

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

Grievant: Class

Between

Post Office: Hialeah, Florida

UNITED STATES POSTAL SERVICE

USPS Case No.: G10C-4G-C 12361586

And

AMERICAN POSTAL WORKERS UNIONS

BEFORE: Linda S. Byars, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Alexander Sanchez, Labor Relations Specialist

For the Union: Jim DeMauro, National Arbitration Advocate

Place of Hearing: Hialeah, Florida

Date of Hearing: August 23, 2013 (Briefs: September 13, 2013)

Date of Award: September 23, 2013

Relevant Contract Provisions: Article 1.6, MOU Clerk Craft Jobs

Contract Year: 2010-2015

Type of Grievance: Use of 204-B's to Supervise Clerk Craft Employees

Award Summary

The Postal Service violated the Clerk Craft Jobs MOU by using 204-B's put up from the Carrier Craft to supervise Clerk Craft employees. The Grievance is sustained. The issue of the remedy is remanded to the parties, and the Arbitrator retains jurisdiction to decide the remedy if necessary.



BACKGROUND

By Step 1 Grievance Outline dated October 14, 2012, the Union stated the background of the Grievance as follows:

As of June 1st, 2012 Mgmt [was] to eliminate the use of 204b's in favor of using the Lead Clerks position. Clarifications were set on Clerk Craft Lead Clerks Questions and Answers on August 14, 2012. Any 204b are to be use in accordance with the contract that states that such use shall be for no less than 14 days and no longer than 90 days. Also coverage [is] only for absences or vacancies of the supervisor. All 204b's are to be given a 1723 to show the assignments and copies are to be sent to the local Union official. [Joint Exhibit No. 2, p. 16.]

The Step 1 Grievance states the problem as follows:

Management in Hialeah are continuing to use 204bs for less than 14 days and more than 90 days and not in coverage of a vacant supervisory position or a supervisor who is absent. Management in the city of Hialeah is continuing the use of 204b's to cover in the retail facilities instead of utilizing the Lead Sales and Services Associate and or Lead Clerk-Customer Service as per their job assignments. This situation is existing and ongoing. [Joint Exhibit No. 2, p. 16.]

The corrective action requested at Step 1 is as follows:

Immediate cease and desist all 204b usage not in accordance with the National Agreement or any related official documents such as questions and answers. Submit copies of any 1723 for any and all current 204b assignment to the Local Union Official and for any future 204b assignment. [Joint Exhibit No. 2, p. 16.]

By Step 2 Grievance dated October 24, 2012, the Union complained that management failed to respond to the Grievance and did not provide the requested documentation. The Step 2 Grievance amends the requested remedy as follows:

In addition to the remedy requested [at Step 1], the Union requests that clerks in the appropriate station to be paid the same amount of hours worked by these 204b's as of October 13, 2012 and to be paid at the OT rate and make employees whole. [Joint Exhibit No. 2, p. 14.]

By memorandum dated November 13, 2012, the Postal Service responded to the Grievance stating as follows:

The union has taken the position that management cannot utilize 204B. If management utilizes 204B, then management must pay to clerks to be named by the union the amount equal to the hours worked by the 204B because according to the union, the 204B are performing work that belongs to the lead clerks. There is no language in the contract that states that management must place lead clerks in every facility. There is also no language that supports the remedy sought by the union. The work performed by 204B personnel is managerial work. This is the same work that any regular EAS supervisor would perform. If the union is successful in gaining this resolution, then every work performed by EAS level 17 would be grieved by the APWU and the union would be compensated.

The APWU cannot dictate to NALC covered employees the terms of the APWU's contract, and this is exactly what the APWU is trying to do through this grievance. The 1723 provided by the union are from carriers covering positions over their craft. In essence what the APWU wants is to create lead clerk positions; and these lead clerks would then supervise the carriers, and or mail handlers. The APWU wants to establish control over the other crafts, and also eliminate EAS supervisors.

The union has failed to establish a violation of the contract. The union has willfully misinterpreted the contract in order to gain more positions, and control over the other crafts. The remedy sought by the union cannot be granted. The grievance is denied. [Joint Exhibit No. 2, p. 12.]

The Union filed Additions and Corrections, dated November 20, 2012, responding with additional arguments, including, "If lead clerks are to replace improperly placed 204bs, then it must be that these improper 204bs will be now performing what is now considered bargaining unit work." [Joint Exhibit No. 2, p. 9.] The Union appealed to Step 3 and management denied the Grievance in a Step 3 decision letter dated January 30, 2013. [Joint Exhibit No. 2, pp. 3-7.] The Union appealed to arbitration in a letter dated February 20, 2013. [Joint Exhibit No. 2, p. 2.]

The Grievance came before the Arbitrator at hearing on August 23, 2013 in Hialeah, Florida. The parties agree that the Grievance is properly before the Arbitrator and that the Arbitrator retains jurisdiction to decide a remedy, if necessary. The parties agreed to file post-hearing briefs post-marked on or before September 13, 2013.

OPINION

The Postal Service objects to the testimony of the Union witness, Ismo Guzman, who as the Hialeah Business Agent filed the Grievance. The Postal Service contends that Mr. Guzman's testimony should not be permitted, "because he had no statement in the case file." [Postal Service Closing Statement, p. 1.] However, the record demonstrates that Mr. Guzman investigated the Grievance, was the Step 2 designee for the Grievance, and was also the Union representative who filed the Additions and Corrections. Contrary to the position of the Postal Service advocate, his statements are contained throughout the written record. His testimony was based on his observations, was supported by the written record, and was credible. Contrary to the Postal Service argument, other witnesses to corroborate his testimony are unnecessary. Striking Mr. Guzman's testimony because he is "biased," as the Postal Service requests, is no more reasonable and fair than striking the testimony of the management witness.

The Postal Service also contends that the Union presented new evidence at arbitration, specifically testimony by Mr. Guzman with respect to 204-B Hestor. The Postal Service objects to such testimony because there is no mention of Mr. Hestor in the written record. However, Mr. Guzman testified that Mr. Hestor was put up from the Carrier Craft as a 204-B in April 2013, two months after the Union appealed to

arbitration in February 2013. The parties' agreement that they put forth the evidence and arguments relied upon during the steps of the grievance procedure does not preclude subsequent evidence showing a continuing violation or evidence showing if and when a violation is corrected. In this case, the Union alleges that the violation is ongoing, and management is obligated to respond to the allegation. Supervisor of Customer Service Support Veronica Ortega testified for the Postal Service that Mr. Hestor is a 204-B from the Carrier Craft and is covering the vacancy of a manager in Miami Gardens, as Mr. Guzman testified.

In its post-hearing brief the Postal Service complains that the Union attempts to prove its case by fabricating evidence and trickery. The Postal Service contends that the Union wants to expand the language of the MOU to eliminate the usage of 204-B's completely, "no matter which craft they come from, and which craft they are supervising." [Postal Service Summary p. 2.] However, the record demonstrates that the Union objects only to 204-B's from other crafts supervising Clerk Craft employees and thereby undermining the parties' agreement to create lead clerk positions.

The record demonstrates that, during the earlier stages of the grievance procedure, it was the position of the Postal Service that the MOU did not prohibit management putting up employees from crafts other than the Clerk Craft to 204-B, regardless of the craft of employees they supervised. However, as the Union points out, the parties at the National level addressed this issue, among others, in a series of Questions and Answers concerning "Lead Clerk."

The agreement signed by the Postal Service and the Union states in relevant part:

1. Beginning June 1, 2012, can employees from other bargaining unit crafts (mail handlers, carriers, etc) be utilized in 204-B assignments to supervise Clerk Craft employees?

Answer: Beginning June 1, 2012, employees from other bargaining unit crafts may be utilized as 204-Bs, supervising Clerk Craft employees, to cover supervisory absences or vacancies of 14 or more consecutive calendar days. Usage of a 204-B in this exception is normally limited to no more than 90 days.

2. Can employees from these other crafts (mail handlers, carriers, etc) be utilized as 204-Bs in the Clerk Craft to cover supervisor absences or vacancies of less than 14 days?

Answer: No

3. Are there any exceptions to the 90 day limit in #1, above?

Answer: Exceptions would only be appropriate in limited situations (such as supervisor on 4 months maternity leave; supervisor on 6 months military leave; or similar situations).

[Joint Exhibit No. 8.]

In other words, the limitations of the MOU (Clerk Craft Jobs), Section 2(D) applies to 204-Bs supervising Clerk Craft employees regardless of whether or not the 204-B has been set up from the Clerk Craft or from other crafts. Contrary to the Postal Service argument, the issue is more complex than whether or not management puts up a clerk or a carrier to 204-B status. The Postal Service violates the MOU when it puts up employees from any craft to supervise Clerk Craft employees where the assignment is outside the limitations of the MOU.

The Memorandum of Understanding on Clerk Craft Jobs states in the first paragraph that the Postal Service agrees to create certain duty assignments in the Clerk Craft, and Paragraph 2 states the understanding with respect to Mail Processing/Customer Service as follows:

The intent behind the creation of the Lead processing Clerk and the Lead Sales and Services Associate is to provide oversight, direction and support, in the absence of Supervisory presence to bargaining unit employees in both Mail Processing and Retail operations. Lead Clerk positions will be created at one level above other employees in the group.

The Employer will fill duty assignments of a Lead Clerk in any facilities where clerks work without direct supervision and in facilities that have a minimum complement of five (5) clerks. Lead Clerk assignments shall include duties in both the Retail and Mail Processing operations in Post Offices. Lead Clerk assignments will also be filled in facilities with only a Retail operation.

- A) Lead Clerk-Mail Processing – Responsibilities include, but are not limited to, resolving problems that may occur during tour operations and determining when a supervisor should be involved, work as a working leader of mail processing employees in a mail processing activity; maintaining records related to mail on hand and mail processed; maintaining a working knowledge of regulations, policies and procedures related to mail processing activities.
- B) Lead Clerk-Customer Service – Responsibilities include, but are not limited to, maintaining a working knowledge of regulations, policies and procedures related to all phases of retail services and Post Office mail processing operations; acting alone or as a working leader to retail and mail processing employees; providing technical guidance to retail clerks in addition to communicating regulations, policies and procedures to those employees, performing administrative duties in both retail and mail processing operations; and ensuring that all work is performed efficiently.
- C) The ratio of Lead Clerk assignments in the clerk craft complement in a facility shall be:

- 5 to 49 clerks – 1
- 50 to 99 clerks – 2
- 100 – 199 clerks – 3
- 200 – 499 clerks – 5
- 500 or more clerks – 5 plus 1 for each 100 additional 100 clerks

Lead Clerk assignments may also be established in retail only offices or stations. Existing LSSA's, Window service technicians and other existing clerk craft positions of a similar nature identified by the parties shall be grandfathered into the new position of Lead Clerk.

D) In order to ensure the orderly establishment of the new Lead Clerk position, the Employer will have 1 year from the signing of this memorandum to develop the Lead Clerk senior qualified job descriptions and any training program that may be necessary, post and fill the positions and complete any other relevant activities. During year 2 of this agreement the parties will jointly agree upon a procedure to be used to review the effectiveness of the newly established position. At the end of year 2, the parties will meet to apply the review procedure with the expectation that the number of work hours utilized for 204-B activities will be reduced or eliminated in those work units with a Lead Clerk position. Additional reviews will be conducted by the parties at the end of years 3 and 4 of this agreement. Not later than June 1, 2012, the Employer will eliminate the usage of 204-B's except in the absence or vacancy of a supervisor for 14 days or more. The usage of a 204-B in this exception is normally limited to no more than 90 days. [Joint Exhibit No. 1.]

As the Union contends, the Postal Service's argument is not that 204-B's from other crafts are supervising Clerk Craft employees as a result of one of the exceptions outlined in the Q&A for Lead Clerk, i.e, in "limited situations (such as supervisor on 4 months maternity leave; supervisor on 6 months military leave; or similar situations)." At arbitration the Postal Service maintained that 204-B's are not supervising Clerk Craft employees in Hialeah.

During opening statement, the Postal Service maintained that 204-B's from the Carrier Craft were put up to cover carriers and that the Union cannot object unless the Postal Service puts up Clerks. When asked by the Arbitrator if it is management's position that the 204-B's are supervising only Carriers and not Clerks, the Postal Service advocate responded, "Yes, that's what I meant to say in my Step 2." However, such argument is contrary to the testimony of both the Union and the Postal Service witnesses.

Hialeah Business Agent Ismo Guzman testified that 204-B's from the Carrier Craft continue to supervise Clerk Craft employees. On cross-examination, Mr. Guzman testified that he observed the 204-B's supervising Clerk Craft employees. The clock

rings in the record also support Mr. Guzman's testimony. Moreover, his testimony is supported by the witness for the Postal Service. Supervisor Ortega testified that 204-B's supervise clerks and carriers.

The Union contends that when management does not establish a lead position as agreed, the 204-B's supervising clerks are performing clerk work.¹ If the Postal Service is required to cease using Clerks as 204-Bs but can continue using Carriers as 204-Bs to supervise clerks, it defeats the purpose as stated in the MOU, and provides the reason for the agreement made in the Lead Clerk Questions & Answers, submitted as Joint Exhibit No. 8. If management can use 204-B's from other crafts to supervise clerks without the restrictions specified in the MOU, the "expectation that the number of work hours utilized for 204-B activities will be reduced or eliminated in those work units with a Lead Clerk position" is easily undermined. Not only is it reasonable to conclude that the work can be performed at a lower pay grade than supervisor, as the Union contends, but the disputes over supervisors performing bargaining unit work and the consequences may be reduced, as also implied by the Union's Additions and Corrections.

The establishment of the lead positions and the elimination of 204-B's supervising Clerk Craft employees is interrelated, as the Union contends. The Union negotiated for the Lead Clerk positions, and the Postal Service agreed to create certain duty assignments in the Clerk Craft, including Lead Clerk. The position of the Postal Service in its Step 3 decision is that, "Management is currently making sure than any usage of a 204-B is in compliance with the provisions set forth in the [parties'] National Agreement." [Joint Exhibit No. 2, p. 3.] However, the parties agreed at the National level that the usage of 204-B's as stated in the MOU would be in effect not later than June 1, 2012. The Postal

¹ The parties agree that the Hialeah office is a 1.6A office.

Service argument at Step 3, that local management contends “there has been a huge transition in the noted facility” (Joint Exhibit No. 2, p. 3), does not alter the commitment made by the Postal Service or excuse a failure to establish the Lead Clerk positions.

In its post-hearing brief, the Postal Service provides an analysis of the number of lead clerks contractually required in Hialeah and concludes that there should be only one. This argument is not found in the written record, and the Postal Service provides no evidence to support such an argument. The Postal Service states at Step 2, “There is no language in the contract that states that management must place lead clerks in every facility.” [Joint Exhibit No. 2, p. 12.] However, the record demonstrates that management in Hialeah did not comply with the MOU requiring the creation of the lead clerk position and the reduction or discontinuance of using 204-B’s to supervise Clerk Craft employees.

At Step 2 of the Grievance procedure, the Union supplemented the remedy requested at Step 1, a cease and desist, with a request that clerks in the appropriate station be paid the same amount of hours worked by the 204-B’s at the overtime rate as of October 13, 2012. The Postal Service responded to the Union’s demand for a monetary remedy by contending that there is no language supporting the remedy sought by the Union. The Union responded in its Additions and Corrections, “The Labor Rep knows that not all remedies for violations are spelled out in the contract and thus the parties must find ways to resolve and form a remedy.” [Joint Exhibit No. 2, p. 9.]

At arbitration, the Union relies on the language in Article 1.6 of the JCIM, which states: “Where bargaining unit work which would have been assigned to employees is performed by a supervisor and such work hours are not de minimus, the bargaining unit employee(s) who would have been assigned the work shall be paid for the time involved

at the applicable rate.” However, as the Union recognized in its Additions and Corrections, the provision is not necessarily the language that applies to a remedy in this case, where management failed to establish the lead position(s) and improperly used 204-B’s from other crafts to supervise Clerk Craft employees.²

As maintained by the Union, the purpose of the parties’ agreement is to establish the Lead Positions and to discontinue the use of 204-B’s to supervise Clerk Craft employees. When management refused to recognize the violation at Step 1 and discontinue the use of 204-B’s to supervise Clerk Craft employees, and maintained the position that it could do so indefinitely, a monetary remedy became reasonable and necessary.

The fact that the 204B-s are supervising Carriers as well as Clerks further complicates the determination of a remedy.³ The witness for the Postal Service estimated that the 204-B’s were supervising Clerks approximately two hours per day. On cross-examination, Ms. Ortega agreed with the Union that, during the other six hours, the 204-B is still the clerks’ supervisor. Contrary to the Postal Service post-hearing argument, there is no evidence in the record that 204-B’s supervising clerks for a period less than two hours per day is compliant with the MOU.

As the Postal Service contends, the Union’s request for a remedy is confusing. The purpose of the MOU is to establish the lead position and to reduce or eliminate 204-B’s supervising Clerk Craft employees. However, the Union does not explain the reasons for its request for a monetary remedy and a cease and desist using 204-B’s to supervise Clerk Craft employees, but no request for management to comply with the MOU by creating the lead clerk position(s).

² The cases cited by the Postal Service are not on-point.

³ The record contains no Q&A for 204-Bs supervising both clerks and carriers.

The record is insufficient to decide a remedy. However, contrary to the position of the Postal Service, the Union met its burden to demonstrate a contractual violation. The parties have a joint responsibility to develop the record so that a reasonable and fair remedy for the violation can be determined. Accordingly, the Arbitrator finds for the Union but remands the issue of the remedy to the parties.

AWARD

The Postal Service violated the MOU, Clerk Craft Jobs, by using 204-B's from other crafts to supervise Clerk Craft employees outside of the limitations specified in the MOU. The Grievance is remanded to the parties for further development and to allow the parties the opportunity to negotiate and agree on a fair and reasonable remedy. The Arbitrator retains jurisdiction to decide a remedy if necessary.



Arbitrator

DATE: September 23, 2013

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

Grievant: Class

Between

Post Office: Hialeah, Florida

UNITED STATES POSTAL SERVICE

USPS Case No.: G10C-4G-C 12361586¹

And

AMERICAN POSTAL WORKERS UNIONS

BEFORE: Linda S. Byars, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Alexander Sanchez, Labor Relations Specialist

For the Union: Jim DeMauro, National Arbitration Advocate

Place of Hearing: Hialeah, Florida

Date of Hearing: March 25, 2014 (Remedy)

Briefs: May 9, 2014

Date of Award: May 22, 2014 (Remedy)

Relevant Contract Provisions: Article 1.6, MOU Clerk Craft Jobs

Contract Year: 2010-2015

Type of Grievance: Use of 204-B's to Supervise Clerk Craft Employees

Award Summary – Remedy

As the Union requests, the remedy is based on the language in Article 1.6 of the JCIM. The Postal Service shall pay the Clerk craft for the hours 204bs supervised clerk craft employees beginning October 1, 2012 until the correction of the contract violation and at the rate of pay anticipated for a Lead Clerk position.



¹ The September 23, 2013 decision is included as Appendix A.

BACKGROUND

The Award dated September 23, 2013 states as follows:

The Postal Service violated the MOU, Clerk Craft Jobs, by using 204-B's from other crafts to supervise Clerk Craft employees outside of the limitations specified in the MOU. The Grievance is remanded to the parties for further development and to allow the parties the opportunity to negotiate and agree on a fair and reasonable remedy. The Arbitrator retains jurisdiction to decide a remedy if necessary.

When the parties were unable to agree on a remedy, the Grievance again came before the Arbitrator at hearing on March 25, 2014. The hearing remained open for submission of information requested of management by the Union and for closing summaries. The record closed on May 9, 2014 with the Arbitrator's receipt of closing summaries.

The Postal Service submits several arguments at the March 25, 2014 hearing and in the written closing that are not properly at arbitration and/or not relevant to a decision on the remedy. The Postal Service begins with the argument that the Grievance is for only the Hialeah Main office and Miami Gardens and not for all nine offices in the Hialeah Installation. However, as the Union maintains, the record clearly demonstrates that Business Agent Ismael Guzman filed the Grievance for the Hialeah Installation, City-wide. Also contrary to the Postal Service argument, Mr. Guzman, as Business Agent for the Installation, is responsible for enforcing the contract city-wide and his testimony is credible.²

As the Postal Service contends, "Many arbitrators rule for the union but withhold financial restitution." [Postal Service Post-hearing Summary p. 2.] In this case, the Union first asked for a "cease and desist" and then at Step 2 asked for a monetary remedy when management did not correct the violation or provide the requested information. As the Arbitrator's September 23, 2013 decision states, "The parties have a joint responsibility to develop the record so that a reasonable and fair remedy for the violation can be determined." Management cannot withhold relevant and reasonable information requested by the Union and claim that the Union has not met its burden of proof. The

² The Postal Service advocate raised a similar objection to Mr. Guzman's testimony at the earlier phase of the arbitration hearing, and the Arbitrator rejected the argument then as now.

Arbitrator's remand of the Grievance in order for the parties to develop the record and reach a reasonable and fair settlement was not intended as the Postal Service advocate maintains.

The Postal Service advocate states, "So unless specifically expressed by language written, that a cease and desist order was issued, management interpreted the issue as otherwise." [Postal Service Post-hearing Summary p. 2.] The Postal Service advocate further states, "You [the Arbitrator] did not write it down, so all of the managers involved interpreted your decision as you wrote it." [Postal Service Post-hearing Summary p. 2.] The record contains no testimony or written statements from managers in Hialeah claiming that they interpreted the September 23, 2013 Award as permitting the violation to continue. Management can and has ignored the contract provisions relied on by the Union in this case. Management can and has ignored the ruling by the Arbitrator that the action grieved is a contract violation. Management can decide that it is and continues to be easier and/or less expensive to violate the contract by using 204bs to supervise clerks and to violate its contractual obligation to establish the lead positions. However, management cannot do so without consequence.³

Also at the arbitration hearing on the merits, the Postal Service advocate maintained that management denied the Union's request for information because the Union was unwilling to pay for the copies. The Union advocate maintained that the arbitration hearing was the first he had heard such reason for not providing the requested information and also maintained that the Union has not ever before paid for copies provided as a result of an information request. Following a discussion with the advocates and including Postmaster Orlando Delaosa, the Postmaster agreed to provide the requested information. The Union agrees that the Postmaster provided the requested information. [Union Post-hearing Summary, p. 4.]⁴

The Postal Service further contends as follows:

The union has not proven how is it necessary to pay a large amount of money to employees that for the most part don't come to work, and have a very low balance of sick leave in comparison with the number of years in service. Most clerks in the Hialeah installation average around 25 years of

³ Citing Case No. G00C-4G-C 06260718 decided by the Arbitrator, the Postal Service contends that when "cease and desist" is intended it is part of the award. However, the remand in the instant case and other factors, distinguish the Tampa case from the instant one.

⁴ Because the violation is on-going, the Union's need for additional information is on-going. Although the Arbitrator agreed to address the Postal Service advocate's claim that the cost of the copies should be assessed to the Union, neither party addressed the cost of the copies as part of its closing arguments.

service, and most have less than 300 hours of sick leave. Now the union wants to reward them for not coming to work as scheduled by paying them a large amount of money, money that they did not earn. [Postal Service Post-hearing Summary p. 2.]

Not only is the above argument based on facts not in evidence, it is largely irrelevant to deciding a remedy.

The Postal Service maintains that all 42 clerks in Hialeah worked 40 hours, that clerks worked overtime, that PTF clerks were promoted to full-time status, that clerks received all their benefits, and that the Union has not proven how the clerks were harmed to the point of receiving huge amounts of money. [Postal Service Post-hearing Summary p. 3.] However, the intent of the monetary remedy in this case is to repair the loss to the Union and to the bargaining unit when management failed to comply with its commitment to cease using 204bs to supervise clerks and to create Lead Clerk positions. The Union's request for remedy is based on the parties' agreement in the JCIM for violations of Article 1.6.⁵

The contract language relied on by the Union states, "Where bargaining unit work which would have been assigned to employees is performed by a supervisor and such work hours are not *de minimus*, the bargaining unit employee(s) who would have been assigned the work shall be paid for the time involved at the applicable rate." [JCIM, p. 23.] The contract language also states, "Bargaining unit employees acting as temporary supervisors (204b) are considered as supervisors for the purposes of Article 1.6." [JCIM, p. 22.] The record is clear, and the Postal Service does not deny, that supervisors (204b's) in Hialeah supervised clerks, outside the limitations expressed by the parties in the JCIM and the continuing joint interpretations of their contract.⁶ There is no dispute that, as of June 1, 2012 and continuing, management in Hialeah has been using 204bs to supervise clerks, rather than creating the Lead Clerk positions bargained for and agreed to in the MOU. In so doing, supervisors perform bargaining unit work, work that is not *de minimus*, as the Union contends. However, as the Union's requested remedy suggests,

⁵ In support of its position on the remedy, the Postal Service cites cases decided by Arbitrators Christopher E. Miles and Ruben Armendariz. Although the cases address remedies for violations of Article 1.6, they are not on-point and address grievances filed under the 2006-2010 Agreement, before the MOU on Clerk Craft Jobs became part of the Agreement.

⁶ As can be seen in the decision on the merits of the case (Appendix A), the Postal Service maintained that the Union had no grounds to complain because the 204bs had been brought up from the carrier craft, not from the clerk craft.

because the Lead Clerk position was not created, the bargaining unit employee who would have been assigned the work is not known.

The Union is asking for the payment of all work hours performed by the 204bs, at the applicable overtime rate, to the Clerk Craft at the Hialeah Installation retroactive to October 1, 2012 through the date that management eliminates usage of 204bs in accordance with the contract. As stated in the earlier decision, the remedy is complicated by the fact that 204bs supervise carrier craft employees as well as clerk craft employees. The parties' agreement to create the Lead Clerk position includes the expectation that the number of work hours utilized for 204b activities will be reduced or eliminated in those work units with a Lead Clerk position, as expressed in the MOU. However, with 204bs supervising both carriers and clerks, the use of 204bs may, or may not, be completely eliminated. It does not appear from the record that the reviews and continuing discussions called for by the parties in the MOU have fleshed out the answers to such questions.

Supervisor of Customer Service Support Veronica Ortega testified that although the 204b is considered the clerks' supervisor for the full eight hours each day, they are directly supervising clerks for approximately two hours per day. If it can be determined from the clock rings and the 1723s the actual hours the 204bs are supervising clerks, those are the hours that the Clerk Craft is entitled to as the remedy for the violation. If the documents do not reveal the actual hours 204bs supervise clerks, then the Union is entitled to be paid for all hours worked by 204bs when they are considered the supervisor of both carriers and clerks.

The Union has not explained or justified its request for the remedy to be paid at the overtime rate. Where the work was to be performed by an employee appointed to a newly created position, the applicable rate is the regular rate for the new position. As requested by the Union, management has a continuing obligation to provide all information to the Union in a timely manner to assist in calculating the total number of hours 204bs in Hialeah supervise clerk craft employees. Accordingly, the Arbitrator makes the following Award.

AWARD

The Postal Service shall provide the requested information to assist in calculating the total number of hours 204bs in the Hialeah Installation supervise clerk craft employees beginning October 1, 2012 until the correction of the contract violation. The Postal Service shall pay the Union for the hours 204bs supervised clerk craft employees beginning October 1, 2012 until the correction of the contract violation, at the rate of pay anticipated for a Lead Clerk position. The Arbitrator retains jurisdiction to decide any dispute arising over the interpretation or implementation of the remedy.



Arbitrator

DATE: May 22, 2013