

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
)
between)
)
UNITED STATES POSTAL SERVICE)
)
and)
)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS, AFL-CIO)
)
and)
)
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO - INTERVENOR)
)
and)
)
NATIONAL POSTAL MAIL HANDLERS)
UNION, AFL-CIO - INTERVENOR)

Case No. Q16N-4Q-C 18427350

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service: Kevin B. Rachel, Esq.
Tiffany McCleave, Esq.

For the NALC: Keith E. Secular, Esq.

For the APWU: Melinda K. Holmes, Esq.
Jason Veny, Esq.

For the NPMHU: Matthew Clash-Drexler, Esq.

Place of Hearing: Washington, D.C.

Dates of Hearing: December 18, 2018
May 20, 2019

Date of Award: November 5, 2019

Relevant Contract Provisions: MOU Re: Pay Schedule Consolidation
and Article 12

Contract Year: 2016-2019

Type of Grievance: Contract Interpretation

Award Summary:

The Postal Service's position in this case is affirmed as set forth in the above Findings.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator

The NALC initiated this national level grievance on September 20, 2018. The parties basically agree on the issue in dispute. The NALC states the issue as: Whether employees from other crafts in pay grades equivalent to the former City Carrier Grade 1 (CC-1) may be reassigned under Article 12 of the National Agreement to the Letter Carrier craft? The NALC contends the answer to this question is "No." The Postal Service states the issue as: Whether the MOU Re: Pay Schedule Consolidation from the parties' 2016-2019 National Agreement impacts cross-craft assignments under Article 12? The Postal Service contends the answer to this question is "No." The APWU and the NPMHU each intervened in this case in support of the Postal Service's position.

The procedures of Article 12 -- included in each of the three Unions' National Agreement -- are the principal means by which bargaining unit employees excess to the needs of their section, craft or installation are reassigned within the Postal Service. Although the provisions of Article 12 generally favor reassigning employees within the same craft, the Postal Service may reassign employees to a different craft in order to enable employees to stay within their local areas. Under Article 12, cross-craft assignments must be to a position "at the same or lower level."¹

The Employee and Labor Relations Manual (ELM) includes an Equivalent Grades Chart (ELM Chart) which identifies pay systems and grades that are considered to be on the same level for a variety of pay purposes.

¹ Through 1978, the APWU, NALC and NPMHU bargained jointly with the Postal Service and their members were covered by a single National Agreement. Thereafter, the Mail Handlers split off and bargained separately. Later the APWU and the NALC also ceased to bargain jointly. Cross-craft assignments were provided for in Article 12 of the 1978 Agreement. The National Agreements of the three Unions each contain a similar MOU -- the "Bridge Memo" -- which (as included in the NALC's National Agreement) states in relevant part:

Re: Article 7, 12 and 13 - Cross Craft and Office Size

- A. It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of this Agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts [four covered by the APWU Agreement] under the 1978 National Agreement.

Historically, since at least 1907, Clerks and Carriers were ranked at the same level and received the same pay. The NALC, alleging a substantial change in Carrier work, sought an upgrade in 1994 negotiations, the first where it negotiated separately from the APWU, but an upgrade was not granted by the interest arbitration panel chaired by Arthur Stark.

The NALC renewed its upgrade proposal in 1998 national negotiations. By the time those negotiations reached interest arbitration before a panel chaired by George Fleischli, collective bargaining agreements with the APWU and Mail Handlers Union already had been reached. The NALC again justified its upgrade proposal based on various changes to job duties brought about by increased automation of the mail prior to its being presented to the carrier. The Postal Service countered that the changes did not have the significance to warrant an upgrade, but also stressed the importance of adhering to the history between the parties and the wage pattern that had been set in the voluntary agreements with the other unions. The Postal Service expressed great concern that granting the NALC an upgrade would have "a potentially disruptive effect" on collective bargaining and "discourage voluntary agreements," while encouraging competitive union negotiations rather than pattern agreements. Arbitrator Fleischli, while not disregarding those concerns, nevertheless concluded that the upgrade was justified based on the impact of automation and other changes on the job duties of the City Carriers. This upgrade was granted in addition to, and not in lieu of, the general wage increase awarded for that year.

The NALC and the Postal Service agreed to the following contractual language regarding this upgrade:

Effective November 18, 2000, all Grade 5 employees covered by this Agreement will be upgraded to Grade 6, and the existing carrier technician differential will be maintained, in accordance with the [Fleischli] Arbitration Award issued September 19, 1999.

The parties further agreed to establish new City Carrier Grades 1 and 2. The previously Postal Service (PS) Grade 5 Carriers were placed in the new CC-1 Grade in the same step they previously held in Grade 5. The Carrier Technicians were placed in the new CC-2 Grade. After

implementation of the upgrade provided for in the Fleischli Award, the ELM Chart was revised in 2003 to reflect an equivalency between CC-1 and PS-6 and CC-2 and PS-7.²

Following implementation of the upgrade provided for in the Fleishli Award, PS-5 Clerks (the bulk of the craft) no longer were eligible for reassignment to Carrier positions. The APWU sought an upgrade for its employees to restore the parity in 2000 negotiations with the Postal Service. Those negotiations concluded in interest arbitration before a panel chaired by Stephen Goldberg. While the APWU did not achieve a general upgrade for its employees, it was awarded upgrades to certain selected positions. The National Agreement resulting from the Goldberg Award was extended by the parties for two years in 2003 and for an additional year in 2005. Both extensions included an MOU for a limited number of additional positions to be upgraded.

In 2006 national negotiations, the APWU again sought and successfully bargained a general upgrade for all positions. As a result, PS-5 Clerks were upgraded to PS-6 Clerks and, as such, became eligible for reassignment to CC-1 Carrier positions.

In negotiations for the 2016-2019 National Agreement, the NALC and the Postal Service agreed to an MOU (the MOU) which, in relevant part, provides:

Re: Pay Schedule Consolidation

The parties hereby agree that effective November 24, 2018, all city carrier pay schedules will consolidate existing grade levels into a single grade, as follows:

Grade 1 career city carriers in RSC Q and RSC Q7 will slot to the equivalent step in Grade 2 of their respective pay schedule, and retain time-in-step credit. The remaining grade level will be classified as "City Carrier."

Grade 1 CCAs in RSC Q4 and RSC Q5 will slot to the equivalent step in Grade 2 of their respective pay schedule, and retain time-in-step credit. The remaining grade level will be classified as "City Carrier Assistant."

² The ELM Chart has remained unchanged since 2003.

Carrier Technician Pay

Carrier Technicians (Occupation Code 2310-2010) and CCA Carrier Technicians (Occupation Codes 2310-0047 and 2310-0048) will receive additional compensation equivalent to 2.1% of the employee's applicable hourly rate for all paid hours. This additional compensation will be considered basic pay for all purposes of determining benefits or additional compensation....

The 2.1% additional compensation received by Carrier Technicians was based on the average differential between the former CC-1 pay and the City Carrier (former CC-2) pay to be received by the former CC-1 Carriers under the MOU.

Although both parties rely on the wording of the MOU as clearly supporting their respective positions in this case, each also presented testimony related to the bargaining that resulted in this MOU in further support of their positions.

Doug Tulino has been Vice President of Labor Relations for the Postal Service since 2005. He was the Postal Service's chief negotiator in the 2016 NALC negotiations. He testified that he had ongoing discussions during the negotiations with his NALC counterpart, President Fred Rolando. Tulino stated that at the outset of negotiations the NALC made clear that one of its important objectives was to achieve an upgrade for Carriers. Tulino stated that they had many discussions and he was clear that the Postal Service was not going to agree to an upgrade. This was because, as he said he told Rolando: "...we have a long sordid history with the upgrade in our collective bargaining process, and it wasn't something that I wanted to set as a pattern for the rest of the negotiations process with the other unions."

Tulino continued that, in an effort to find a way to meet the Union's demand for an upgrade, the conversation shifted to the compensation portion of what an upgrade would provide. Tulino explained that he was willing to consider that, provided the Postal Service got the necessary *quid pro quo* from the Union. Tulino said that is what happened and resulted in the MOU. The consolidation of pay scales provided for in the MOU was the mechanism used to provide the Union with the objective they had to get the money to their employees.

Tulino stressed that there never was any discussion about an upgrade being justified because of any change in job duties, skill levels, or other factors that might merit a higher level. There also never was any discussion between him and Rolando or other Union representatives regarding the MOU having any impact on cross-craft excessing.

Joe Alexandrovich served as Manager of Collective Bargaining and Arbitration for five years prior to his retirement from the Postal Service in March 2018. At Tulino's request, he drafted the key relevant provisions in the first three paragraphs of the MOU. He pointed out that the MOU does not use the term "upgrade" because this was not an upgrade. He added that if they had done an upgrade they would have called it that and the CC-1 Carriers would have become CC-2, and the CC-2 Technician Carriers would have become CC-3.

Fred Rolando has been President of the NALC for some ten years and was the Union's chief negotiator in the 2016 negotiations. He noted that bargaining occurred over a 15-month period. He said he made it clear from the beginning that "due to the nature of our work and some of the other give and take that was going on in the negotiations" the Union felt the Carriers deserved an upgrade. According to Rolando, Tulino made it clear he was "fine with the upgrade," but had two conditions. The first was that he did not want to call it an "upgrade" because he did not want to be in a position to give all the other unions upgrades. Tulino also for some reason did not want to create a CC Grade 3 for Technician Carriers. Rolando said he was agreeable as long as the CC Grade 1s became CC Grade 2 Carriers. Rolando stated that the Postal Service came up with the term "Pay Schedule Consolidation" and giving the Technician Carriers a pay differential.

Rolando agreed that he and Tulino did not discuss the effects of an upgrade on Article 12. Rolando added: "I think we were both aware of the past and the history." Rolando stated that the NALC's understanding after the negotiations were completed was that the impact on Article 12 would be the same as when the Carriers received a previous upgrade in the 1999 Fleischli Award. Rolando noted that the NALC did not learn that the Postal Service had a

different understanding until it received a letter dated September 6, 2018 from the Postal Service, stating:

This letter is in reference to the implementation of the Memorandum of Understanding (MOU) Re: *Pay Schedule Consolidation* found in the 2016-2019 National Agreement.

Pursuant to the terms of the MOU, Rate Schedule Codes (RSC) Q, Q4, and Q7 will consolidate into one grade. The pay rates in this grade will be equivalent to the Grade 2 pay rates in effect as of November 24, 2018.

City Carriers (Occupation Code 2310-2009) and City Carrier Assistants (CCA) (Occupation Codes 2310-0045 and 2310-0046) will be placed into the equivalent step in the consolidated grade and will retain time-in-step credit.

Carrier Technicians (Occupation Code 2310-2010) and City Carrier Assistant Technicians (Occupation Codes 2310-0047 and 2310-0048) will be placed into the equivalent step in the consolidated grade and will retain time-in-step credit. For all paid hours, these employees will receive additional compensation equivalent to 2.1% of their hourly rate.

To accommodate these changes in our internal systems, the personnel records of City Carriers and CCAs will continue to reflect they are a "Grade 01" employee, and the personnel records of Carrier Technicians and CCA Technicians will continue to reflect they are a "Grade 02" employee.

Upon the effective date of the MOU, all employees in the city letter carrier craft will receive a new PS Form 50, *Notice of Personnel Action*, with Nature of Action (NOA) Code 997, "Contractual Increase," which will indicate the employee's new salary.

* * *

Implementation of the MOU Re: *Pay Schedule Consolidation* will not impact any provisions of the National Agreement, including, but not limited to, Articles 6, 12, and 41 and handbooks/manuals that are incorporated into the National Agreement through Article 19, except as described above.

NALC POSITION

The NALC insists that employees in PS Grade 6 positions no longer are eligible to be excessed into the Letter Carrier craft. Article 12 prohibits excessing employees across craft lines to higher level positions. It is undisputed that prior to implementation of the MOU on November 24, 2018, determination of pay level equivalencies for purposes of cross-craft reassignments had been determined by reference to the ELM Equivalent Grades Chart. That chart provides that Grade 1 in the City Carriers pay schedule is equivalent to PS Grade 6, and Grade 2 in the City Carriers pay schedule is equivalent to PS Grade 7. The consolidation of City Carrier pay schedule that was implemented on November 24, 2018 eliminated City Carrier Grade 1. The MOU provides that "Grade 1 career city carriers in RSC Q and RSC Q7 will slot to the equivalent step in Grade 2 of their respective pay schedule." Grade 1 carriers were upgraded to Grade 2. Grade 2 Technicians remained in Grade 2. The consequences of this change for Article 12, the NALC asserts, are unambiguous. PS Grade 7 employees remain eligible for reassignment to any position in the Letter Carrier craft, but for employees in PS Grade 6 any reassignment to the Letter Carrier craft would constitute excessing to a higher level, which is prohibited by Article 12. This result is the only outcome that harmonizes the plain language of Article 12, the ELM Chart and the MOU.

The NALC contends that relevant precedent also supports the NALC's position. The basic premise of the Postal Service's position is that the pay schedule consolidation was fundamentally different from previous upgrades. In fact, the NALC asserts, it was exactly the same. When the NALC pay upgrade granted in the 1999 Fleischli Award was implemented on November 18, 2000, all PS Grade 5 Letter Carriers were upgraded to a new NALC Grade 1, which was the same as PS Grade 6. The parties used a step-to-step upgrade procedure by which employees were placed in the new CC Grade 1 in the same step they previously held in PS Grade 5. For Grade 1 Letter Carriers, the implementation of the pay schedule consolidation in 2019 was identical to the implementation of the Fleischli upgrade. The only difference was that the pay schedule consolidation did not result in a new higher grade for the Carrier Technicians. That difference is not an issue in this case.

The NALC also argues that the 2018 consolidation cannot be dismissed as "merely a pay rate increase" without any other repercussions. Bargaining history undercuts this argument. The 2008 APWU upgrade clearly was a substitute for a pattern general increase. The 2006-2010 APWU National Agreement provided for only two general increases over the four-year agreement, effective November 25, 2006 and November 21, 2009. There was no general increase in the three years between. Instead, the parties provided for a one-pay-level upgrade, effective February 16, 2008. Following this APWU upgrade, the Postal Service once again was entitled under Article 12 to reassign former Grade 5 Clerks into the Letter Carrier craft. Those clerks were now in Grade 6 which was the equivalent of City Carrier Grade 1 on the ELM Chart. Although it could have done so, the NALC did not argue that there had been no recognized changes in the Clerk position so that the upgrade was simply a disguised pattern pay increase.

Similarly, the NALC asserts, the drafting precedent shows there is no significance to the MOU's changing the name "City Grade Carrier 2" to "City Carrier." After the Fleischli Award, which upgraded PS 5 and 6 Letter Carriers to Grades 6 and 7, the parties agreed to rename the Letter Carrier grades "CC-1" and "CC-2." Notwithstanding the name change, these grades were understood to be equivalent to PS Grades 6 and 7 for purposes of Article 12. In sum, the NALC argues, in 2000 and 2008 all that mattered for Article 12 purposes was that employees were moved to the higher pay grade. That is all that should matter here.

The NALC further rejects the Postal Service's contention that the bargaining history of the MOU supports management's position. On the contrary, such history supports the NALC's position. There is no dispute that in negotiating the MOU the parties never discussed Article 12 or excessing. The MOU, which notably was drafted by the Postal Service, contained no language allowing PS Grade 6 employees to be excessed into the Letter Carrier positions following the pay schedule consolidation. Insofar as Article 12 prohibits the cross-craft excessing of employees to higher level positions, it was the Postal Service's responsibility to incorporate appropriate language allowing such excessing, if that is what it wanted to do. The NALC's position is based on the plain meaning of the contract language.

The NALC maintains that the record also does not support the assertion of the Postal Service and APWU that eliminating Letter Carrier vacancies as "landing spots" for excess Clerks would have "profound implications" for postal operations and would be "devastating to the clerk craft." The record shows that 11,589 Level 6 Clerk positions were eliminated over the five-year period from 2014 to 2018. Yet, only 98 Clerks were excessed into the Carrier craft during those five years -- 0.8 percent of the positions eliminated.

Finally, the NALC notes, a long line of national arbitration precedent clearly establishes that the present interpretive dispute must be resolved within the four corners of the NALC National Agreement.

POSTAL SERVICE POSITION

The Postal Service contends that the language of the MOU demonstrates that the parties did not agree to an upgrade or otherwise intend to impact cross-craft assignments under Article 12. Initially, the Postal Service notes, the title of the MOU is "Pay Schedule Consolidation." The term "upgrade" is not used in the title or anywhere else in the MOU. This is in stark contrast to other MOUs or contract language providing for an upgrade, all of which use the term "upgrade" or "upgrades" in the title or section heading. The use of another term in this MOU is a clear indication the parties agreed to something different from an upgrade. The plain meaning of "pay schedule consolidation" is not upgrade.

The Postal Service asserts that the first paragraph of the MOU reinforces the point that its purpose is to "consolidate existing grade levels into a single grade, as follows." Therefore, what "follows" in the MOU has to be understood in the context of the MOU's purpose to consolidate existing grade levels. By its terms, the language in the second paragraph, relied on by the NALC, merely describes how the new consolidated pay schedule is to be established. The intent of the MOU was to consolidate the schedules in a way that provided for an increase equivalent to what an upgrade would provide. There is nothing in the MOU that would remotely suggest it was intended to have any consequences outside the issue of pay.

The Postal Service points out that it never had agreed to a "pay schedule consolidation" before; nor is there any other example of a bargaining unit pay system where two positions are in the same grade, but are making different salaries.

The MOU, the Postal Service stresses, literally says nothing about an upgrade. The Postal Service insists this was purposeful and demonstrates that the parties' agreement did not include an upgrade. The NALC expressly sought a general upgrade, but failed to achieve that and settled instead for a pay schedule consolidation.

The Postal Service argues that the bargaining history of the MOU also demonstrates that the parties did not agree to an upgrade or otherwise intend to impact cross-craft assignments under Article 12. Postal Service Vice President Tulino explicitly and unequivocally testified that when NALC President Rolando brought up the issue of an upgrade, Tulino told him that an upgrade was not something he could consider, explaining that it would complicate negotiations with other unions and set a pattern that he was unwilling to set. The discussion then turned to whether the NALC, even if it could not be granted an upgrade, could receive a comparable pay increase. That was a possibility Tulino could consider, assuming other concessions and trade-offs rendered an overall deal satisfactory. Not only is Tulino's account of his response to the NALC's upgrade request plausible, the Postal Service insists, it is precisely what one would expect based on the Postal Service's collective bargaining history. The upgrading of carriers in the Fleischli Award sparked a subsequent interest arbitration and series of negotiations focused in large measure on the upgrade issue. This era ended with the 2006 APWU National Agreement which granted the APWU a general upgrade. Since that time, all has been quiet on the upgrade front. It is inconceivable that Tulino would have agreed to restart a new era of one-upmanship, leapfrogging and competitive, rather than pattern bargaining. President Rolando must have, or at least should have, understood that the concern of avoiding complications with the other unions could only be satisfied by not agreeing to an upgrade.

Understanding the MOU as a pay raise rather than as an upgrade, the Postal Service contends, also is consistent with how both parties treated the MOU as part of the overall

economic provisions of the new NALC National Agreement. Unlike the upgrade in the Fleischli Award, the pay raise provided in the MOU was in lieu of, not in addition to, a general increase for that year. Because of other concessions in the overall agreement, this increase was within the established pattern with the other unions. Moreover, there is no suggestion whatsoever that the MOU was based on any understanding of changed job duties or responsibilities, as was the upgrade in the Fleischli Award.

The Postal Service emphasizes there is no dispute that the parties did not discuss any issues concerning the MOU having an impact on cross-craft assignments or any other collateral impact that a general upgrade might have. As such, there clearly was no agreement or meeting of the minds to affect that issue. While the Postal Service submits that the evidence supports the conclusion that both parties knew that the MOU was a pay raise and not an upgrade, the evidence is virtually undisputed that at least the Postal Service had no thought that the MOU would impact cross-craft assignments. In such circumstances, the plain meaning of the language must control, and the plain meaning of "pay schedule consolidation" is far from "upgrade."

The Postal Service further points out that technological changes, mail volume declines, and changes in the mix of mail all have contributed to major reorganizations, consolidations, and complement reductions throughout the Postal Service. The impact of these factors has fallen disproportionately on the APWU, and especially the Clerk craft. The ability to make cross-craft reassignments is one of the most important tools within Article 12's reassignment process to find jobs for excessed employees and to do so in keeping with the fundamental goal and obligation of keeping dislocation and disruption to a minimum. It is not reasonable or even plausible that the Postal Service and the NALC came to an agreement to severely limit cross-craft reassignments into the Carrier craft when there is no mention of such in the text of the agreement. Such a conclusion would be all the more astonishing when both parties concur that there was no discussion of the topic at any point in bargaining. This issue, the Postal Service stresses, has far too much significance, implicates the rights of too many other unions, adversely affects too many employees, and has had too complicated a history to suggest that this is what the parties meant to do with no word of discussion.

INTERVENOR APWU POSITION

The APWU, which intervened in this case in support of the Postal Service's position, maintains that the MOU does not change the right of PS 6 Clerks to reassignment into formerly Grade 1 City Carrier positions under the APWU National Agreement. Both the NALC and the Postal Service agree they never discussed, negotiated or settled on an understanding, implied or explicit, that the MOU and pay raise for Grade 1 Carriers to the Grade 2 pay rate would bar PS 6 Clerks from reassignment to the former Grade 1 positions. Changing the long standing rule about the Carrier positions available for cross-craft reassignment of PS 6 Clerks has to be consciously made and explicitly stated and has to include the APWU. The record is bare of any evidence that the MOU explicitly, implicitly or in its application, was expected or intended by both parties to change the right of PS 6 Clerks to be reassigned to Grade 1 City Carrier positions.

The APWU stresses that the NALC did not achieve an actual upgrade like the APWU accomplished in 2006. The NALC negotiated a pay raise, not an upgrade, and the word upgrade is nowhere to be found in the MOU. It is evident the parties did not use the term upgrade because it does have meaning -- a meaning the Postal Service did not intend. Moreover, nothing changed about the work or circumstances of the Grade 1 Carrier position that would seem to justify making them Grade 2.

The APWU insists the ELM Equivalent Grades Chart which predates the new consolidated Carrier pay scale does not show that comparable pay grades for pay rate purposes change with changes to the pay rates within those grades. Pay rates of the comparable Carrier and Clerk grades for more than a decade have not been equal despite the pay grades being identified as equivalent on the ELM Chart. Even if the arbitrator accepts the NALC's interpretation of the ELM Chart, that chart does not override the APWU National Agreement or the practice of equating PS 6 with the former CC 1 Grade, regardless of their specific pay rates and regardless of raises that change those rates.

The APWU believes that preventing the reassignment of its bargaining unit employees to the Carrier positions that have for years been available to them requires intent and agreement on the part of at least three parties (the Postal Service, the APWU and the NALC), if not four (the Mail Handlers). Otherwise, the APWU argues, there is a conflict with the fundamental principle that one union's entitlements and obligations cannot be changed through the bilateral agreements of other unions with the Postal Service.

Finally, the APWU stresses, the issues and disputes the NALC's position have and will give rise to are sobering. As the APWU identified, future arbitrations will have to grapple with a host of substantive challenges about reassignments. The APWU poses these questions:

Does Article 12 protect only a bargaining unit employee's opportunity to be reassigned to a position in another craft at the same or lower level or is it also a limit on which employees can come into a craft? What does "same or lower level" mean in the collective bargaining agreement, does it mean the same thing in all of the unions' contracts, and which contract is operative? As noted earlier, what does "equivalent" mean in the ELM Equivalent Grades Chart and how does the Postal Service properly interpret or change the chart in accordance with Article 19 in the APWU National Agreement? And...does the Bridge Memo prohibit the Postal Service from unilaterally or bilaterally changing reassignment rules (either losing or gaining) that impact another union's Article 12?

These questions and the overall impact of the NALC's position, the APWU argues, favor prudence against changing cross-craft reassignments, especially in the absence of language and intent to do so.

INTERVENOR NPMHU POSITION

The NPMHU, which intervened in this case in support of the Postal Service's position, sees the question posed by this arbitration -- whether the MOU between the Postal Service and the NALC changed the manner in which employees from other crafts are eligible for cross-craft reassignments -- as being of the utmost importance to the unions, their respective

members and to the Postal Service. The importance of this issue is best exemplified by the Bridge Memo which continues to be part of each union's separate national agreement. The Bridge Memo prohibits any one union and the Postal Service from bilaterally agreeing to change the application and meaning of Article 12 from how it existed under the 1978 National Agreement when the three national postal unions were covered by the same collective bargaining agreement. The Mail Handlers also point to the 1999 Fleischli Award -- which granted an upgrade to the City Letter Carriers -- in which Fleischli explained that such changes should occur only "when necessary to address proven inequity."

In this case, the NPMHU insists, there is no evidence of "proven inequity" to justify an upgrade. Consistent with Vice President Tulino's testimony that the NALC did not justify the request for an upgrade on any change in job duties, Tulino testified not only that he expressly told NALC President Rolando that the Postal Service would not "entertain an upgrade," but also that, in drafting the MOU, the Postal Service "crafted" the language so that it could not be an upgrade because of the implications that had for the Postal Service on bargaining with other postal unions.

In sum, the Mail Handlers argue, given what Fleischli described as the "destructive effect" of upgrades, particularly the impact on what positions would be eligible for cross-craft reassignments, a party desiring to alter the historic relationships between the parties has a heavy standard to meet and a high bar to overcome. Where, as in this case, there is a complete absence of any justification for the upgrade; the drafted language in the MOU does not even reference a change in the relative comparison of positions between bargaining units; and there is clear testimony from Tulino regarding the specific discussions he had with Rolando on this very topic, it must be concluded that the NALC has failed to meet its burden or the heavy standard that properly must be applied in this case.

FINDINGS

This grievance was filed by the NALC seeking an interpretation of the NALC's National Agreement with the Postal Service. The Postal Service and the intervenor Unions agree that only the NALC National Agreement is at issue in this case, although cross-craft assignments occur under provisions of Article 12 that are found in all three National Agreements and that are subject to the Bridge Memo.

The MOU at issue is part of the 2016-2019 NALC National Agreement. There is no question that the MOU provided for an increase in compensation for NALC members, who evidently did not otherwise receive pay raises in that contract. Pay rates for employees in different crafts whose grades have been designated as equivalent have and do vary depending on negotiations or interest arbitration awards.

In contrast to prior agreements or awards providing for an upgrade, the MOU does not include any use of the term "upgrade." It is titled "Pay Schedule Consolidation," and states at the outset the parties' agreement that "all city carrier pay schedules will consolidate existing grade levels into a single grade" and then provides how that is to be accomplished, including:

Grade 1 career city carriers in RSC Q and RSC Q7 will slot to the equivalent step in Grade 2 of their respective pay schedule, and retain time-in-step credit. The remaining grade level will be classified as "City Carrier."

The record in this case indicates this is the first occasion on which the Postal Service has agreed to or utilized a pay schedule consolidation. The language of the MOU is not so clear as to preclude consideration of its bargaining history, particularly in the context of past upgrades, in an effort to determine the meaning of the parties' agreement as it relates to the issue in this case.

The testimony of Postal Service Vice President Tulino and NALC President Rolando, the principal negotiators, is fairly close. The NALC sought an upgrade for Carriers.

That was an important bargaining goal for the Union. The Postal Service, however, made it clear it could not agree to an upgrade as such, explaining that would trigger demands from other unions to obtain an upgrade. There was no reference to or discussion of Article 12 excessing, withholding of positions or cross-craft assignments, but, as Rolando indicated, it is reasonable to conclude that both of them were "aware of the past and the history."

There is some difference in the testimony of the two principals. Tulino insisted he told Rolando that the Postal Service was not going to agree to an upgrade and explained why not. Rolando testified that Tulino was "fine with the upgrade," but did not want to call it an "upgrade" because Tulino did not want to be in position to give all the unions upgrades.

There is no question that the MOU provided Carriers with the increased compensation they would have received if granted an upgrade. This additional compensation was in lieu of the pay increases negotiated with other unions. Indeed, it was greater, but the Postal Service's assertion that the difference was "paid for" (*quid pro quo*) by other concessions agreed to by the NALC was uncontradicted.

In these circumstances, it would not have been reasonable for the NALC to assume that the Postal Service chose for the first time to structure and agree to the "pay schedule consolidation" set forth in the MOU, instead of agreeing to a traditional upgrade, simply to avoid using the word "upgrade," but with the intent, for Article 12 purposes, to elevate the relative level of CC-1 Carriers, whose grade level was consolidated in the new City Carrier grade level, above that of positions in other crafts that then were at the equivalent level. This is particularly so given that there is no evidence that the duties, responsibilities and/or working conditions of the CC-1 Carrier positions had changed significantly, or that the NALC alleged such changes in negotiations. Past experience, as both parties were aware, indicated that when one craft got an "upgrade" -- as the NALC did in the 1999 Fleischli Award -- that immediately triggered demands by other crafts to regain parity.³

³ Prior to the Fleischli Award, Carriers were PS Grade 5, as were the bulk of APWU Clerks. As the result of the Fleischli Award, Carriers were upgraded to PS Grade 6 (Technician Carriers continued to receive an additional differential payment). It followed that PS-5 Clerks no longer were at the same level as PS-6 Carriers and no longer could be excessed into Carrier positions.

The fact that the "pay schedule consolidation" ultimately agreed to in the MOU was a new concept proposed by the Postal Service in response to the NALC's demand for an upgrade and the absence of any use of the term "upgrade" in the MOU -- in the context of the discussions between Tulino and Rolando and the past history of Postal upgrades -- surely alerted, or should have alerted, the NALC that the Postal Service understood that by agreeing to the MOU it was not agreeing to change the relative level of Carriers in relation to positions in other crafts. Otherwise, there would have been no apparent reason not to just agree to upgrade CC-1 Carriers to CC-2 and CC-2 Technician Carriers to CC-3.

Given the NALC's knowledge of the Postal Service's concerns, and the NALC's agreement in the MOU to a pay schedule consolidation, which purposely was not delineated as an upgrade, without any discussion of the MOU having an impact on Article 12 excessing or cross-craft assignments, the evidence as a whole supports a finding that the parties' understanding memorialized in the MOU is that it does not have such an effect.

Accordingly, I conclude that (i) the NALC's stated issue should be answered in the affirmative with respect to newly designated City Carrier positions that formerly were CC-1 positions, and (ii) the Postal Service's stated issue should be answered in the negative.

(Thereafter the NALC and the Postal Service agreed to CC-1 and CC-2 positions that were slotted into the ELM Chart as equivalent to PS-6 and PS-7.) In the next round of negotiations, the APWU sought an upgrade for its crafts. It did not achieve an upgrade for PS-5 Clerks in the interest arbitration that concluded those negotiations, but in the next round of negotiations the APWU successfully bargained an upgrade that returned those Clerks to the same level (PS-6) as the CC-1 Carriers as part of an overall compensation package comparable to that achieved by the other Unions.

AWARD

The Postal Service's position in this case is affirmed as set forth in the above Findings.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator