

In the Matter of the Arbitration Between:

THE UNITED STATES POSTAL SERVICE

AND

Case No. H1C NA C 85

THE AMERICAN POSTAL WORKERS UNION
AFL-CIO

Hearing heard January 31, 1985

Before Richard I. Bloch, Esq.

APPEARANCES

For the Union

Richard I. Wevodau
Director, Maintenance Division
APWU

For the Postal Service

Anthony W. DuComb, Esq.

OPINION

Facts

Postal Service Employees wishing to change their duty assignments do so by means of a Preferred Duty Assignment mechanism established in Article 38 of the labor agreement. Article 38.2(B)(1) details the establishment of so-called Preferred Assignment Selection Registers. These registers are posted during the first 14 days in January and employees sign up anticipating the possibility that they may later be able to gain an assignment on a more preferable tour or with

better days off.

Prior to 1975, a Preferred Assignment was defined, in Article 38.1.e.4, as:

An assignment preferred over his present assignment by an employee eligible to bid for such assignment when it is posted for bid.

In 1975, the parties added to that definition, providing that:

...This bidding is done among qualified employees in the same level and occupational group.

The dispute in this case surrounds addition of the word "qualified". The Postal Service announced, in 1983, that, in order to be considered "qualified" and to thereby secure the bid for the preferred assignment, the senior employee must have already completed any required training on a particular piece of equipment.

The Union grieved this interpretation, contending that, for purposes of the Preferred Assignment Selection Registers, it is necessary only that the senior employee be in the same salary level and occupational group as the vacancy. If the senior employee has not previously been trained, it says, the Postal Service must train them then.

Issue

Is it a violation of the labor agreement for the Postal Service to require that senior employees complete all necessary training in order to be considered "qualified" to bid on

preferred assignments?

Union Position

The Union contends, among other things, that this question has already been answered by prior case H8T 5D C 15971 and that the grievance must be sustained on the basis of that case alone. (The case will be examined below.)

In any event, the Union says it was never the intent of the parties to modify the previous clear impact of the contract which was to entertain bids and make selections from the Registers solely on the basis of seniority. The employer's application of the labor agreement, it says, is inconsistent both with other provisions of the Agreement and with the past practice of the parties.

Management Position

The Postal Service says the wording, new to the 1975 agreement, may simply not be ignored. The Union would read out of the agreement the significant requirement that the employee must be "qualified". A qualified employee suggests something well beyond mere existence in the same level and occupational group on the Preferred Duty Assignment Register it is argued. Accordingly, it requests that the grievance be denied.

Relevant Contract Provisions

ARTICLE 38

MAINTENANCE CRAFT

...E. Definitions

1. Maintenance Craft. All employees in maintenance craft positions for which the Union has secured recognition at the national level.

.... 3. Duty assignments. A set of duties and responsibilities within a recognized occupations group and level regularly scheduled during specific hours of duty.

4. Preferred Duty Assignment. A duty assignment preferred over the present duty assignment by an employee eligible to bid for such duty assignment when it is posted for bid. This bidding is done among qualified employees in the same level and occupational group as the vacant duty assignment.

5. Service Seniority. that seniority based on total service in the maintenance craft, regardless of occupational group and level beginning with an appointment to the regular work force in the maintenance craft. A part-time regular employee who is converted to full-time begins a new period of service seniority. Employees who were on the rolls before May 1, 1958, who had temporary or indefinite appointment, which continued to career appointment, retain seniority credit for combined temporary, indefinite, and career employment which was continuous in the same position designation and installation.

6. Seniority for Preferred Assignments. This seniority determines relative standing among regular work force employees eligible to bid for preferred assignments. It is computed from entry into a regular work force position in a particular occupational group and level. It continues to accrue so long as service in the same occupational group and level, and installation is uninterrupted.

7. Occupational Group. In the maintenance craft, occupational group shall be determined by position designation and level.
8. The following positions in the maintenance shall be filled on the basis of Seniority (Senior Qualified) in accordance with the procedures established in Section 2, Article 38.
 - a. Custodian PS-2 (KP-1) from any lower level
 - b. Custodial Laborer PS-3 (SP 6-13)--from any lower level
 - c. Laborer Materials Handling PS-3 (SP 1-11)--from any lower level
 - d. Elevator Operator PS-3 (KP-2)--from any equivalent or lower level
 - e. Elevator Starter PS-4 (SP 6-3)--from Elevator Operator) PS 3 (KP-2)
 - f. General mechanic PS-5 (SP 6-2)--from Mechanic Helper PS-4 (SP 6-1)
 - g. Area Maintenance Technician PS-8 (SP 6-77)--Area Maintenance Specialist PS-7 (SP 6-78)
 - h. Materials Handling Equipment Operator PS-4 (SP-9)--from Laborer Materials Handling PS-3 (SP 1-11)
 - i. Cleaner in Charge PS-4 (SP 6-51) from Custodial Laborer PS-3 (SP 6-13)
 - j. Group Leader, Custodial PS-4 (SP 6-58)--from Custodial Laborer PS-3 (SP 6-13)

Section 2. Posting

A. In the Maintenance Craft all vacant duty assignments shall be filled as follows:

1. When a vacant or newly established duty assignment is to be filled, the Employer shall post for a period of 7 calendar days, a notice of intent that the duty assignment will be

filled using the appropriate preferred assignment selection register and/or promotion eligibility register, except for newly established positions as defined in Article 1, Section 5. Such positions shall be posted as they are created and assigned to the craft unit. A copy of the notice of intent shall be furnished to the local Union.

2. All vacant or newly established craft duty assignments shall be filled from a preferred assignment eligibility register established on the basis of assignment selection forms submitted by maintenance craft employees. Where a vacant or newly established duty assignment cannot be filled from an established duty assignment cannot be filled from an established preferred assignment selection register, and the assignment is to be filled by means of a promotion, selection shall be made from the appropriate promotion eligibility register. To fill a vacant duty assignment at levels PS-6 and above, a notice of intent will be posted to fill the vacancy and all residual vacancies using the preferred assignment eligibility registers and/or promotion eligibility registers, as necessary, until a level PS-5 maintenance craft vacancy occurs. To fill a vacant duty assignment at levels PS-4 and PS-5 a notice of intent will be posted to fill the vacancy and all residual vacancies using the preferred assignment eligibility registers and/or promotion eligibility registers, as necessary, until a level PS-3 and below, a notice of intent will be posted to fill the vacancy and all residual vacancies using the preferred assignment registers and/or promotion eligibility registers.

B. Method of Selection

1. The Employer will maintain and/or establish preferred assignment selection registers. During the first fourteen days in January of each year a notice advising the employees of the opportunity to submit changes in preferred assignment selections shall be posted on all official bulletin boards at the installation,

including stations and braches, to assure that it comes to the attention of all employees eligible to submit forms. Changes in preferred assignment selections shall be submitted on or before January 31. If requested, an employee will be allowed to review the preferred assignment registers and the employee's own preferred assignment selection form(s). If the employee does not submit a change in preferred assignment selections during this period, existing preferred assignment selections shall continue. When absent employees have so requested in writing, stating their mailing addresses, a copy of any applicable notice of intent shall be mailed to them.

2. The employee shall indicate preference(s) for any vacancy that may occur during that year, including tours and days off.

3. Newly established or vacant duty assignments shall be filled by senior employees in the same salary level and occupational group as the vacancy where such employees are available.

4. When newly established positions as defined in Article 1, Section 5, are created in an installation, the Employer shall post a notice on all official bulletin boards soliciting applicants. The notice shall be posted for ten (10) calendar days. Within thirty (30) days of the date of initial posting the successful applicant shall be announced and placed in the position.

5. An employee may submit a new or amended preferred assignment selection form in the following situations:

- a. the employee is promoted;
- b. the employee's duty assignment is eliminated;
- c. the duty assignment would result in the employee being assigned closer to the employee's place of residence;

- d. because of substantiated medical or health reasons whereby continuation in the employee's present assignment would be harmful;
- e. three times during each calendar year, an employee may submit additional preferred assignment selection forms indicating a change in tour preference. The times selected for submitting the additional preferred assignment selection forms shall be at the option of the employee.

C. Promotion

1. The Employer will maintain existing, or establish as necessary, a promotion eligibility register to be used for the purpose of filling vacancies in the particular occupational group and level. A promotion eligibility register shall be established for each occupational group and level for which there is a position existing in the installation. The register shall remain in effect throughout the life of this Agreement. Upon notification from an employee of the acquisition of new or additional training, education, or experience pertinent to the qualifications for the position, the Employer will update the existing register within 10 days of receipt of such notification. Such employee notification must be furnished within thirty (30) days of the acquisition of such additional training, education, or experience. The promotion, eligibility register shall not be updated during the period of time a vacant position is in the process of being filled. Employees shall be listed on this register in order of qualifications, and all positions for promotion shall be awarded to the best qualified applicants, except those positions set forth in Section 1, E8 of this Article.

Analysis

The Labor Agreement deals with preferred assignments in

a variety of sections. 38(2)(A)(2), for example,¹ requires that all vacant or newly established duty assignments in the maintenance craft be filled from the preferred assignment eligibility register constructed by use of assignment selection forms. Subsection (3)² says the vacancies shall be filled "by senior employees in the same salary level and occupational group" as the vacancy. There is no mention of qualifications or of separate registers established according to particular needs or abilities. And, prior to 1975, qualifications were clearly not a factor. The question is whether the modification to Subsection 1(e)(4) changed this approach. The finding is that it did not.

On the one hand, it is difficult to ignore the 1975 modification. The Postal Service argues that the term must mean something, particularly in the context of prior practice of selecting employees strictly by seniority. Management negotiators testify that concerns over retrofitting, with more sophisticated electronics encountered by some higher-level maintenance classifications, as compared to the earlier electro-mechanical equipment, led to the desire to ensure that only "qualified"--meaning "trained"--individuals would

¹ Supra, p. 6.

² Supra, p. 7.

be admitted to the Preferred Assignment Register. Thus, management proposed inclusion of the word "qualified"; it was a concept, says management, that the Union said it "could live with." This testimony was unrebutted and, absent more, would compel the conclusion that management is within its rights in requiring a successful bidder to be previously trained on the full scope of the particular job.

But in this unique case, there is more. If this was a mutually-agreed change, it was one of enormous substance and impact. From a system wherein management had no discretion whatsoever in terms of selecting employees for preferred assignments, it now had one that was in many respects subject to near-comprehensive control, since management could generally determine, unilaterally, which employee was to be trained and, therefore, which employee would have priority on the register. In essence, the Preferred Assignment Register was modified (according to management's view) to be somewhat more similar to the promotion eligibility register. (See Article 38.2.C.1., p. 8 (supra).) On that Register, employees are listed in order of qualifications and positions

for promotion are awarded to those "best qualified."³

But if this was the result, the parties, particularly management, were strangely silent. A "Maintenance Bulletin" was issued by the Service in October of 1975 designed, by its terms, to "provide guidance on implementing Article XXXVIII of the new 1975 National Agreement which applies to the Maintenance Craft." Concerning promotions, it speaks of new rules with respect to selection of "best qualified." In Paragraph VIII, the Bulletin deals with preferred assignment selection procedures. But it says nothing at all with respect to what would have been a massive modification to a "strict seniority" system.

There is no mention of "qualifications." To the contrary, the Bulletin states, in part:

After all [Preferred Assignment Selection] forms have been received and reviewed, registers will be established for possible work schedules on each tour in every salary level and occupational group. These registers will be organized in seniority order.

When a new employee enters the maintenance craft during the year, he will be provided a Preferred Assignments Selection Form and his choice or choices will be entered on the appropriate registers.

Included as attachments to that Bulletin were (1) a Preferred

³ The employer does not here contend that a "best qualified" standard should apply in the case of assignment preferences, but it does assert that threshold training qualifications are essential.

Assignment Selection Form, and (2) a Promotion Preference Selection Form.⁴ The Promotion Form instructs the employee to "select the positions below for which you are now qualified, and for which you would like to be considered for promotion. It continues:

Include on your list any positions you believe you will become qualified for in the coming year. List your qualifications in the space provided. Your qualifications will be evaluated and your name placed on a promotion eligibility register for each position you have checked. The registers will be arranged in order of qualifications.

The Preferred Assignment Form, on the other hand, lists only the individual's name, occupational group and schedule preferences (tour and days off). It does not speak to qualifications. The instructions simply tell the employee to complete the form to indicate his or her interest in preferred assignments. The employee is instructed to "check the boxes that represent tours and days off duty assignments which you would prefer" and concludes by noting that "whenever a vacant duty assignment must be filled, the senior employee on the appropriate preferred eligibility register will be selected." These are dramatically different forms, reflecting wholly different understandings. Following consummation of the 1975-78 National Agreement, the employer

⁴ The forms are attached to this Opinion as Appendix A and B infra.

issued a "Training Guide-Explanation of Changes" document. The format included one column noting the changes to the new agreement and another with explanatory "Comments." Referring to the "best qualified" requirement relevant to promotions, the Comments noted that "employees shall be listed by qualifications and promotions shall be on the basis of best qualified." Again, however, the new language concerning preferred duty assignments was set forth without comment. The sole reference to the issue--a significant one--occurs in the context of Section 38(2)(B)(3) (supra p. 7), which states:

Newly established or vacant duty assignments shall be filled by senior employees in the same salary level and occupational group as the vacancy where such employees are available.

This language, which on its face supports the Union's position in this case, was explained by the Postal Service as follows:

Employees will be awarded preferred assignments by seniority in the same salary level and occupational group as the vacancy. Since the vacancy is in the same occupational group and salary level he is considered "qualified." (Emphasis added.)

This is precisely the position here urged by the Union. The Service notes, properly, that this Training Guide may hardly be considered as a binding document. But it serves well enough as a reasonable reflection of management's view of the new agreement and supports the contention that the parties did not intend to incorporate a wholly new interpretation and

application of the preferred assignment mechanism.

The change suggested here also appears to have been ignored in a 1976 Memorandum of Understanding between the parties. It dealt with implementing the terms of Article XXXVIII and clarifying the method of effecting preferred assignments. That document stated in relevant part:

Under the provisions of Section 2B of Article XXXVIII, Maintenance Craft, when a vacant or newly established duty assignment (hereinafter referred to as an assignment) is to be filled, the senior employee in the same salary level and occupational group as the assignment who has indicated his preference for that scheduled work week and tour of duty on a Preferred Assignment Selection Form will be offered the assignment. Such senior employee must promptly indicate his acceptance or declination of the assignment.

Here, too, it was agreed, without qualification, that the senior employee in the same salary level and occupational group as the assignment would be offered the assignment. There is no mention in this Understanding of a "qualification" requirement.

In the overall, it is abundantly apparent that, contrary to the Postal Service's contentions, the inclusion of the word "qualified" in 38.1.e.4 was not intended to modify the then-existent system.⁵

⁵ One notes that the parties had, prior to 1975, incorporated similar language in the bidding provisions of Section 2(E)(1). Despite use there of the term "Senior Qualified Bidder", the bidding for preferred assignments, had, as noted above, been strictly by seniority.

The Postal Service directs the Arbitrator's attention to various Union proposals submitted in subsequent negotiations that would have resulted in removal of the language here contested. In the appropriate case, this might stand as an acknowledgement by the Union relevant to the contested interpretation. Yet, prior to 1983, there is no firm indication that, despite the 1975 change, regional facilities had abandoned the strict seniority approach to the preferred assignments. In this light, the proposed modifications may reasonably be viewed as what the Union says they were--attempts to clarify the language to avoid just the situation that led to this dispute.

In a case decided in September of 1983⁶ this arbitrator concluded that, once having posted a vacancy for certain positions, management was proscribed from adding qualification requirements that would serve to narrow the field of eligible applicants. There, as here, Section 2(A)(2) of Article XXXVIII was germane. The Opinion noted, in relevant part:

Article XXXVIII (2)(C) deals with promotions and talks in terms of "best qualified. Article XXXVIII(2)(A)(2), however, deals with the preferred transfers here at issue and makes no reference whatsoever to qualifications, threshold or otherwise. The parties knew how to write this language and the absence of any qualification in

⁶ Grievance Nos. H8T 5D C 15971 and H8T 5D C 16038.

this provision points unmistakably to the conclusion that no such qualification was intended. In a situation like this, Management is within its rights in listing various job specifics on the Notice of Intent. But it may not, by such listing, avoid what is otherwise a contractual obligation to select by pure seniority. If additional expertise is required of the successful applicant, such individual may be trained. (At p. 6.)

In sum, it was abundantly clear, that prior to the 1975 Agreement, the preferred assignment register was to be filled and applied by pure seniority, without reference to particular qualifications. In 1975, the parties added the requirement that bidding be done among "Qualified Employees". While the Service says this phrasing was intended to modify the selection-by-seniority approach, the application of the Agreement does not reflect this. There was no such notification by management in the various documents by which such message would have been transmitted, nor in fact was the selection methodology changed in practice, according to the evidence. There is no evidence in this record that the parties ever intended to somehow establish a system of multiple registers, each keyed to the particular qualifications sought. Instead, it is clear enough that management continued to regard membership in the same level and occupational group as the sole requirement to be "Qualified" (as management indicated in its own explanation of the contract). The weight of the evidence speaks convincingly to the intended impact of the labor agreement. For these

reasons, the finding is that management violated the agreement by its action in the instant case and the Union's request for a cease and desist should be granted.

AWARD

The grievance is granted.



Richard I. Bloch, Esq.

October 31, 1985

PREFERRED ASSIGNMENT SELECTION FORM

NAME			SSAN
SERVICE SENIORITY DATE	OCC. SEN. DATE	LEVEL	OCCUPATIONAL GROUP
TITLE		PO FINANCE NUMBER	

INSTRUCTIONS

Complete this form to indicate your interest in preferred assignments. Check the boxes that represent tours and days off duty assignments which you would prefer. Your name will be entered on a preferred assignment eligibility register for each of the work schedules you check. The registers will be arranged in seniority order. Whenever a vacant duty assignment must be filled, the senior employee on the appropriate preferred assignment eligibility register will be selected. Check as many options as required to express your preference.

SCHEDULE PREFERENCES
(TOUR AND DAYS OFF)

TOUR 1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	SAT SUN	SUN MON	MON TUE	TUE WED	WED THU	THU FRI	FRI SAT	OTHR
TOUR 2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	SAT SUN	SUN MON	MON TUE	TUE WED	WED THU	THU FRI	FRI SAT	OTHR
TOUR 3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	SAT SUN	SUN MON	MON TUE	TUE WED	WED THU	THU FRI	FRI SAT	OTHR
UTILITY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	SAT SUN	SUN MON	MON TUE	TUE WED	WED THU	THU FRI	FRI SAT	OTHR

* INDICATE PREFERENCE

SIGNATURE	DATE
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Part-time Regular - I wish to be considered for full time regular

THIS FORM MUST BE RETURNED BEFORE _____

ATTACHMENT 11
PROMOTION PREFERENCE SELECTION FORM

APPENDIX B

NAME			SSAN
SERVICE SENIORITY DATE	OCC. SEN. DATE	LEVEL	OCCUPATIONAL GROUP
TITLE			PO FINRANCE NUMBER

Select the positions below for which you are now qualified, and for which you would like to be considered for promotion. Include on your list any positions you believe you will become qualified for during the coming year. List your qualifications in the space provided. Your qualifications will be evaluated and your name placed on a promotion eligibility register for each position you have checked. The registers will be arranged in order of qualifications.

POSITION TITLE	LEVEL	POSITION		ELIGIBLE	QUALIFICATIONS
Area Maint Tech	8	77	4801-20XX		
Area Maint Spec	7	78	4801-21XX		
Asst Engineman	5	11	5309-01XX		
Blacksmith-Welder	6	43	3704-02XX		
Carpenter	6	6	4607-02XX		
Conveyor Mechanic	6	7	5343-02XX		
Electronic Tech	7	84	0856-04XX		
Electronic Tech	8	75	0856-01XX		
Electronic Tech	9	80	0856-01XX		
Electronic Tech	10	76	0856-01XX		
Elevator Mechanic	7	12	5313-03XX		
Engineman	6	45	5309-02XX		
Fireman	4	14	5402-01XX		
Fireman-laborer	4	4	5402-02XX		
General Mechanic	5	2	4749-02XX		
Label Protg Ctr Me	6	79	4418-01XX		
Machinist	7	18	3414-02XX		
Maint Control Clk	5	66	0301-16XX		
Maint Control Tech	6	67	0301-07XX		
Maint Electrician	6	10	2805-03XX		
Maint Mech - MPE	7	64	5342-01XX		
Maint Mech - MPE	6	63	5342-01XX		
Mason	6	44	3603-02XX		
Mechanic Helper	4	1	4701-01XX		
Off App Repairman	5	22	4806-04XX		
Oiler - MPE	4	62	5323-01XX		
Painter	6	5	4102-02XX		
Plumber	6	17	4206-02XX		
Postal Mach Mech	6	8	4801-06XX		
Scale Mechanic	5	16	3341-02XX		
Stationary Engr	7	99	5415-01XX		
Supply Clerk	4	4	2040-07XX		
Atal Clerk	5	29	0590-01XX		
Tool & Parts Clerk	5	31	6904-01XX		
Vending Mach Mech	6	68	4801-04XX		
SIGNATURE					DATE

PLEASE RETURN THIS FORM BEF