has met its burden in presenting a prima facie case. They have shown that the number of casuals employed were disproportionate in number when compared to career employees. This factor provides reasonable cause on the Union's part to pursue the allegation that the Postal Service is in violation of Article 7." (at pages 30-31).

Regional Arbitrator Kathleen J. Thomson in Case No. F90-C-1F-C 93038234 (April 4, 2002) very cogently stated: "There can be no question that the Union has the ultimate burden to prove a violation of Article 7.1.B.1. But this simple statement does not dispose of the question that is presented in this case. As stated in *How Arbitration Works*, 'It may be noted that the burden of going forward with the evidence may shift during the course of the hearing; after the party having the burden of persuasion presents sufficient evidence to justify a finding in its favor on the issue, the other party has the burden of producing evidence in rebuttal...' The reasons Arbitrators place the burden to produce some evidence on the employer in some situations are the difficulty a party has in proving an absolute negative (i.e. proving that there can be no legitimate reason for hiring casuals), and the fact that the employer is the only party to have knowledge why it took a particular management action at a particular time (i.e. why it needed casuals at any point in time). Under such circumstances, it is fairer to place the burden on the Agency to at least identify the claimed need." (at pages 14-15).

Regional Arbitrator Hamah R. King in Case No. G98C-4G-C 99130083 (November 15, 2002) concluded on page 14: "The establishment of a prima facie case by the Union created a burden on the Postal Service to provide that its casual employment was justified under the provisions of Article 7.1.B.1 as interpreted by the Downes Memorandum of May 29, 1986, which has since been validated by Arbitrator Shyam Das. The evidence presented by the Postal Service failed to provide such justification."

As a final example, Regional Arbitrator John C. Fletcher in Case No. I94C-4I-C 97027112 (November 30, 2002) stated: "True, the Postal Service is not contractually obligated to prove a violation of Article 7.1.B.1. Arbitrator Das was quite clear that this burden is upon the Union. However, once legitimate evidence of the Postal Service's violation of Article 7.1.B.1 was presented by the Union, as was the situation in this case, the burden to defend its action effectively shifted to Management. In other words, the Postal Service's mere assertion that the contract was not violated was no longer enough." (at page 20).

Charles Pugar has been the Union President since April, 2003. From 1995 until 2000, he was the Union's Business Agent. Regarding the "casual in lieu of" issues presented by the instant grievances, Mr. Pugar testified that he has been involved every step of the way, as a Steward at Steps 1 and 2; as the Business Agent; and as

the Union President. Mr. Pugar testified that the Postal Service's position was "absolutely consistent" prior to the Das Award that the only two restrictions on the hiring of casuals were those set forth in the Zumas Award regarding the percentage limitation and the limit on the duration of their terms set forth in Article 7.1.B.3 and 4. Mr. Pugar further stated that at no time did the Postal Service justify the existence and hiring of casuals other than to assert that it was in compliance with Zumas.

Regarding the grievances set forth in Union Exhibits 3a-3l, Mr. Pugar testified that the grievances were filed because casuals were being hired to staff areas instead of these areas being staffed by the regular work force. He also stated that the Union was only alleging a violation of Article 7.1.B.1 in its grievances, and was not alleging violations of Article 7.1.B.2, 3 or 4. Mr. Pugar testified that the Union's position was that management at the Pittsburgh P&DC violated Article 7.1.B.1 when it hired casuals on a regular and consistent basis to perform long-term clerk duties as a regular part of the staffing matrix at the Pittsburgh P&DC, while at the same time the career clerk workforce declined.

Mr. Pugar noted that in management's answers to these grievances, it gave no justification for the hiring of the casuals, and it did not assert that the casuals were hired for heavy work loads or for other Downes or Das sanctioned reasons. Rather, Mr. Pugar testified that the Postal Service simply responded that it did not have to give a reason why the casuals were hired. Mr. Pugar also clarified that the Union was not arguing over the "kind of work" that if properly hired, the casuals could do (i.e. their "utilization").

The Union through Mr. Pugar provided extensive documentary evidence to support its burden of proving a prima facie case: (1) Joint Exhibit 7 is a casual complement chart depicting the number of casual clerks utilized in the Pittsburgh P&DC by month from the period of January 7, 1995 through May 5, 2006. A review of the chart shows fairly consistent usage of casuals, anywhere from 60 to 160, with a spike in usage generally occurring only during the Christmas periods; (2) Joint Exhibit 8 shows the total amount of hours worked by casuals at the P&DC, by year; (3) Joint Exhibit 9 shows the casual clerk total work hours from October 1, 2005 to July 1, 2006; (4) Joint Exhibit 10 shows the total annual work hours performed by the career Clerks at the P&DC by year, from 1994 to 2005. It illustrates a steady reduction in the work hours of career employees, from 2,082,239 in 1994 to 676,874 in 2005. Even though career work hours were decreasing, casual work hours continued to be steady (see Joint Exhibit 7), and in 1996 and 1997 casual work hours increased (Joint Exhibit 8); (5) Joint Exhibit 11 shows a steady reduction in the number of career clerks employed at the P&DC from PP-1, 1994 through PP-1, 2005. Career clerk employees at the P&DC decreased every year from 1,160 in PP 1-94 to 659 in PP 1-04, with a slight increase to 679 clerks as of PP 1-05; (6) Joint Exhibit 12 illustrates career clerk craft hiring. Limited career clerk hiring at the P&DC occurred between 1994 and 2005: 27 clerks were hired in 1994, 20 clerks were hired in 1997, 19 clerks (13 for the P&DC) were hired in 1998, 14 clerks were hired in 2000., and 13 clerks were hired for 2005. No career clerks were hired at the P&DC in 1995, 1999, 2001, 2002 and 2003. One career clerk was hired for 1996. In 2004, which was the year with the highest amount of career clerk hirings (61), twelve of these were hired for stations and branches, and not the P&DC. While the clerk craft complement was decreasing, casual hiring/usage continued at a steady rate.; (7) Joint Exhibit 13, which is a supplement to Joint Exhibit 12, is the career clerk craft seniority roster. It reflects all clerks employed in Pittsburgh, not only at the P&DC, and reflects the following hirings: 1994 - 27 clerks hired; 1995 - 0 clerks hired; 1996 - 2 clerks who transferred to Pittsburgh from other offices; 1997 - 20 clerks hired; 1998 - 19 clerks

hired, 6 for stations and branches and not for the P&DC; 1999 - 0 clerks hired; 2000 - 14 clerks hired; 2001 - 0 clerks hired; 2002 - 0 clerks hired; 2003 - 0 clerks hired; and 2004 - 61 clerks hired, 12 for stations and branches, and not the P&DC. During this same period of time, the career clerk complement at the P&DC shrunk from 1,160 on PP1-94 to 679 in PP1-05, a reduction of 481 career clerks (see Joint Exhibit 11). While this reduction was occurring, the casual complement remained fairly consistent, again lending credence to the Union's claim that casual employes were utilized as a regular work force, in lieu of, and not unlike, career employees.; (8) Union Exhibit 8 is an assortment of casual appointment letters. These documents confirm the continuous hiring of casual employees from August, 1994 through June 2001, but they do not show a specific reason for their hiring, such as "heavy workload or leave periods" or "temporary or intermittent service conditions" or "other circumstances".; (9) Union Exhibits 9-13, which are examples of casual complement reports routinely provided to the Union from 1995 to 2004, confirm the continuous year-round utilization of casual employes at the P&DC. There is no stated justification for the utilization of these casuals.

The Union also presented Work and Leave Hour Excerpts (Union Exhibit 21) derived from Joint Exhibits 4 and 17, which served as the source for all charts presented by the Union through PP 15-2005 (see Union Exhibits 22a, b, c, and d). Union witness Pugar testified that Union Exhibit 21 shows a grand total of 3,536,143 work hours performed by casual employees from PP 20-1993 through PP 15-2005.[2] Union Exhibit 22a (the casual clerk complement graph) shows a relatively stable casual complement throughout the period from PP 20-1993 through PP 15-2005, with a larger number of casuals employed during the Christmas period. Mr. Pugar provided testimony regarding certain events and their correlation to the graph: (1) issuance of the Parkinson Award on November 22, 1995, denying the Union's grievance concerning "casual in lieu of", was followed by an increase in the casual complement; (2) UPS strike in July and August, 1997 was not accompanied by an increase in the casual complement; (3) issuance of the Award by this arbitrator on December 18, 1997, denying the Union's grievance concerning "casual in lieu of", was followed by an increase in the casual complement; (4) issuance of the Das Award on August 29, 2001 was followed by a decrease in the casual complement.; and (5) 9/11/01 and its aftermath were not accompanied by an increase in casual complement.

Union Exhibit 22b (the casual percentage of total clerk complement chart) and Union Exhibit 22c (total complement chart) illustrate that while the career complement was steadily declining, the Postal Service consistently utilized nearly 10% casual employees. Union Exhibit 22d (the casual work hours graph) shows that in the period at issue, aside from the spike in hours during the Christmas period, casual hours averaged from just under 5,000 hours per week; then climbed to well over 5,000 hours per week until the issuance of the Das Award when casual hours began to decline.

As computed by the Postal Service in its brief, the casual work hours were as follows: 1994 - 256,136.20; 1995 - 225,801.58; 1996 - 280,739.64; 1997 - 541,300.35; 1998 - 536,503.44; 1999 - 453,274.67; 2000 - 381,127.77; 2001 - 248,394.22; 2002 - 153,210.47; 2003 - 190,822.69; 2004 - 128,447.17; 2005 - 119,522.99; and 2006 - 152,170,17 (Joint Exhibits 4, 17, Union Exhibit 24). This amounts to a total of 3,583,786.66 casual hours. Of these, approximately 500,000 hours could be attributed to casual hirings during the Christmas season.

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[2] Joint Exhibit 8, a chart of casual work hours at the P&DC from 1994 to 2005, shows 3,454,211 hours.

In response to the Union's presentation, Mr. James Dominowski testified on behalf of the Postal Service. Mr. Dominowski has worked for the Postal Service for thirty years, and within that time he has served in such positions as Manager, Distribution Operations, as well as a Senior Manager, Distribution Operations for the Pittsburgh P&DC. Mr. Dominowski pointed out that while serving as the Senior MDO, he had the responsibility and oversight for all three tours at the P&DC. He further testified that while serving as Supervisor of Compensation and Staffing, and Manager of Personnel at the P&DC, he was heavily involved in the hiring process, from initially receiving requests for casuals from all functional areas of Operations throughout the Pittsburgh District, to actually going through the testing and background checks and ultimately hiring casuals for Operations, including at the P&DC.

Mr. Dominowski proceeded to explain how he would receive requests for the hiring of casuals from Operations. Mr. Dominowski testified that the reasons for such requests would include the following: (1) the Fall mailing season which he testified involved a significant heavy workload period that ran from September through the end of November; (2) heavy leave situations which he testified would encompass the prime vacation period running from the last Friday in April through September; (3) coverage for employees who had been injured requiring accommodation in either a light or limited duty status; (4) other anticipated heavy workload situations, such as political mailing events, handling tax information and returns to the IRS, and the 9/11 crisis; (5) holidays, especially during the Christmas season; (6) to supplement for situations where a position was needed but could not be filled due to being in a withholding status per Article 12.5 of the National Agreement; (7) the UPS strike in 1997; (8) covering for time periods involved in waiting for a removal to be fully adjudicated; (9) suspensions; (10) covering for anticipated heavy workloads resulting from Acts of God, such as hurricanes, power outages, tornados, snow storms, and machine failures; and (11) a myriad of other situations imposing a need to augment/supplement the workforce with casuals.

Mr. Dominowski also testified to the kinds of situations that he interpreted as falling within the criteria of the Downes Memorandum pertaining to "other conditions where supplemental workforce needs occur", as well as the "temporary and intermittent" criteria: (1) incidental annual leave and sick leave; (2) FMLA; (3) long term sick leave; (4) military leave; (5) leave without pay; (6) court leave; (7) administrative leave; (8) leaves of absence; (9) union leave; (10) administrative leave; (11) higher level details; (12) withholding situations; and (13) limited and light duty.

I respectfully state that while the Postal Service through Mr. Dominowski's testimony provided possible, theoretical examples of circumstances that might arguably justify the hiring of casual employees, they were not then specifically substantiated by the Postal Service as being the actual reasons that the casuals were hired at the P&DC. With all deference to Mr. Dominowski and his testimony regarding all the general reasons for the hiring of casuals at the P&DC, his testimony did not show that in fact the Postal Service relied on reasons sanctioned by the Downes Memorandum and the Das Award when it hired casuals. Aside from the Christmas season, it cannot be said from his testimony, or the documentary evidence introduced at the hearings (see in particular Joint Exhibit 7), that the Postal Service (for example) actually hired casual clerks at the P&DC for the Fall mailing season, or for heavy leave situations from April through September, or during the 1997 UPS strike, or for other anticipated heavy workload situations such as tax time in April or for political mailing events.

In actuality, as shown by the testimony of Mr. Pugar, there is no Fall mailing season

at the P&DC (although there is at the Pittsburgh BMC); a heavy mailing season for political events does not exist for the P&DC; and during the 1997 UPS strike, the Mail Handler craft, and not the Clerk craft, did the extra work.

There was no evidence of any temporary or intermittent service conditions submitted by the Postal Service to justify the hiring of casual employees at the P&DC. Accepted industrial standards of a "temporary service condition" would be a specifically identifiable condition that is not expected to last beyond a limited duration of time, such as moving a processing operation from one location to another; an identifiable surge in mail; moving to a new facility; consolidation of facilities; installation of new equipment causing a supplemental need; and operational changes in the methods of working mail. A proper definition of an "intermittent service condition" would be a specifically identifiable condition which stops and starts on predictable intervals, such as tax time or high-volume billing cycles.

While very thorough and very well presented, the Postal Service's presentation fell short of rebutting the Union's prima facie showing. The Das Award, and the Downes Memorandum, require a pre-identification by the Postal Service of a genuine need at a particular time at a particular facility for the hiring of casual employees, and that such need was the actual reason for the hiring of the casuals. This has now been recognized by the Postal Service, as is shown by the May 19, 2006 Memorandum of Vice President of Area Operations for the Eastern Area Alexander Lazaroff, which sets forth that revised procedures for casual hiring and implementation "...requires an active role for the local Complement Committee as well as the Manager, Labor Relations to review all relevant documentation **prior** to the casual hire." (Union Exhibit 16, emphasis in original).

This has also now been specifically recognized in the Pittsburgh Performance Cluster as is set forth in the June 16, 2006 Memorandum by District Manager/Lead Executive Keith J. Beppler regarding casual hiring and utilization:

> "As per the attached, the Eastern Area has implemented procedures for casual hiring and utilization. This is not the only way to hire casuals and that attached form must be submitted in advance to your functional manager.
>
> The Eastern Area Casual Hiring Approval Form must be completed by the requesting office along with a clearly identified reason for the request. Specific information must be provided to support the request which includes material evidence.
>
> This procedure will be shared with the local president of the respective Union, and it is therefore necessary that you provide a rationale for hiring a casual in accordance with our Collective Bargaining Agreements and the National Arbitration Award from Arbitrator Das.
>
> By utilizing this procedure we will be in a much better position to avoid and reduce casual in lieu of grievances and the liability associated with them.
>
> Your cooperation in this matter is required and appreciated. This process is in effect immediately." (emphasis in original, Union Exhibit 16).[3]

[3] Pursuant to the Lazaroff and Beppler Memorandums, and in accordance with the Das Award, the Pittsburgh District now notifies the Union of casual hirings, and includes a copy of the casual hiring justification form defining the temporary need used to support the particular casual's hiring (see Union Exhibits 17, 18).

As is evidenced by my pre-Das August 26, 1997 Award at the Pittsburgh P&DC in APWU #9600050 (December 18, 1997), the Postal Service based on Zumas staffed at least one area of the P&DC without regard to the Downes Memorandum, and casuals were clearly used in lieu of full and part-time employees. In that case, as of January, 1993, there were six duty assignments in the manual Box 30 (Zip Code 15230) work section on Tour 3 in the Pittsburgh P&DC, which were occupied by full-time regular career PS-05 Distribution Clerks, who had acquired their assignments through the Article 37 bidding procedures. While these six employees did not necessarily work their entire tour of duty in Box 30, it was their principal assignment area, and they would normally work there by seniority. These six clerks performed duties and responsibilities within recognized positions, and were regularly scheduled during specific hours of duty. The Service decided to reduce the number of occupied duty assignments on Tour 3 in Box 30 effective January 29, 1993. All six assignments were abolished.

However, these former Box 30 assignment holders (who were now unassigned) were brought back to work Box 30 on a daily basis in the ensuing months, during the time when casual employees were being hired and trained on a regular basis to work the "reorganized" Box 30 operation. The Service reorganized Box 30 with the intention of exclusively utilizing casuals. The combined staffing mix of unassigned Box 30 clerks and casuals continued throughout 1993. As the unassigned career regulars acquired other duty assignments, they were replaced by casuals in Box 30.

On February 1, 1994, the Service posted three (not six) Box 30, Level 6 General Expeditor duty assignments for bid on Tour 3. Nevertheless, manually processing Box 30 mail remained the principal assignment, which was done by casual employees. The Union contended that these three positions were insufficient, as demonstrated by the continued full-time utilization of casual employees. From July 18, 1994 through October 25, 1996, casuals were hired for Box 30, utilized in Box 30, and the Service ended their casual appointments in Box 30 just as new casual employees were hired for Box 30 to take their place in a continuous cycle. These casuals were hired for the purpose of staffing Box 30 on a daily basis, year in and year out, usually eight hours a day, five days a week since the January, 1993 abolishment of the six career positions.

Pursuant to the Das Award, it is respectfully submitted that this representative Pittsburgh P&DC Box 30 case is a classic example of the proscribed use of casuals in lieu of career employees. However, it was justified by Zumas at the time, and it is now raised as an illustration of an underlying reason why the Union's multiple "casual in lieu of" grievances were denied. Simply stated, at the Pittsburgh P&DC pre-Das, the Postal Service took the liberty of using casuals in lieu of career employees. Once the Das Award was issued in 2001, with the Award not being prospective only, the day of reckoning arrived for the Postal Service as is evidenced by the instant grievances now to be decided pursuant to the Downes Memorandum as interpreted by the Das Award.

The Downes Memorandum is explicit, and the parties stipulated, that the phrase "heavy workload or leave periods" means heavy leave periods. The fact that heavy leave periods undeniably exists as a reason for the utilization of casual employes shows the intent of the Downes Memorandum to exclude leaves during "normal" leave periods as justifying the hiring of casual employees. For example, annual and sick leaves at the P&DC are taken year-round every year. To suggest (as the Postal Service does) that a year-round permanent use of casual employees is justified by the

ordinary use of annual and sick leaves during non-heavy leave periods contradicts the example provided by Arbitrator Das "...the Postal Service could staff an entire facility *[or in this case 10% of the entire clerical workforce]* with a succession of casual employes on an indefinite basis...", and his conclusion that "...this position is contrary to both National Arbitration precedent and the parties' joint adoption at the National level of the formulation of Article 7.1.B.1 set forth in the Downes Memorandum."

In any case, as is shown by Union Exhibits 23 and 24, the heavy leave periods at the P&DC were not concurrent with a spike in casual work and in some instances, casual work decreased during heavy leave periods.

There is, however, a caveat. It would appear that "other circumstances where supplemental workforce needs occur" could include replacement for a career employee on limited or light duty; replacement for a career employee on extended sick leave/annual leave; replacement for a career employee on extended leave without pay; replacement for a career employee on extended leave due to military activation; replacement for a career employee on a 30 day or more suspension or pending removal; replacement for a career employee serving as an Acting Supervisor/204B; replacement for a career employee serving as an OIC; and replacement for a career employee on full-time Union duties. In these "other circumstances", a causal employee could be hired pursuant to the Das Award and the Downes Memorandum.

This becomes important when consideration is given to Union Exhibit 15, which are Reports of Casual Assignments dated August 20, 2004, September 2, 2005, December 2, 2005 and April 7, 2006. Taken as a whole, these Reports show the hiring of casuals beginning on August 20, 2004 for "other circumstances where supplemental workforce needs occur", such as for employees on limited/light duty, FMLA, maternity leaves, extended LWOPs, military leaves, 204B acting supervisory assignments, and union leaves. With all deference to the testimony provided by Mr. Montana on behalf of the Union, these circumstances fall within the allowed hirings of casual clerks pursuant to the Das Award and the Downes Memorandum. Accordingly, the casual hours represented by Union Exhibit 15 (which also includes Christmas seasonal work by casuals) are justified, and are not instances of the hiring of casual employees in lieu of full time and regular part-time employees.

Otherwise, as was stated by Regional Arbitrator Margo R. Newman in Case No. J98C-1J-C 01136130 (May 18, 2006): "Since the Union made a prima facie showing of a violation of Article 7.1.B.1, the burden shifted to the Employer to explain the reasons for the casual hiring during this period. It must be recalled that in its initial response to the grievance prior to the issuance of the Das award, but while the Downes memo was in effect, the Employer's position was that if it did not exceed the casual cap and duration limitations found elsewhere in Article 7.1.B, it was permitted to hire casuals for any reason....Thus, any subsequent explanation in terms of the Downes memo criteria must be viewed as an after-the-fact attempt to justify actions taken over the prior two and one-half year period." (at page 22). The same is true in this case, except that the period at issue by the Union is not two and one-half years, but ten years from 1994 to 2004

The findings of Regional Arbitrator Linda S. Byars in H98C-1H-C 99148702 (July 21, 2003) also ring true in this case: "It is clearly not sufficient for Management in Pensacola to rely on general reasons that may permit the hiring of casuals without credibly identifying the specific purpose for which it hired casuals to supplement career

employees. The failure of the Postal Service to establish the necessary relationship between the casuals hired and the purpose for which they were hired persuades the Arbitrator that the continuous employment of casuals in the Pensacola Post Office was in lieu of career employees (footnote omitted)" (at page 14).

It would appear that management at the Pittsburgh P&DC took financial advantage of the Zumas Award, and maintained a steady and consistent workforce of casuals in lieu of career employees, without any demonstrated genuine need at any particular time. Simply stated, the Postal Service hired casuals, based on Article 7.1.B and the Zumas Award, and just: (1) made an effort to utilize part-time flexible employees at the straight-time rate prior to assigning the work to casuals as required by Article 7.1.B.2; (2) observed the casual cap set forth in Article 7.1.B.3; and (3) complied with the two ninety day terms and the no more than twenty-one day Christmas period of Article 7.1.B.4.

This is shown by the Postal Service's Step 2 responses to APWU Grievances Nos. 9600047, 9600049 and 9703434. In Grievances Nos. 9600047 and 9600049, the Service's Step 2 response stated in pertinent part: "According to Article 7, Section 1B2 of the CBA, management has the right to assign such work to casuals, as long as we ensure that qualified and available part time flexible employees are utilized at the straight time rate during the course of the service week. The Union failed to demonstrate that management was in violation of this provision." In Grievance No. 9703434, the Postal Service's Step 2 response stated in pertinent part: "The National Agreement also does not contain language restricting the utilization of casual employees in any assignment for any length of time provided the supplemental workforce cap is maintained and that casual employees work no more than two periods of ninety days plus twenty-one days during the Christmas period in the fiscal year. The cap has not been exceeded."[4]

While the Postal Service may have complied with Article 7.1B.2, 3 and 4 in its hiring of casual employees during the period from 1994 to 2004, it did not comply with Article 7.1.B.1 and the Downes Memorandum as interpreted by Arbitrator Das. The words of Arbitrator John C. Fletcher in Case No. I94C-4I-C 97027112 (November 30, 2002) regarding the hiring of casuals at the Jefferson City, Missouri Post Office aptly summarizes the conduct of management at the Pittsburgh P&DC in this case. After citing the Regional Awards of Arbitrator Stallworth in I90C-4I-C 93028129 and Arbitrator Miller in C94C-4C-C 98029563, Arbitrator Fletcher stated: "This Arbitrator will follow the teachings of Arbitrators Stallworth and Miller, in that his particular record supports a conclusion that Casuals were hired and utilized at Jefferson City on an ongoing basis as a result of Career employee shortages, which, according to our reading of the Downes Memorandum and the Das Award, does not represent a *legitimate* condition under which a supplemental work force may be *continually* hired and maintained. Therefore, on merit, the grievance must be, and is, sustained." (emphasis in original, at pages 21-22)

As during period fro, 1994 to 2004, casual clerks were not hired at the Pittsburgh P&DC as a limited term supplemental work force, but rather were hired in lieu of full and part-time clerks, the grievances will be sustained with an appropriate remedy.

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[4] It is noted that this Step 2 answer was written on January 29, 1998, about a month after my "Box 30" Award.

Remedy

I first note that the remedy agreed upon by the parties at the National Level in Step 4 settlements in Cases H1C-1E-C 3325 (August 1, 1983) and H1C-1E-C 3326 (October 11, 1983) establish that the payment of overtime is appropriate when violations of Article 7.1 occur and casuals are improperly hired to perform bargaining unit work.

The earliest grievances sustained by this Award are APWU Numbers 9401462 and 9401463 (Joint Exhibits 3b, 3c), which were initiated by the Union at the First Step on April 8, 1994. Pursuant to Article XV, Section 2, Step 1(a), the appropriate remedial period would therefore commence fourteen days prior to April 8, 1994, which is March 25, 1994. Based on Union Exhibit 15, the remedy period would conclude on August 20, 2004. The appropriate scope of the remedy would be the hours worked by casual clerks from March 25, 1994 to August 20, 2004, excluding the casual Christmas season hours, as these were the hours worked by the casual clerks in lieu of being worked by the full and part-time clerks. Subtracted from the remedy should be 500,000 hours for the hiring of casual clerks during the Christmas seasons from 1994 through 2003. The overtime payments due the appropriate full and part-time clerks should be calculated at the "then current overtime rates" between March of 1994 and August of 2004. If the parties wish, they may substitute "at the level 5, step 0 rate" or establish an equivalent average dollar amount applicable over that time period.

The recipients of the monetary awards are identified as follows: "All full and part-time clerk craft employees on the Pittsburgh P&DC's seniority rolls are to receive a prorated share of the remedy based upon the amount of time on the rolls during the period of the violation from March 25, 1994 to August 20, 2004."

I appreciate the Union's assertion that it should also be made whole as for every casual employee hired in lieu of a career employee, the Union arguably has suffered a financial loss. The Union's rationale is that as it is the exclusive representative for the career employees at the Pittsburgh P&DC, and as casual employees are not career, bargaining unit employees, when they are hired "in lieu of" career employees, there is a loss of dues revenues to the Union. While this may be true, the purpose of a remedy in a "casual in lieu of" grievance is to make restitution to the affected career employees by trying to restore the *status quo ante* as if career employees had done the work instead of the proscribed use of casual employees. An appropriate remedy would not appear to extend to the secondary loss of dues by a Union. This conclusion is supported by my review of the numerous National and Regional Awards submitted by the Union and the Postal Service regarding "casual in lieu of" grievances, wherein no arbitrator concluded that the scope of an appropriate remedy extended to the alleged subsidiary loss of dues revenues by the Union.

Award

The class action grievances are sustained. The Postal Service violated Article 7.1.B.1 by hiring casual clerks at the Pittsburgh, PA P&DC as other than a supplemental work force and in lieu of full and part-time clerks from March 25, 1994 until August 20, 2004.

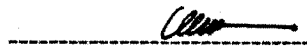
The appropriate scope of the remedy would be the hours worked by casual clerks from March 25, 1994 to August 20, 2004. Subtracted from the remedy should be

500,000 hours for the hiring of casual clerks during the Christmas seasons from 1994 through 2003. The overtime payments due the appropriate full and part-time clerks should be calculated at the "then current overtime rates" between March of 1994 and August of 2004. If the parties wish, they may substitute "at the level 5, step 0 rate" or establish an equivalent average dollar amount applicable over that time period.

The recipients of the monetary awards are identified as follows: "All full and part-time clerk craft employees on the Pittsburgh P&DC's seniority rolls are to receive a prorated share of the remedy based upon the amount of time on the rolls during the period of the violation from March 25, 1994 to August 20, 2004."

The Postal Service is tasked to calculate and effectuate this remedy.

I intend this Award to be sufficiently detailed to avoid a protracted dispute over its implementation. However, as my efforts may fall short, and interpretative questions remain, I retain jurisdiction over the remedy so as to resolve any questions or disputes.



Elliot Newman, Arbitrator

April 9, 2007
Pittsburgh, Pennsylvania