

Regular Arbitration Panel

In the Matter of the Arbitration

Grievant: Class Action

between

Post Office: Fort Myers, FL

UNITED STATES POSTAL SERVICE

USPS Case No: G15C-1G-C 17304855

and

APWU Case No: 2016807

AMERICAN POSTAL WORKERS

UNION, AFL-CIO

BEFORE: Zachary C. Morris, Arbitrator

APPEARANCES:

For the Service: Mike Thomas, Labor Relations Specialist

For the APWU: Jim DeMauro, National Arbitration Advocate

Place of Hearing: 14080 Jetport Loop, Fort Myers, FL 33913

Date of Hearing: Tuesday, August 22, 2017

Date of Award: Tuesday, October 24, 2017

Relevant Contract Provisions: Article 1.6 and Article 19

Contract Year: 2010-2015

Type of Grievance: Contract

Award Summary:

The grievance is sustained. Management violated the Clerk Craft Jobs MOU and Article 1.6 of the National Agreement by hiring temporary supervisors to perform the work of Lead Clerks at the Fort Myers P&DC.



Zachary C. Morris, Arbitrator

I. PROCEDURAL BACKGROUND

This grievance stems from an alleged violation of Article 1.6 and the Clerk Craft Jobs MOU. The grievance was denied at each Step of the grievance procedure and is properly before the Arbitrator for a full and final decision.

At the hearing, both the Postal Service and the Union were ably represented and were given a full and fair opportunity to present evidence, examine and cross examine witnesses, and make arguments. In reaching the conclusions and making the Award set forth herein, the Arbitrator has given full consideration to all evidence of record.

The parties agreed to submit post-hearing briefs in support of their positions. The briefs were to be postmarked by September 22, 2017. Both were properly postmarked by that date. The Arbitrator received the final brief on September 25, at which point the record was closed.

II. ISSUE

Did Management violate Article 1.6 of the 2015 Collective Bargaining Agreement when they hired holiday supervisors at the Fort Myers P&DC in 2016? If so, what shall be the remedy?

III. STATEMENT OF THE CASE

In the late summer of 2016, Management created a job posting via an external publication for a position entitled Supervisor Peak Season Temp. While this case arises out of the Fort Myers P&DC, the posting showed that similar positions were being created at the Tampa, Mid-Florida, Ybor City, Seminole, Orlando, and Manasota P&DCs.

The position was open only to non-bargaining unit annuitants – in other words, retired supervisors. The job was a temporary one, starting on November 1, 2016, and continuing only through January 15, 2017. This is the first time that such a position was ever created.

The functional purpose of the job was to assist “local management with supervisory functions due to peak season staffing and volume levels.” The duties and responsibilities of the position includes:

- 1) Supervises employees engaged in mail processing, distribution or delivery activities.
- 2) Monitors operational performance data throughout the tour; resolves routine problems; reports unusual operational problems and recommends solutions.
- 3) Coordinates mail flow activities with other supervisors on the tour.
- 4) Investigates accidents; prepares necessary reports; ensures compliance with regulations, policies and procedures.
- 5) Performs other supervisory duties as assigned.

Unrebutted testimony from two Union witnesses (then-Local Vice President Dan Gray and Lead Clerk Dave Grant) indicates that these temporary supervisors were not full-fledged supervisors as they did not approve leave or issue discipline. Rather, the two witnesses testified that they were performing the functions of a Lead Clerk – a position created in the 2010-2015 Collective Bargaining Agreement, and carried forward to the current Agreement. In response to Management's actions, the Union filed this grievance on November 14, 2016, alleging violations of Articles 1, 19, 25, and 37.

IV. POSITION OF THE UNION

The Union cautions the Arbitrator not to focus on whether these temporary supervisors were 204Bs. It is irrelevant because whether you call them 204Bs or Temporary Peak Season Supervisors, the outcome is the same – they were performing bargaining unit work. As such, this grievance is entirely about Article 1.6.A.

The duties and responsibilities for the position are almost exactly the same as those of a Lead Clerk. In their supervisory role, they performed only those duties that a Lead Clerk does – oversee the operation in conjunction with other Supervisors. They were not allowed to approve requests for leave. They were not allowed to issue discipline. These are the only supervisory roles that Lead Clerks are not allowed to perform as well. Credible testimony from the Union shows as much and Management put forth no witnesses to rebut this testimony.

These were obviously something less than full EAS Supervisors, as can be seen not only from what they did and didn't do, but also from their Activity Code. The code is 59-0, a designation never seen before.

Temporary Supervisors were eliminated with the Clerk Craft Jobs MOU, and the only exception to this rule is inapplicable in the instant grievance. There is nothing in the File to indicate that Management has the authority to hire temporary supervisors for the peak season, and Management's only witness admitted that no one consulted the EL-312 to determine if it was allowed or not.

Ultimately, these Lead Clerks were harmed by Management's actions because they were not maximized. The remedy for such a violation is spelled out in the 2012 JCIM. It states, "... the bargaining unit employee(s) who would have been assigned the work shall be paid for the time involved at the applicable rate."

Based on the unrebutted testimony, evidence and argument put forth, the Union requests that the grievance be sustained and that the Fort Myers Clerk Craft be made whole for all hours performed by the holiday supervisors at the applicable rate from November 14, 2016 through January 15, 2017.

V. POSITION OF THE SERVICE

Management points to the fact that these temporary supervisors are not 204Bs. They are not Lead Clerks. Rather, they are non-bargaining unit, contract employees hired for less than ninety days.

Article 3 grants the Service the exclusive right to "hire, promote, transfer, assign, and retain employees". It also grants Management the right to maintain efficiency. Efficiency is the main reason these hires were made. The idea was to have additional supervisors who could "hit the ground running" without any training required. They were clearly hired as EAS Level 17 employees and Management has every right to hire them. There is no requirement anywhere in the National Agreement or its associated handbooks and manuals that would require the Service to consult with the APWU prior to hiring a Supervisor.

Management points to the language in the Clerk Craft Jobs MOU: "The intent behind the creation of the Lead Processing Clerk and the Lead Sales and Services Associate is to provide oversight, direction and support, **in the absence of Supervisory presence** to bargaining unit employees...". This was clearly not the case in this instance, as there was Supervisory presence at the Fort Myers P&DC. As such, they were not performing the role of a Lead Clerk.

Further, the Service needed supervisory help on a more full-time basis. Lead Clerks are only performing their Lead Clerk duties one or two hours a day, whereas these temporary Supervisors were supervising eight hours each day. There was no loss of hours to any of the Lead Clerks, as they all worked forty hours a week.

Finally, just because this has never been done before does not establish a violation of the National Agreement. For these reasons, the Service requests that the grievance be denied in its entirety.

VI. OPINION

I will first address Management's objections to certain Union documents submitted at the hearing, and accepted provisionally. This grievance falls under the new AUGER system, which prevents additional evidence from being introduced into the Grievance File once it is sealed after Step 3.

In an MOU signed by Manager of Field Labor Relations Michael Mlakar and Director of Industrial Relations Tony McKinnon, an exception was created whereby "Step 4/s, Pre-arbs, Arbitration award, etc." may be added to the File. It seems the intent is that any documents interpreting the National Agreement or establishing national policy would fall under this exception.

For this reason, I have allowed into evidence a Lead Clerk Questions & Answers document signed by Manager of Contract Administration Patrick Devine and Clerk Craft Director Rob Strunk. Management also argued that this document was not relevant to this grievance, but I disagree, finding it helps to establish the fact that only regular Supervisors and Lead Clerks should be supervising clerks.

The Union also sought to admit an e-mail chain between Assistant Clerk Craft Director Lamont Brooks and Manager of Contract Administration Ricky Dean. I would not feel it appropriate to admit this into evidence, as it is nothing more than a correspondence between two individuals at the National Level of both the Postal Service and the APWU. While the AUGER exception does use the word, "etc.", I believe the intent was that official national decisions and documents could be entered. This e-mail chain certainly does not rise to that level. Consequently, it has not been considered.

Turning now to the merits, both parties acknowledged that hiring these sorts of temporary supervisors is a rather novel idea, having never been done before. Consequently, there is no contractual language the Union can turn to expressly prohibiting such actions.

However, it seems to me that Management's actions here do violate the intent of the Clerk Craft Jobs MOU, and consequently Article 1.6.A.

Management points to the language, "in the absence of Supervisory presence", to bolster their argument that these temporary supervisors were not acting as Lead Clerks. However, a further reading of the MOU shows that Lead Clerk duty assignments should be filled where clerks work without direct supervision AND in any facilities that have a complement of at least five clerks. The absence of direct supervision is not a prerequisite to having a Lead Clerk. I believe the language, "in the absence of Supervisory presence", is included to ensure that Lead Clerks still defer to a Supervisor's decisions if one is present.

So were these temporary supervisors performing the job of a Lead Clerk? All of the evidence concerning the duties they actually performed indicates that they were. The unrebutted testimony given at the hearing indicates that these temporary supervisors did everything that Lead Clerks do and were also limited in the same way that a Lead Clerk is. They could not and did not issue discipline or approve leave requests. Even the duties and responsibilities laid out in the job posting shows nothing about issuing discipline or accepting leave requests. In fact, those duties are quite similar to those of a Lead Clerk – "Responsibilities include, but are not limited to, resolving problems that may occur during tour operations and determining when a supervisor should be involved, work as a working leader of mail processing employees in a mail processing activity; maintaining records related to mail on hand and mail processed; maintaining a working knowledge of regulations, policies and procedures related to mail processing activities." It seems to me that this newly created position was essentially a Lead Clerk position, but without the mail processing duties that all Lead Clerks are still responsible for, and the testimony supports this conclusion.

I certainly understand the appeal of hiring EAS annuitants as peak season supervisors. But in doing so, Management violated the intent of the Clerk Craft Jobs MOU – that intent being granting some supervisory powers to qualified members of the bargaining unit, while simultaneously eliminating short-term supervisors. It seems to me that the Union bargained for,

and gained, the right to be supervised by nobody but either a full-time regular Supervisor or a Lead Clerk. The Peak Season Supervisors hired in Fort Myers are neither.

While they were something less than regular supervisors, these annuitants were EAS Level 17 employees. By showing that they were performing the work of Lead Clerks, the Union has established a violation of Article 1.6.A.

The remedy for such a violation is clearly spelled out in the parties' JCIM – "Where bargaining unit work which would have been assigned to employees is performed by a supervisor and such work hours are not *de minimus*, the bargaining unit employee(s) who would have been assigned the work shall be paid for the time involved at the applicable rate." Accordingly, the Union's requested remedy shall be granted.

VII. AWARD

For the reasons stated above, the grievance is sustained. The Fort Myers Clerk Craft is to be made whole for all hours performed by the holiday supervisors at the applicable rate from November 14, 2016, to January 15, 2017. The application of this remedy is remanded to the local parties and I will retain jurisdiction in the event any dispute arises.



Zachary C. Morris, Arbitrator

October 24, 2017