

APWU

American Postal Workers Union, AFL-CIO

1300 L Street, NW Washington, DC 20005

Mike Morris, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-331-0992 (Fax)

Fax & First Class Mail
Initiate National Dispute

August 17, 2011

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

National Executive Board

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Director, Support Services Division

Shayn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

John H. Dirzios
Coordinator, Northeast Region

Priscilla Vogel
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Re: APWU#HQTG20110464; Denial of Retreat Rights

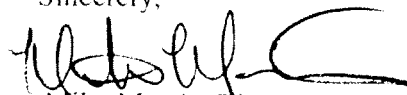
Dear Mr. Tulino:

In accordance with the provisions of Article 15, Section 2 and 4, of the Collective Bargaining Agreement, the American Postal Workers Union is initiating a Step 4 dispute regarding denial of retreat rights.

The Postal Service has issued instructions to the field that excessed employees who have exercised their retreat rights pursuant to Article 12 will be denied the opportunity to retreat by bidding as provided in Article 37.3.B.1 on posted non-traditional full-time duty assignments. Article 37.3.B.1 says "(t)he employee(s) shall have the right to bid for vacancies within the former installation and the written request for retreat rights shall serve as a bid for vacancies in the level from which the employee was reassigned and for all residual vacancies in other levels for which the employee has expressed a desire to retreat." Nothing was negotiated that would abridge this right.

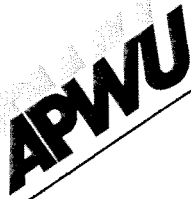
It is requested that you or your designee contact my office at (202) 842-4273 in order to schedule a meeting to discuss this important issue pursuant to Article 15, Section 2 and 4 of the CBA.

Sincerely,



Mike Morris, Director
Industrial Relations

MM:bw
OPEIU #2
AFL-CIO



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American Postal Workers Union, AFL-CIO

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Article 15 - 15 Day Statement of Issues and Facts

September 12, 2011

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

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Coordinator, Northeast Region

Princella Vogel
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Re: APWU#HQTG20110464; Denial of Retreat Rights

Dear Mr. Tulino:

In accordance with Article 15.4.D of the National Agreement, this letter is the Union's 15-day statement setting out the Union's understanding of the issues involved and the facts giving rise to such issues in the national dispute initiated by my letter of August 17, 2011, which is incorporated here by this reference.

The issue identified by the Union in its dispute and the basic facts of this dispute are the same: it is the Union's understanding that the Postal Service has issued, formally or informally, directives, instructions, and/or guidance to the field that violate the National Agreement by directing that excessed employees who exercise their retreat rights in accordance with Article 12 of the National Agreement will not be permitted to retreat by bidding on posted non-traditional full-time duty assignments. This limitation creates an exception to the process and rights set forth in Article 12, Article 37.3.B.1, and the Non-Traditional Full-Time (NTFT) Duty Assignments MOU by permitting the Postal Service to distinguish between the types of duty assignments available to employees who wish to exercise their retreat rights. It is the Union's position that this exception is unfounded and violates the terms of the National Agreement.

The first paragraph of Article 37.3.B.1 states:

In the Clerk Craft, an employee(s) involuntarily excessed from the Craft or installation (Article 12.5.C.5) shall be entitled at the time of such reassignment to file a written request to return to the first vacancy in the craft and installation from which reassigned. Such request for retreat rights must indicate whether the employee(s) desires to retreat to the same, lower, and/or higher salary level assignment and, if so, what salary level(s). The employee(s) shall have the right to bid for vacancies within the former installation and the written request for retreat rights shall serve as a bid for vacancies in the level from which the employee was reassigned and for all residual vacancies in other levels for which the employee has expressed a desire to retreat. The employee(s) may

retreat to only those assignments for which the employee(s) would have been eligible to bid. If vacancies are available in the specified lower, higher, or same salary level, the employee will be given the option.

The NTFT Duty Assignments MOU also addresses retreat rights and states:

Excessed employees with retreat rights (under 12.5.C.4 or 12.5.C.5) may decline the opportunity to retreat to non-traditional full-time assignment [sic] without relinquishing the right to retreat to posted traditional full-time regular duty assignments.

(Emphasis added).

It is the Union's position that the National Agreement specifically requires that the Postal Service make available to employees exercising their retreat rights the opportunity to bid on all available duty assignments, including those that are NTFT assignments. Not only does the NTFT Duty Assignments MOU not change the rule of Article 12 and Article 37.3.B.1 that employees can bid, and bid automatically by making a written request to return, on any available vacancy, but it expressly affirms that NTFT duty assignments are not only available but must be offered to any employee whose requirements the NTFT duty assignments satisfy. The employee has the right to decline the NTFB duty assignments, but as the MOU provides, doing so does not impact the employee's right to have his or her request continue to operate as an automatic bid on other NTFB duty assignments and posted traditional full-time regular duty assignments. The National Agreement expressly requires, therefore, that NTFT duty assignments be available for bidding as part of employees' retreat rights under Article 12 and 37 and the NTFT Duty Assignment MOU, that the Postal Service offer such duty assignments to retreating employees, and that the employee can decline the NTFT duty assignment once it is offered without prejudicing his or her other retreat opportunities.

The Postal Service's position appears to be, simply, that it has the discretion to make an exception to the explicit retreat rights in the National Agreement for NTFT duty assignments. No provision of the National Agreement gives the Postal Service that discretion or permits such an exception to be made; to the contrary, the parties specifically agreed that NTFT duty assignments would be part of the retreat process.

Finally, as remedy we request the Employer cease and desist from this, or any like or related violations of the National Agreement. In addition, we request that all affected employees, the Union and the bargaining unit be made whole, including but not limited to compensating affected employees for lost work hour opportunities and disgorging any savings obtained by the Postal Service because of its violations.

Sincerely,



Mike Morris, Director
Industrial Relations

APWU

Fax and First Class Mail

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Appeal to Arbitration, National Dispute

September 15, 2011

Mike Morris, Director
Industrial Relations
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202-842-4273 (Office)
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National Executive Board

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Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: USPS Dispute #Q11C4QC11322494, APWU #HQTG20110464
Denial of Retreat Rights

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,


Mike Morris, Director
Industrial Relations

cc: Residents Officers

MM:bw
OPEIU #2
AFL-CIO



September 12, 2011

Mr. Mike Morris
Director, Industrial Relations
American Postal Workers Union,
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

**CERTIFIED MAIL NUMBER:
7010 2780 0003 6469 2421**

RE: Q11C-4Q-C 11322494
APWU # HQTG20110464
Washington, DC 20260-4100

Dear Mike,

In accordance with Article 15.2 (Step 4) (a), the Postal Service is providing you with its understanding of the issue involved. The parties have discussed the issue in this dispute on several occasions and have been unable to reach an agreement. Time limits at this level were extended by mutual consent, as it relates to the exchange of position statements ("15-day letters"), with the understanding that the Postal Service's position statement would be mailed no later than by September 12, 2011.

Issue Presented

The issue presented by the Union, according to its August 17, 2011 letter in initiating this dispute, alleges that the USPS has issued instructions to the field that excessed employees who have exercised their retreat rights pursuant to Article 12 will be denied the opportunity to retreat by bidding as provided in Article 37.3.B.1 on posted Non-Traditional Full-Time (NTFT) duty assignments.

APWU Position

The Postal Service has violated the Agreement by issuing instructions to the field that excessed employees who have exercised their retreat rights pursuant to Article 12 will be denied the opportunity to retreat by bidding as provided in Article 37.3.B.1 on posted NTFT duty assignments. Article 37.3.B.1 states: "(t)he employee(s) shall have the right to bid for vacancies within the former installation and the written request for retreat rights shall serve as a bid for vacancies in the level from which the employee was reassigned and for all residual vacancies in other levels for which the employee has expressed a desire to retreat." Nothing was negotiated that would abridge this right.

USPS Position

It is the Postal Service's position that while the union has alleged violations of the Agreement, the union has failed to identify a specific national interpretive dispute as required by Article 15.2 (step 4). It is the Postal Service's position that the Union has failed to support their allegations; in that the union does not refer to any specific instance where the Postal Service has actually issued such

instructions; the person(s) issuing such; or the date they were issued. The union has failed to claim, much less demonstrate, that any field manager, postmaster or supervisor ever acted in accordance with these claimed instructions. While alleging intent to violate the Agreement, the union has failed to demonstrate that any actual violation has in fact occurred. Perhaps more importantly, the denial of these retreat rights under the circumstances of the newly-negotiated NTFT Duty Assignments MOU, are not contractually prohibited.

The Non-Traditional Full-Time (NTFT) Duty Assignments MOU, as agreed by the parties, provides for new work schedules of 30-48 hours a week. In addition, the MOU provides (only) that there will no longer be part-time regulars (PTR's) in the clerk and motor vehicle crafts, there will no longer be PTF clerks in Function 1 and offices Levels 21 and above, and there will no longer be PTF's in the motor vehicle craft. The agreement, as negotiated, provides that the PTF's/PTR's would be converted into the newly-created NTFT schedules of 30-48 hours per week. There was no agreement to post duty assignments for these PTF's/PTR's. The union expressed its desire, during discussion of Questions and Answers designed to clarify the new agreement to apply the strictures of Article 37 and its posting requirements only after agreement had been reached on the collective bargaining agreement. Thereafter, the union asserted that in the event duty assignments were created upon the conversion of the PTF's/PTR's, employees with retreat rights should be allowed to retreat by seniority into these duty assignments.

It is undisputed that retreat rights, in accordance with Articles 12.5.C.5.b(6) and 37.3.B.1, are triggered by the first vacancy, in the level from which the employee was reassigned, or residual vacancies in other levels for which the employee has expressed a desire to retreat. The employee's written request, at the time of reassignment, acts as a bid and the employee may only retreat to those assignments for which the employee would have been eligible to bid. All newly established or vacant Clerk Craft duty assignments shall be posted in accordance Article 37.3. However, NTFT Duty Assignments have not been posted. Since no NTFT positions have been posted, the Union's filing of this dispute is premature, in that there have been no duty assignments posted that would trigger retreat rights under Article 12.

It is undisputed that the parties reached agreement on June 28, 2011 on a set of Questions and Answers (Q & A's) which provided, among other things, that the PTF's and PTR's would be converted to full-time on August 23, 2011.¹ In addition, in response to the union's requests during the discussions for the Q & A's to post duty assignments for the converted PTF's/PTR's, the Union was notified that, even if the Postal Service agreed to post the duty assignments, Postal systems requirements would not be able to accommodate the posting of any NTFT duty assignments until late September or early October. Although the Postal Service had not agreed to post the duty assignments, the Postal Service asked if the union would consider delaying the PTF's/PTR's conversion to synchronize with the potential NTFT duty assignment postings. The union flatly refused to delay the conversions. As a result, the PTF's/PTR's were given schedules from 30-48 hours a week beginning August 27, 2011.

The creation of Non-Traditional Full Time (NTFT) schedules, at the suggestion of the APWU, and as agreed by the parties, was intended to give the USPS the ability to re-tool full-time assignments to provide operationally needed flexibility, with the express intent of minimizing the circumstances in which excessing would be required. Article 12.5.B defines the principles and requirements of involuntary reassignments, the first of which is that, "Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service."

¹ Subsequent agreement was reached to provide for the conversions on August 27, 2011, the first day of pay period 19.

Recognizing that the conversion of all PTR's and PTF's, in accordance with the NTFT Duty Assignments MOU, has added significantly to the full-time complement of the USPS, it would not make sense contractually, or operationally, to retreat excessed clerks into newly created NTFT assignments, established with the expressed intention of minimizing the circumstances which would require excessing, only to cause a new excessing event, impacting the same employees, or newly converted PTF's/PTR's, and restricted to a 50 mile radius in accordance with the 2010 Agreement and the new Minimizing Excessing MOU and the newly-amended Transfer Opportunities to Minimize Excessing MOU.

Stated simply, the union is asking that the Postal Service convert the PTF's/PTR's, post duty assignments (which are created for these converted PTF's/PTR's) for them, allow excessed employees who are 40-hour full-time-regular (FTR) employees to retreat back into those duty assignments, and cause the excessing out of the installation of the converted PTF's/PTR's, for whom the duty assignments were created. Clearly, the retreat of FTR employees back into duty assignments of 30-48 hours a week, created for the converted PTF's/PTR's, is inconsistent with the NTFT scheduling concept.² Had the union imposed these requirements, particularly in light of the new 50-mile excessing restrictions under the Minimizing Excessing MOU, during the negotiation of the NTFT Duty Assignments MOU, no agreement to convert the PT's/PTR's would have been accepted by the Postal Service. The agreement, as negotiated by the parties, provides only for the conversions of the affected PTF's and PTR's.

It is the USPS position, based on the agreement of the parties, that the NTFT Duty Assignments MOU, given its unique provisions, including the conversion of PTF's & PTR's, eclipses the pre-existing requirements under Articles 12 & 37. For the purpose of conversions to full-time, the NTFT MOU pre-dominates the already existing requirements. Clearly, the NTFT Duty Assignments MOU steps outside the boundaries of Articles 7 and 8 in its new recognition of full-time regular schedules of 30-48 hours a week departing from the traditional 5 day a week, 8 hours a day schedules. Ordinarily, when duty assignments are created, Articles 12 and 37 would apply. However, in this unique conversion of the PTR's and PTF's, the NTFT Duty Assignments MOU, as agreed by the parties, prevails. This reasoning is consistent with the intent of the NTFT Duty Assignments MOU and the agreed-upon intent to minimize the circumstances requiring excessing, as explained above.

As such, the Union has not shown any violations of the Agreement and/or the NTFT Duty Assignments MOU.

Past practice, negotiations history, case law, handbooks and manuals, and reading of the National Agreement, and arbitral authority support management's interpretation

Sincerely,



Patrick M. Devine
Acting Manager
Contract Administration (APWU)

² Consistent with the concept of NTFT duty assignments being created for the PTF's/PTR's being converted, the parties agreed in Question #35 of the June 28, 2011 Q & A's that an excessed clerk or MVS employee who was full-time as of May 23, 2011 would not relinquish retreat rights by declining to retreat to NTFT duty assignments of less than 40 or more than 44 hours a week.