

the issue in this proceeding. The Arbitrator finds the issue to be whether the Postal Service violated Article 7, Section 3 B of the National Agreement when, at the Southern Hills Station, Abilene, Texas, it posted two regular part-time custodial positions of 24 hours each over a six-day period.

The Background of the Dispute

In August 1984 the Management posted at the Southern Hills Station--then a newly opened facility--the following two part-time regular positions: a Custodian, scheduled for 7:00 a.m. to 3:30 p.m. Saturday and 7:00 a.m. to 11:00 a.m. Tuesday through Friday--a weekly total of 24 hours, and a Laborer-Custodian scheduled for 8 a.m. to 4:30 p.m. Monday and 1:00 p.m. to 5:00 p.m. Tuesday through Friday, also a weekly total of 24 hours. The positions were awarded on August 31, 1984. The Union grieved these actions, essentially contending that they violated Article 7.3 B's requirement for maximization of full-time personnel. 7.3 B states as follows:

The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedule in all postal installations.

In denying the grievance at Step 2 the Service asserted

that the posting was justified by staffing requirements, and that it was within the Service's managerial rights as set forth in Article 3 of the Agreement. At Step 3 the Service reiterated its staffing requirements argument. At Step 4 the Service asserted that its staffing decision was in accordance with Section 243.u of the MS-47 Handbook, which provides as follows:

u. If the facility is not to be cleaned by contract, divide line H by 1768. (Note - The 1768 figure is the current productive annual workhours for one USPS custodial employee. This figure is subject to change.) Round to the nearest tenth. Enter the resulting figure in column (P) line K. If line K is less than one, a part-time position should be authorized. If line K is equal to or greater than one, any combination of full-time and/or part-time positions should be authorized that provides sufficient workhours to perform all the custodial tasks.

The MS-47 Handbook is entitled "Housekeeping Postal Facilities". Section 243.u is contained in Chapter 2, which is entitled "Determining Staffing Requirements".

Section 243.u was first contained in the 1983 revision of the MS-47 Handbook. It is not disputed that in promulgating that language the Postal Service complied with the procedural requirements of Article 19 of the National Agreement, which provides in its entirety as follows:

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

The Union argues as follows: The Service's creation of two 24-hour part-time regular custodial positions in the same six-day period was a clear violation of the full-time maximization requirement set forth in Article 7.3B. Under Article 19, the Agreement takes precedence over any handbook provision; thus anything in Section 243.u of the

MS-47 Handbook that is inconsistent with Article 7.3B of the Agreement cannot be given effect. In fact though, the history of the parties' discussions prior to the Service's promulgation of Section 243.8 of the MS-47 Handbook indicates that it was not intended to change the prior practice of maximizing full-time employment in all areas including Maintenance, or to modify in any way Article 7.3B. In this connection, in 1974 Arbitrator James J. Willingham, in case A-C-16, held that the contractual maximization policy applied to regular part-time employees in the Maintenance Division. Here the factual record, even if it is restricted to the job postings, establishes that at the Southern Hills Station there was 48 hours of part-time work being performed "on a daily basis, 8 within 10 over a 6 day period," and thus a regular full-time position was required.

The Postal Service argues as follows: Section 243.u of the MS-47 Handbook clearly and unambiguously provides that Management is not required "to create a full-time regular custodial position when the staffing survey determines 40 hours or more of custodial work is required at a particular work location". The Arbitrator must, under the Agreement, accept and apply the language of Section 243.u, which was fully discussed with the Union

pursuant to Article 19. Furthermore, the history of such discussions establishes that the Union was made aware that the language of Section 243.u was intended to allow Management the flexibility, in a situation such as that at Southern, to use two part-time regular employees, rather than a combination of one full-time and one part-time employee, to meet the needs of the local office. The Union prior to arbitration in this matter never alleged that Section 243.u was in conflict with the Agreement, and is thus barred now from so arguing. In any event, there is no conflict--Article 7.3B is "not applicable to the Maintenance Craft inasmuch as all employees, including part-time regular employees in the Maintenance Craft, have fixed work schedules." Article 38.2D6 of the Agreement provides that the Notice of Intent for posting in the Maintenance Craft requires a statement of "fixed schedule", and Article 8.1 "provides that part-time regular employees may have work weeks of less than 40 hours." The posting at issue fully complied with these contractual requirements. The Union has, improperly at this stage of the proceeding, sought to introduce factual evidence concerning scheduling at the Southern Hills Station that was never before presented in the processing of the grievance at issue--that evidence may not therefore

be considered by the Arbitrator. As to the regional arbitration decision in Case A-C 16, that is not in point and can have no possible relevance here since it was issued long before the promulgation of Section 243.u.

Discussion

Article 7.3 B of the Agreement states that the Service "shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules at all postal installations." A pivotal question is whether 7.3 B establishes two separate requirements--one to maximize full-time employment at the expense of all part-time employment, whether regular or flexible, and the other to minimize part-time flexible employment in favor of full-time and part-time regular employment--or instead establishes a single requirement to maximize full-time employment only at the expense of part-time flexible employment. If only the latter requirement was intended, then the Union's claim here must fail, since management at Abilene used two regular part-time, not flexible part-time employees to fill the 48 hours of custodial work at the Southern Hills Station.

The meaning of Article 7.3 B is not glaringly evident. On balance though this Arbitrator regards the language of that provision to be most amenable to the interpretation urged by the Service, i.e., that the full-time maximization requirement only applies viz-a-vis part-time flexible employment. The language of 7.3 B mentions only full-time and part-time flexible employment. Nowhere is there mention of part-time regular employment, and the absence of any such reference suggests that none was intended. Furthermore, 7.3 B is in the form of a single sentence without any indication, either in terms of grammar or punctuation, that it was intended to have disjunctive parts.

It is also significant that the parties in Article 7.3 A expressly dealt with the question of maximizing generally full-time employment, viz providing for 90% full-time employees in installations with 200 man-years of employment. It is reasonable to conclude that having dealt generally with maximization of full-time employment in 7.3 A, the parties would not have done so again in 7.3 B.

Further, important support for the Service's reading of 7.3 B is to be found in the history of the promulgation of Section 243.u in the MS-47 Handbook. Under Article 19 of the Agreement, not only do the Agreement's terms take

precedence over any inconsistent handbook provision, but the Service is expressly forbidden to make changes in any handbook that are "inconsistent with this Agreement." There is no basis in the evidence in this proceeding for finding that the Service intended, in proposing and promulgating Section 243.u, to make any change in the MS-47 Handbook that was inconsistent with Article 7.3 B of the Agreement. This must have been the Union's view as well, since it did not contest the change, as it would have been entitled to do under Article 19 had it believed the change to be inconsistent with the Agreement. The conclusion is inescapable, then, that both parties regarded Section 243.u of the MS-47 Handbook as an application, not a modification of Article 7.3 B of the Agreement. However, in this connection the language of Section 243.u can only reasonably be read as permitting a combination of part-time regulars to provide a custodial service in excess of 40 hours. It would be hard to imagine a clearer expression of this than Section 243.u's permission to use, for purposes of providing custodial services of 40 hours or more, "any combination of full-time and/or part-time positions..."

The Union argues that its reading of Article 7.3 B finds support in the decision of Arbitrator James J.

Willingham in Case A-C-16. However, that was a regional, not a national arbitration, and it took place many years before the parties' actions, in connection with the promulgation of Section 243.u of the MS-47 Handbook,

indicated that they read Article 7.3 B as not being applicable to custodial service where part-time flexibles are not used. Furthermore, this Arbitrator does not read Arbitrator Willingham's decision as dealing with the point here at issue. Willingham held that an employee classified as a part-time regular, who actually was regularly scheduled for "40 hours per week on a six day schedule" had retroactively to "be reclassified as a full-time regular."

Conclusions

For the foregoing reasons the Arbitrator finds that the Postal Service did not violate Article 7, Section 3 B of the National Agreement with respect to the posting of two regular part-time custodial positions at the Southern Hills Station. The grievance accordingly will be denied.

Dated: June 13, 1986


DANIEL G. COLLINS, Arbitrator

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated 1981-84 and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

The Postal Service did not violate Article 7, Section 3 B of the 1981-84 National Agreement when it posted two regular part-time custodial positions of 24 hours each over a six-day period at the Southern Hills Station, Abilene, Texas. The grievance accordingly is denied.

Daniel G. Collins
DANIEL G. COLLINS, Arbitrator

State of New York)
) ss.:
County of New York)

On this 13th day of June, 1986, before me personally came and appeared DANIEL G. COLLINS to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Carole Percaccio

CAROLE PERCACCIA
NOTARY PUBLIC, State of New York
No. 91-4637460
Created in New York County
Commission Expires January 31, 1989