National Arbitration Panel

In the Matter of Arbitration	)	
	)	
	)	
between	)	
	)	Case No.
	)	C90C-1C-C 93018526
United States Postal Service	)	
	)	Final Award-Merits
	)	
and	)	(Crossing Wage Level)
	)	
	)	
American Postal Workers Union	)	

Before: Shyam Das

Appearances:

For the Postal Service: Lynn D. Poole, Esquire

For the APWU: Arthur M. Luby, Esquire

Place of Hearing:	Washington, D.C.
Dates of Hearing:	July 11, 2002 April 22, 2003 August 14, 2003 August 15, 2003
Date of Interim Award:	December 13, 2002
Date of Final Award:	September 7, 2004
Relevant Contract Provision:	Articles 3, 7.2 and 25
Contract Year:	1990-1994
Type of Grievance:	Contract Interpretation

Award Summary

The Postal Service is not required to justify cross-wage level assignments within the Clerk Craft such as those involved in this grievance under Article 7.2.B, and that provision is not violated by such assignments.

Shyam Das, Arbitrator

On August 16, 1992, the Union filed a class action grievance in Lehigh Valley, Pennsylvania. The basis for the grievance is set forth in the Step 2 appeal form as follows:

> During the period May 29, 1992 - June 5, 1992, management used 23 different level 5/6 clerks to perform duties in level 4, in the automation area of the facility. These 23 clerks accounted for a total of 246 hours of work performed in lieu of level 4 clerks.
>
> The Collective Bargaining Agreement (CBA) provides no language for such crossing of wage levels. Article 7.2.B provides for such crossing of occupational groups if in the same wage level. This assignment clearly violates the CBA since it is to circumvent the assignment of overtime work to the level four clerks and the posting of bid positions to the clerk craft.
>
> These assignments are being made not because of light workload in the level 5/6 areas, since most of these clerks are removed from their primary job areas and that mail then sits. Management must compensate the level 4 clerks at the appropriate overtime rate to include penalty overtime for all hours worked by the level 5/6 clerks.

The grievance was appealed to Step 3 without a Step 2 decision. The Step 3 appeal notes: "The parties have agreed that this grievance would be the representative case and that no further grievances must be filed." After the Postal Service denied the grievance at Step 3, it was appealed by the Union to regional arbitration, at which level the Postal Service declared it raised an interpretive issue.

On December 10, 1993 the Union appealed the grievance to Step 4. This appeal identified the applicable contract provision as Article 7.2 and the issue as "Crossing Wage Levels". There was no Step 4 meeting. On May 9, 1994, the Union appealed the case to National Arbitration, again identifying the applicable contract provision as Article 7.2.

At the outset of the arbitration hearing on July 11, 2002, the Union took the position that this grievance does not raise a legitimate national interpretive issue and should be remanded to the region. The Postal Service disagreed. The parties agreed to bifurcation to permit an initial determination to be made as to whether this grievance raises an interpretive issue properly to be resolved at National Arbitration, and, if so, what that issue is.

In an Interim Award, issued on December 13, 2002, I concluded that:

> [T]his grievance does raise an interpretive issue of general application for purposes of Article 15.4.D.1 of the 1990-1994 National Agreement. That issue is whether Article 7.2 applies to, and is violated by, intra-craft cross-wage level assignments such as those involved in this grievance.

The parties then addressed the merits of this case at hearings held on April 22 and August 14-15, 2003.

The intra-craft cross-wage level assignments protested in the underlying Lehigh Valley grievance occurred some time after the Lehigh Valley office moved into a new location. At the new location there were only two MPLSMs staffed by Level 5 and 6 Clerks, in contrast to three MPLSMs at the prior facility. The number of pieces of automated equipment staffed by Level 4 Mail Processors increased from six to 12 or 13. Lehigh Valley Supervisor Ronald Worrich testified that after the move, there was an excess number of Level 6 Clerks. There was only four hours of work for them at Level 6, so he assigned them to Level 4 work on a regular and recurring basis.[1]

Leroy Moyer, who was the Clerk Craft Director for the Lehigh Valley Local when this grievance was filed, testified that the Level 4 employees complained that they were being deprived of overtime opportunities. He also was concerned that there was an insufficient number of Level 4 positions after the move to the new facility.

Both Moyer and Worrich testified that prior to the move to the new facility there were occasions when Level 6 or 5 Clerks were temporarily assigned to Level 4 work to relieve Mail Processors on their lunch break or to cover an absence. Moyer stressed that this was not done on a regular and routine basis. He said he knew these assignments were "wrong", but he tolerated

[1] The grievance disputes whether there was insufficient Level 6 work, but for purposes of deciding the interpretive issue I will assume that there was insufficient work and that this was the reason for the assignment to Level 4 work.

them in the context of the cooperative relationship that existed between the Local and management.

Article 7, Section 2 of the 1990-1994 National Agreement in effect when the grievance was filed in 1992 provides:

> Section 2. Employment and Work Assignments
>
> A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:
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> 1. All available work within each separate craft by tour has been combined.
>
> 2. Work of different crafts in the same wage level by tour has been combined.
>
> The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.
>
> B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's

knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Article 25 provides:

ARTICLE 25
HIGHER LEVEL ASSIGNMENTS

Section 1. Definitions

Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

Section 2. Higher Level Pay

An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate.

In a regional arbitration decision (Case No. E7C-2E-C 48567) issued on May 15, 1992 -- shortly before the present grievance was filed -- Arbitrator Bernard Cushman held that the

assignment of Level 6 and 5 Clerks to Level 4 Mail Processor work violated Article 7.2. The Cushman Award, as had some earlier regional arbitration decisions, rejected the Postal Service's position that intra-craft assignments are not within the purview of Article 7. Most, if not all, other regional arbitrators who have been faced with this issue after the Cushman Award have reached the same conclusion.[2]

The Postal Service takes the position that Article 7.2.B does not prohibit cross-wage level assignments unless they are cross-craft assignments. This case, it stresses, involves only cross-wage level assignments within the Clerk Craft. It insists that the Cushman Award and other regional arbitration decisions holding that intra-craft assignments are within the purview of Article 7 are incorrect. It also points to some regional decisions that support the Postal Service's position.

UNION POSITION

The Union contends that Article 7.2.B specifically provides that employees can only be assigned available work "in the same wage level" in the event of insufficient work in the employee's own scheduled assignment. This applies to intra-craft as well as cross-craft assignments. The Cushman Award and other regional arbitration decisions reaching the same conclusion are consistent with the language of the contract and

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[2] Evidently, a considerable number of grievances involving this issue are being held in abeyance by agreement of the parties, pending the decision in this case.

are directly rooted in National Arbitration awards issued by Arbitrators Richard Bloch and Richard Mittenthal.

The Union rejects the Postal Service's argument that Article 7.2.B does not really mean what it says. On the basis of bargaining history and the parties' purported practice, the Union asserts, the Postal Service has claimed at different points in this case that Article 7.2.B means that employees can be assigned across wage levels if (a) they maintain their rate, or (b) provided the assignment is not across craft lines. The proffered interpretations, the Union maintains, contradict one another and, in any case, are unsupported by evidence.

The Union stresses that the bargaining history witnesses presented by the Postal Service did not testify that the Postal Service believed that Article 7.2.B, which was included in the initial 1971 National Agreement, was designed or intended simply to protect craft jurisdiction. They testified it was not intended to protect jurisdiction at all, but rather to provide rate protection -- an employee assigned to a lower level position would continue to be paid at his scheduled wage level. That was the basis on which the Postal Service sought to delete the words "in the same wage level" as superfluous -- in light of Article 25.2 -- in subsequent contracts. The Unions successfully resisted such a change, and in 1982 Arbitrator Mittenthal rejected the Postal Service's contention that Article 7.2.B should be read, in light of its bargaining history, as not prohibiting cross-craft assignment to a higher level job.

The Union freely concedes that craft jurisdiction is a matter of utmost sensitivity in the Postal Service. But it stresses that if the parties had intended only to protect craft jurisdiction they could and would have done so directly, rather than by indirectly and abstractly expressing craft jurisdiction concerns in terms of wage level.

The Union contends that the record also fails to support the Postal Service's claim that the Union acquiesced to a practice of allowing temporary reassignment across wage levels, provided such assignments did not cross crafts.[3] The weight of the evidence establishes not only that there was not a consistent mutually understood practice of allowing the sort of reassignment at issue here, but also that in most offices such assignments were protested. Moreover, the Postal Service provided no documentation that the National APWU believed that only cross-craft assignments had to be within the same wage level. With the exception of one alleged after-hours discussion with former Clerk Craft Director Kenny Wilson, there was no testimony that any Headquarters National Union officer held such a view.

At best, the Union argues, the record shows that different Locals initially took different approaches to enforcement of Article 7.2.B when Clerks were assigned across

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[3] The Union does not dispute that Level 6 Clerks frequently were assigned (at level 6 pay) to distribution work performed by level 5 Clerks, but it stresses that such work is included in the Level 6 position description.

wage levels in and out of Mail Processor operations because of insufficient work. The Union asserts that these differences evaporated as the Mail Processor work force grew and became more insistent on contractual protection, and that since the late 1980's the Union's position on Article 7.2.B has been consistent and completely in accord with the position taken both here and before Arbitrator Cushman.

The Union points out that it does not take the position that Clerks (or any of its crafts) can never be assigned across wage levels. Its position is that, per the language of Article 7.2.B, "insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment" is not a contractually authorized reason to assign an employee to work outside the employee's wage level. Consistent with this language, when Lehigh Valley Clerk Craft Director Moyer was dealing with an occasional de minimis need to provide temporary staffing in OCR operations with higher level Clerks to keep the mail flowing, he declined to pursue grievances. When the reason for such cross level assignments became regular insufficient work in the normal assignments of Level 5 and 6 Clerks, he appropriately sought to enforce the restrictions of Article 7.2.B.

The appropriate remedy in this case, the Union asserts, is to provide overtime pay to Level 4 Mail Processors on the Overtime Desired List commensurate with the hours worked by higher level Clerks in violation of Article 7.2.B. The Union requests that, in the absence of appropriate records, the matter

be remanded to the parties for consideration, subject to returning any differences to the arbitrator.

EMPLOYER POSITION

The Postal Service contends that Article 7.2.B was not intended to, and does not, apply to intra-craft assignments, and that for years the practice in the Postal Service supported that interpretation. It urges that, to understand what "within the same wage level" means, it is necessary to look beyond literal wording and to consider what the parties were trying to accomplish when they negotiated that language, as well as its subsequent utilization by the parties. The Postal Service stresses that the Union acknowledges it is necessary to go beyond a literal interpretation of this provision when the Union concedes that the Postal Service can temporarily assign Clerks to a lower level position if the work is within their job description -- an exception found nowhere in Article 7.2.B.

The Postal Service asserts that the bargaining history evidence it presented shows that the language "within the same wage level" in Article 7.2.B, which originally was agreed to in the initial Working Text of the 1971 National Agreement, before the parties negotiated the text of other provisions including Article 25 later that year, was intended to provide rate protection for employees assigned to other work -- whether cross-craft or intra-craft. That was why the Postal Service proposed deleting this language from Article 7.2.B in 1973 and 1975 negotiations on the basis that it was superfluous in light

of Article 25.2. The Joint Bargaining Committee (JBC) Unions successfully resisted any change, and the Postal Service -- while it stuck to its position on the meaning of Article 7.2.B -- ceased to press for a change in language. The Postal Service stresses, however, that the evidence shows that the Unions insisted on keeping that language because they saw it as a defense to the crossing of craft lines, which was a crucial issue for them. Neither the Postal Service, nor the Unions, the Postal Service argues, saw Article 7.2 as restricting intra-craft assignments.

Testimony of both Postal Service and Union witnesses establishes that over the next years Clerk Craft employees frequently were reassigned from Level 6 MPLSM work to lower level work without anyone raising an Article 7.2.B issue. The Postal Service maintains that it was only after the Postal Service began to deploy automated OCR and BCS equipment and established a lower level Mail Processor position within the Clerk Craft that a change in position began to occur. The Union first sought to have the Mail Processor position upgraded from Level 3 to Level 5. After Arbitrator Benjamin Aaron increased it only to Level 4, some Union officials began to seek additional compensation for the Level 4 Clerks by claiming that Article 7.2 sharply restricted the Postal Service's ability to use higher level Clerks temporarily in Level 4 assignments.

The Union succeeded in convincing certain regional arbitrators, most notably Arbitrator Cushman in 1992, of its new interpretation. The Postal Service insists that the Cushman

Award and others reaching the same conclusion -- many of which rely on the Cushman Award -- reached the wrong result. Critically absent from Cushman's analysis is the extensive bargaining history which the Postal Service has presented in this case. Otherwise, he could not have relied upon a statement from Arbitrator Mittenthal's 1982 Award that the parties did not disagree about the meaning of the term "in the same wage level". That statement, the Postal Service asserts, is clearly incorrect. Moreover, Cushman evidently was not made aware of the exception conceded by the Union in this case that its contract interpretation is null and void so long as the lower level work at issue is part of the higher level Clerk position description.

The National Arbitration decisions issued in 1982 by Arbitrators Bloch and Mittenthal, which the Union relies on, both notably involved cross-craft assignments. Moreover, the Postal Service stresses, apparently neither arbitrator was presented with the extensive and unrebutted bargaining history evidence presented in this case, and Mittenthal's discussion of the negotiation history rests on the false assumption that the Postal Service agreed with the Union on the meaning of the term "in the same wage level".

The Postal Service argues that the Union's current position flies in the face of one of the JBC Unions' chief goals in 1971, which was to achieve an all regular work force. As Union witnesses acknowledged, the Postal Service could utilize part-time or casual employees or delay performance of Level 4

work if it did not assign it to Level 5 or 6 Clerks. It is not required to assign this work on overtime to Level 4 Clerks. Moreover, to the extent there is not enough work to keep Level 5 and 6 clerks productive for all of their guaranteed 8 hours, the Postal Service could eliminate those full-time positions. That hardly could have been the result intended by the Unions' negotiators in 1971.

The Postal Service also points to evidence it presented to show that even after some in the Union were trying to rewrite the bargaining history in the 1980s, other APWU officials made it clear they did not see Article 7.2 as restricting management's right to make lower level assignments within the same craft. Similarly, the record shows that continuing through the 1990s in diverse locations the Union frequently acquiesced in the Postal Service's right to make such assignments.

The Postal Service maintains that the Union's attempt to explain away this overwhelming evidence by claiming that such assignments are permissible so long as the lower level assignment was in the higher level employee's position description is inconsistent with National Arbitration awards and ELM provisions. These authorities hold that Postal Service position descriptions are not fully descriptive of what an employee can be required to do, and that their primary function is to rank positions for pay purposes.

The Postal Service points out that the APWU's position is at odds with the NALC's interpretation of Article 7.2 found in its joint contract interpretation manual (JCAM). The NALC, which was part of the JBC that negotiated the wording of Article 7.2.B has agreed with the Postal Service in its JCAM that 7.2.B and 7.2.C cover cross-craft assignments.

Contract interpretation, the Postal Service urges, should be rational and lead to sensible results. The APWU's position does not. For example, a Union witness contended that it would violate Article 7.2.B for Level 6 MPLSM operators to work Level 5 FSM machines, yet it would not be a violation for them to work Level 6 FSM machines, even though the two FSM positions are basically the same job.

The Postal Service further contends that its interpretation harmonizes Article 7.2.B with Article 25.2. If the parties had truly negotiated in 1971 that the Postal Service relinquished all rights to assign employees to a lower level, both cross-craft and intra-craft, the last sentence in Article 25.2 would be rendered nugatory. A more sensible conclusion is that both sides saw that sentence as having meaning; the Postal Service broadly, as not affecting its rights to make temporary assignments either cross-craft or intra-craft; the Unions, more narrowly, as applying only to intra-craft lower level temporary assignments. The Postal Service stresses there is nothing in the contract or in the bargaining history indicating that Article 25.2's last sentence was agreed to simply in order to

cover higher level employees temporarily assigned to lower level work within their position description.

Finally, the Postal Service contends that even if it is determined that the Postal Service did commit a violation of the National Agreement, the Union is entitled to no relief in this case. There is no need for prospective remedial relief because today the Postal Service does not have MPLSM Operators or Level 4 Mail Processors. Indeed, there are few Level 4 positions left at all. Nor is any retroactive remedy appropriate. The Union demands overtime pay for Level 4 employees who could have been assigned the work in question on overtime, but the Union does not dispute the Postal Service could have assigned this work to part-time employees or casual employees, or even put it over to the next day. There is no right to overtime. The remedy the Union seeks is simply a windfall. The Level 4 employees were fully employed for 8 hours at their regular positions.

FINDINGS

The Postal Service asserts that prior to 1971, when Article 7.2 was first agreed to, management freely assigned employees to any work they were qualified to perform in or out of their craft. If the temporary assignment was to a lower level job, the employee continued to receive his or her regular pay. If the assignment was to higher work, the employee only received the higher pay after 30 days. In 1971, the Union succeeded in getting the Postal Service to agree -- in Article

25 -- that employees assigned to higher level work would be paid at the higher level for time actually spent on the job. In 1971, the parties also agreed -- prior to negotiating Article 25 -- to the provisions in Article 7.2.[4]

The Postal Service maintains that the language in Article 7.2.B was not intended to limit its previous flexibility to temporarily move employees to higher or lower levels, both within craft and cross-craft, as it saw fit. It also insists that by agreeing to include the words "in the same wage level" in that provision, the Postal Service was only agreeing that employees temporarily assigned to a lower level job would retain their regular rate of pay. Whatever the merits of this position if we were starting from a clean slate, there is National Arbitration precedent which holds that the words "in the same wage level" in Article 7.2.B -- at least in the context of a cross-craft assignment -- mean that the assignment must be to work in the same wage level. This was a holding in Arbitrator Mittenthal's 1982 decision in Case No. H8C-2F-C-7406, in which the Postal Service relied on the same bargaining history it has cited in this case. Even assuming, purely for the sake of argument, that the Postal Service's brief in that case -- which Arbitrator Mittenthal read as acknowledging that "in the same wage level" meant the assignment had to be to a job in the same wage level -- misstated its position or was misunderstood by the arbitrator, the decision was final and binding and the Postal

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[4] Article 7.2.A was somewhat revised in 1973. Article 7.2.B and 7.2.C have remained essentially unchanged.

Service has not questioned its continued application to cross-craft assignments.

Although Arbitrator Mittenthal's decision only involved cross-craft assignments, it would be contractually anomalous and, in my view, unsound in this collective bargaining context to conclude that the words "in the same wage level" in Article 7.2.B have some different meaning for purposes of deciding the present case. It does not follow, however, that the intra-craft cross-wage level assignments at issue in this case violated the National Agreement.

Absent a contractual proscription on such assignments, there can be no question that the Postal Service would have the right to make intra-craft cross-wage level assignments such as those involved in this grievance. Article 3 (Management Rights) provides:

> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
>
> A. To direct employees of the Employer in the performance of official duties;
>
> B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
>
> C. To maintain the efficiency of the operations entrusted to it;

> D. To determine the methods, means, and personnel by which such operations are to be conducted;
>
> * * *

Moreover, Article 25 clearly contemplates that employees may be temporarily assigned to higher level work or lower level positions and sets forth the basis on which they are to be paid in those circumstances. In particular -- and relevant to the assignments at issue in this case -- Article 25 provides that: "An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate."

On its face Article 7.2, on which the Union relies, does not include any direct proscription on cross-wage level assignments within the same craft. Article 7.2.A provides only that: "Normally, work in different ... levels will not be combined into one job." That provision goes on, however, to recognize such a combination may be effected for the purpose of providing maximum full-time employment -- a major goal of the Postal Unions since the advent of collective bargaining -- and providing necessary flexibility. Indeed, Article 7.2.A specifically provides that work in different crafts or occupational groups may be included in a full-time schedule assignment only after: "All available work within each separate craft by tour has been combined."

Article 7.2.A, obviously, is not applicable to temporary assignments of the sort at issue in this case. Article 7.2.B and 7.2.C do address temporary assignments. Neither provision directly proscribes any assignment. Rather each authorizes certain assignments in particular circumstances. Nonetheless, there would appear be no need for such authorization -- given Article 3 -- if there was not some proscription that otherwise would bar such an assignment.

In Case No. H8S-5F-C-8027, decided in 1982, National Arbitrator Richard Bloch found there was an "inherent proscription against crossing craft lines", and that Article 7.2.B and 7.2.C set forth "limited circumstances" in which that inherent proscription is inapplicable. Arbitrator Bloch concluded with respect to Article 7.2:

> Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited.

He further stated:

> ... one must proceed on the premise that crossing craft lines is prohibited and that the contractual exceptions [in Article 7.2.B and 7.2.C] are not to be invoked unless clearly met.

Arbitrator Bloch cited Article 7.2.A as recognizing the distinction among crafts. As the Cushman Award and other similar regional decisions have noted (and as discussed above), the first sentence in Article 7.2.A specifies that normally work

in different wage levels, not just different crafts or occupational groups, will not be combined into one job. The remainder of that provision, however, does not treat wage levels as the equivalent of separate crafts or occupational groups. It states that, in order to provide maximum full-time employment and necessary flexibility, management "may establish full-time schedule assignments by including work within different crafts or occupational groups" -- something Arbitrator Bloch said otherwise would have been proscribed. Combining work in different wage levels in the same craft or group is addressed only indirectly in the requirement that before any inter-craft or inter-occupational group combinations are made, "work within each separate craft by tour" shall first be combined.[5]

Thus, I am not persuaded that the 1992 Cushman Award (and other similar regional arbitration decisions) is correct in concluding that: "... Section A lists wage levels as a third category coordinate with crafts and occupational groups". (Emphasis added.) The Cushman Award goes on to state:

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[5] This distinction is even clearer in the wording of Article 7.2.A in the 1971 Agreement -- which was revised to the present language in 1973. In the 1971 Agreement, this provision read:

> Normally work in different crafts, occupational groups or levels will not be combined into one job. However, in order to maximize full-time employment opportunities and provide necessary flexibility, management may after studied effort to meet its requirements by combining within craft or occupational groups establish full-time or part-time scheduled assignments by including work within different crafts or occupational groups.

> Under B and C it is provided that temporary assignments must be in the same wage level. The "inherent presumption" [a reference to the "inherent proscription" against crossing craft lines found by Arbitrator Bloch] would appear to apply to wage levels as well as to crafts or occupational group levels. Otherwise the term wage level would be superfluous.

With due respect to Arbitrator Cushman, this conclusion is not an obvious one. The provision in Article 7.2.A that normally work in different levels will not be combined into one job serves a distinct purpose, and, as discussed above, the remainder of Article 7.2.A does not treat wage level as the equivalent of craft or occupational group. As for Article 7.2.B and 7.2.C, under National Arbitrator Mittenthal's 1982 decision in Case No. H8C-2F-C-7406, the words "in the same wage level" in those provisions serve as a substantial limitation on cross-craft temporary assignments. So, it is not necessary to find that there is an inherent proscription against crossing wage levels within a craft in order to give effect to the parties use of the term wage level.

Craft jurisdiction has been a persistently significant issue between and among the Postal Service and the various Unions representing its employees. That was true before 1971. It is true today. Arbitrator Bloch found there was an "inherent proscription against crossing craft lines" reflected in Article 7.2. I see no convincing basis in Article 7.2 or elsewhere in the National Agreement for finding an equivalent proscription against cross-wage level assignments within the same craft or

occupational group. Moreover, the bargaining history evidence in this record reveals that the Unions were fiercely concerned about crossing craft lines, but there is no evidence on which to conclude that they had any similar concern for crossing wage levels within the same craft -- particularly for temporary assignments. There also is no past practice evidence that establishes the parties have a mutual understanding that intra-craft cross-wage level assignments of the sort at issue here are prohibited.

This case does not involve combining work from different levels into a single job, but simply using Clerk Craft employees to temporarily perform Clerk Craft work they are qualified to perform where they are needed or can be used most efficiently. This case also does not involve competing rights to overtime. These temporary assignments are all on straight time, and there is no reason why -- absent a contractual requirement -- the Postal Service should have to pay overtime to get Level 4 Clerk work done when there are qualified Level 5 and 6 Clerks available to do the work on straight time. If the Union believes that additional Level 4 positions should be posted at a particular facility, that is a separate issue which should be addressed on its own merits.

The Union's position in this case also leads to an unreasonable result: in the circumstances described in Article 7.2.B and 7.2.C management can cross craft lines -- albeit only in the same wage level -- but it cannot cross wage levels within the same craft. It is inherently unlikely, on this record, that

the parties intended to provide greater protection against crossing wage levels within the same craft than against crossing craft lines -- a result that would be exactly the opposite of the agreed-to priorities reflected in the sequential actions set forth in Article 7.2.A.

Furthermore, if cross-wage level assignments were subject to the same "inherent proscription" as cross-craft assignments were determined to be in Arbitrator Bloch's decision, then such assignments would be prohibited and could only be made where the Agreement clearly authorizes them. The Union asserts that it is not saying that the Postal Service can never temporarily assign Clerk craft employees to work in a lower level -- something clearly contemplated by Article 25 -- but only that such assignments cannot be made in the circumstances described in Article 7.2.B. Yet, the only example the Union cited where Article 25 might apply consistent with its reading of the Agreement is where Clerks are assigned to lower level work which is within their position description. But such assignments, under the Union's theory, are not really to a lower level position, because the employees are performing work within their own position description, even if it overlaps work also performed by a lower level position.

The most critical point, however, is that -- unlike crossing craft lines -- there is no inherent or other contractual proscription on cross-wage level assignments within the Clerk Craft. Absent such a proscription, the Postal Service is not required by the National Agreement or National

Arbitration precedent to justify intra-craft cross-wage level assignments such as those involved in this grievance under the terms of Article 7.2.B.

One final point needs to be stressed. Nothing in this opinion is addressed to crossing occupational groups within the same craft. There are a number of regional arbitration awards (but no National Arbitration decision that I am aware of) which deal with various issues involving temporary assignments that cross occupational groups. Those issues are not raised in this case. There is no claim that the Level 6 or 5 Clerks temporarily assigned to Level 4 Mail Processor work are in a separate occupational group, as that term is used in the National Agreement.

AWARD

The Postal Service is not required to justify cross-wage level assignments within the Clerk Craft such as those involved in this grievance under Article 7.2.B, and that provision is not violated by such assignments.

Shyam Das, Arbitrator