

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	(GRIEVANT: APWU President
between)	POST OFFICE: (Not applicable)
UNITED STATES POSTAL SERVICE	(CASE NO: H4C-NA-C 32
and)	
AMERICAN POSTAL WORKERS UNION)	
AFL-CIO)	

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the U.S. Postal Service:

L. G. Handy
Manager, Labor Relations
Salt Lake City

For the Union:

Richard I. Wevodau
Director, Maintenance Div.

Place of Hearing:

Washington, D.C.

Date of Hearing:

February 23, 1988

Dates of Post-Hearing Briefs:

April 8 and 29, 1988

AWARD:

To the extent to which the grievance protests the Qualifications Standard for the Building Maintenance Custodian job, it is denied.

To the extent to which the grievance protests the Position Description of the Building Maintenance Custodian job, it is remanded to the parties for further discussion and settlement in light of the comments made at the arbitration hearing.

Date of Award: May 6, 1988


Richard Mittenthal
Arbitrator

BACKGROUND

This grievance, filed at the national level by the APWU, protests certain aspects of the Position Description and Qualifications Standard issued for the Building Maintenance Custodian job. The APWU insists that the wording of these documents is improper. The Postal Service disagrees.

In certain smaller Postal Service facilities, routine building maintenance work was customarily handled in two different ways. If no building maintenance employee was authorized for a facility, the work was accomplished by sending a maintenance employee there from the nearest Sectional Center. If one building maintenance employee was authorized for the facility, ordinarily a Fireman-Laborer, he performed the work. The basic function of the Fireman-Laborer, a Level 4 job, is to "operate low pressure heating plant, make minor repairs to building and equipment, and perform manual labor in connection with maintenance and cleaning of the buildings and grounds..." The Qualifications Standard for this position stated "applicants must be physically able to perform efficiently the duties of the position." It did not spell out the kinds of physical effort required of the job.

The Postal Service established a Building Maintenance Custodian position, also Level 4, on July 19, 1985. Its purpose was to reduce Sectional Center maintenance costs by providing smaller facilities with their own building maintenance employee wherever the maintenance workload was sufficient to justify this action. It contemplated also that a Building Maintenance Custodian could be used to fill future Fireman-Laborer vacancies.

The Position Description of the Building Maintenance Custodian reads in part:

"Basic Function

Serves as the principal maintenance service employee in a postal facility where no maintenance service employee of a higher level is provided. Participates in the normal laboring, cleaning, and maintenance activities required to keep the postal building, equipment, and grounds in proper condition.

"Duties and Responsibilities

5. Operates simple heating, ventilation and air conditioning systems and performs designated maintenance and repair operations of a routine nature.

6. Performs custodial duties such as but not limited to, cleaning and scrubbing floors, dusting furniture and fixtures, cleaning walls and windows, cleaning hardware and toilet fixtures, caring for lawns and shrubs, cleaning sidewalks and driveways." (Emphasis added)

The Qualifications Standard reads in part:

"Physical Requirements

Applicants must be physically able to perform efficiently the duties of the position which may require arduous exertion involving standing, walking, climbing, bending, reaching, and stooping for prolonged periods of time and intermittent lifting and carrying of heavy tools, tool boxes, and equipment on level surfaces and up ladders and stairways. Applicants must have vision of 20/40 (Snellen) in one eye and the ability to read without strain printed material the size of typewritten characters is required. Corrective lenses are permitted. The ability to distinguish basic colors and shades is also required. Applicants will be required to hear the conversational voice in a noisy environment and to identify environmental sounds, such as equipment running or unusual noises. Hearing aids are permitted. (Emphasis added)

The APWU believes there are too few words in the Position Description. It asks that the underscored language in item #5 be enlarged to include after the term "air conditioning systems", the explanatory phrase "such as window unit or package unit." It believes there are too many words in the Qualifications Standard. It asks that the underscored language in Physical Requirements be amended to delete all the explanatory material in the first sentence, that is, all the words following "the duties of the position..." It contends that these additions and subtractions are necessary to comply with the Position Description requirements of the Employee & Labor Relations Manual (ELM) and the Qualifications Standards requirements of ELM 312 and Handbook EL-303.

The Postal Service denies that the Position Description and Qualifications Standard in question involve any violation of the National Agreement, ELM or EL-303. It asserts there was good reason for the greater detail in the Qualifications Standard. Its objectives were to make medical personnel more aware of the nature of the physical demands placed on a prospective Building Maintenance Custodian and to make applicants for the job more aware of what precisely they will be called upon to do. It alleges that the words it used to describe the job and its qualifications accurately reflect the job content and that no sound basis exists for the additions and subtractions sought by the APWU.

DISCUSSION AND FINDINGS

As for the Position Description issue, it is clear that Management contemplates that the Building Maintenance Custodian is to operate only "simple...air conditioning systems" and that a "window unit" or a "package unit" is an example of such a "system." The parties' differences, in short, seemed to be more a matter of form than of substance. Accordingly, I chose at the arbitration hearing to remand this phase of the dispute to the parties in the belief that they could quickly resolve this issue without need of a ruling. The parties agreed to this arrangement and hence no decision is necessary on this point at the present time.

As for the Qualifications Standard issue, the EL-303 states:

"The purpose of these qualification standards is to establish evaluation criteria so that U. S. Postal Service positions are staffed with fully qualified persons whose job performance will provide good customer service and efficient postal operations. The qualification standards state the significant knowledge, skills, and abilities essential for successful job performance.

"Physical requirements are included in some qualification standards. These requirements are intended primarily for applicants when entering the Postal Service. Physical examinations for inservice applicants or bidders will only be administered when the physical requirements for the new position are different than those required in the employee's former position. All employees must be physically able to perform the duties of the position applied [for] without hazard to themselves or others." Chapter 1, Paragraphs 110 and 141, respectively. (Emphasis added)

The APWU has no problem with Management stating in the Qualifications Standard for the Building Maintenance Custodian that the employee "must be physically able to perform the duties of the position." It objects to Management detailing the "physical...duties..."; it objects to the "arduous exertion" language. It refers to Article 19 of the National Agreement which permits Management to "make changes" in handbooks, manuals, and published regulations that are "fair, reasonable, and equitable"; it refers also to ELM 312.22 which requires the "application" of Qualifications Standards to be "consistent with the applicable provisions of the appropriate collective bargaining agreement." It alleges that the term "arduous exertion" is "subjective, not measurable and open to varying interpretation." Therefore, it insists, this term "cannot be applied equally in each and every instance..." and will make it "extremely difficult" for a doctor

to render an "objective evaluation." For these reasons, it claims the use of the "arduous exertion" language must inevitably lead to "unfair, unreasonable and unequitable" results in violation of Article 19.

The Postal Service contends that Management has the right under Article 3 to determine the "methods" and "means" by which postal work is to be conducted, including the physical requirements for the performance of a job. It believes the physical requirements set forth in a Qualifications Standard for a new position are not subject to substantive challenge under Article 19. It urges that any holding to the contrary would lead to mischievous results with "profound implications for the legal obligations of the Postal Service and its Unions."

The record in this case has not been sufficiently developed to justify any ruling on this broad Article 19 issue. I shall assume, without deciding these points, that the Qualifications Standard in dispute involved a "change" in a handbook, manual or published regulation and that the "fair, reasonable, and equitable" test of Article 19 could properly be applied to such a "change." For the following reasons, however, there has been no violation of Article 19, the ELM or the EL-303.

The Qualifications Standard in dispute says the Building Maintenance Custodian "may require arduous exertion..." Surely, the "cleaning" or "scrubbing" of "floors" or the "cleaning" of "walls", "sidewalks" or "driveways" could occasionally impose heavy physical demands on an employee. The level of physical effort would depend on the kind of substance involved (e.g., dirt, snow, ice), the extent to which it had adhered to a surface, and the piece of equipment used to remove it. Similarly, intermittent "lifting and carrying" of heavy items could mean strenuous physical work. The APWU does not really deny that "arduous exertion" is necessary from time to time. Its view rather is that this term is too vague and subjective to be used fairly in a Qualifications Standard.

The fact is, however, that physical requirements are often expressed in general terms. The range of possible physical tasks is too great to permit the kind of precision the APWU apparently seeks. Indeed, other portions of this Qualifications Standard are also expressed vaguely. For example, the proficiency requirements speak of the applicant having the "ability to communicate in writing...the ability to transmit and receive written information..." and the "ability to work with others...the ability to work safely and efficiently in cooperation with fellow employees..." This language, although just as vague as the physical requirement in question, has not been challenged by the APWU.

Whether an employee is capable of an occasional "arduous exertion" will depend on what the actual physical work is in a given facility and what the actual physical condition of the employee is. True, some subjective judgments are involved. But that is commonplace in the administration of physical fitness criteria under a collective bargaining agreement. Even if the "arduous exertion" language were not in this Qualifications Standard, a doctor would still have to make some subjective judgments on the basis of what he knew of the physical requirements of the job as written in the Position Description. This case must turn on whether the physical requirement in question - an occasional task demanding "arduous exertion" - fairly depicts the nature of the position. I believe it does and Management therefore was free to insert these words into the Qualifications Standard.

This ruling does not prejudice the rights of any incumbent Fireman-Laborer or Building Maintenance Custodian. For the EL-303 plainly states that the physical requirements found in a Qualifications Standard "are intended primarily for applicants when entering the Postal Service." And, according to the EL-303, an incumbent Fireman-Laborer applying for a Building Maintenance Custodian vacancy could be required to take a physical examination only if "the physical requirements for the new position are different than those required in the employee's former position." A reading of the Position Descriptions of these two jobs reveals that their physical requirements are essentially the same.

My conclusion is that the Qualifications Standard in dispute does not violate the National Agreement or any handbook, manual or published regulation.

AWARD

To the extent to which the grievance protests the Qualifications Standard for the Building Maintenance Custodian job, it is denied.

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