

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-331-0992 (Fax)

Appeal to Arbitration, National Dispute

February 20, 2009

National Executive Board

William Burrus
President

Cliff Guffey
Executive Vice President

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Secretary-Treasurer

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Director, Support Services Division

Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

Elizabeth "Liz" Powell
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: USPS Dispute No. Q06C4QC08268987, APWU No. HQTG200810

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,


Greg Bell, Director
Industrial Relations

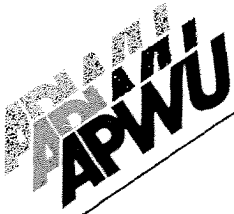
USPS #: Q06C4QC08268987
APWU #: HQTG200810

Case Officer: William Burrus
Step 4 Appeal Date: 7/14/2008
Contract Article(s): 6; Protective Benefits,
Severance Pay

cc: Resident Officers
Industrial Relations

File

GB/LB



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
President
(202) 842-4246

Article 15 - 15 Day Statement of Issues and Facts

February 19, 2009

Via Certified Mail

Ms. Mary Hércules, Labor Relations Specialist
Contract Administration
The U.S. Postal Service
475 L'Enfant Plaza, SW, Room 9146
Washington, D.C. 20260-4125

National Executive Board

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Coordinator, Western Region

Re: APWU No. HQTG200810, USPS No. Q06C4QC08268987

We have met on several occasions to discuss the above-referenced dispute at Step 4 of the grievance procedure. The parties mutually agreed to submit their written statements no later than February 19, 2009. The following represents the APWU's understanding of the issues to be decided, and the facts giving rise to the interpretive dispute.

This dispute concerns the provisions of the collective bargaining agreement that govern reassignments when there is an excess of employees in a craft within an installation, and the circumstances in which APWU bargaining unit employees are entitled to severance pay when they accept voluntary early retirement (VER) benefits. For the past several years, in certain installations, the Postal Service has been soliciting volunteers from among bargaining unit employees in the impacted craft within the same installation by offering eligible employees voluntary early retirement (VER). However, the Postal Service continues to refuse to pay employees who terminate their employment a lump sum severance payment, in addition to their early retirement benefits.

It is the APWU's position that pursuant to, but not limited to, Article 5 of the national Agreement the Postal Service is prohibited from taking "any actions affecting wages, hours and other terms and conditions of employment" which violate the terms of the parties' collective bargaining agreement.

Under the terms of the parties' National Agreement, when reducing employees in an installation, the Postal Service must make a determination whether to utilize the applicable provisions of either Article 12 or Article 6. The APWU contends that Article 12 or Article 6 is the only authority under the National Agreement that applies. Furthermore, Article 6 is the only authority on employee's entitlement (subject to provisions of Chapters 83 and 84 of Title 5 U.S. Code, and any amendments thereto) for giving early retirement benefits, along with severance pay.

Ms. Mary Hércules
Re: USPS No. Q06C4QC08268987
February 19, 2009
Page 2

Article 6.B.4 of the National Agreement is the only exception that allows VER under the terms of the collective bargaining agreement. This offer of voluntary early retirement and the reassignment of employees that followed are governed by the provisions of Article 6.B.4. This provision when implemented requires the payment of severance pay to employees who voluntarily terminate their employment through early retirement.

The employer's response in discussions of this issue was that no employees suffered layoff or reduction in force so the provisions of Article 6.B.4 were not applicable. However, this position ignores the plain language of the provision. This provision requires that the offer of early retirement and severance pay occurs "before" the implementation of layoff and reduction in force. The record clearly indicates that the employer determined not to apply Article 12, and therefore Article 6 applied. The employer intended to reduce the complement of employees and the agreement requires that the reassignment of employees and if necessary layoffs and reduction in force follow the awarding of severance pay and, if eligible, early retirement benefits.

For example, even in the employer's written response to employee questions, the Postal Service made specific reference to "positions that are becoming surplus or excess to the agency's future ability to carry out its mission effectively" and in the reduction of employees in the Pittsburgh, Pa Remote Encoding (REC) referred to the reduction of employees as a "reduction in force."

The parties have agreed that the employer's right of reassignment under Article 6 "may be exercised in lieu of reassigning employees under the provisions of Article 12." It is clear by the offer of early retirement that the employer chose to apply the provisions of Article 6 which requires the payment of severance pay for employees who voluntarily terminate employment through early retirement.

The question before us is whether the reassignment of employees was accomplished under the provisions of Article 6 or Article 12. The union believes that based on the record and the offer of early retirement which is covered only by Article 6, the actions taken were clearly within the agreed-to provisions of Article 6 and the payment of severance pay is required to employees who voluntarily terminate employment whether or not the employer determines a lay-off or RIF is necessary.

Please contact me if you wish to discuss this matter.

Sincerely,



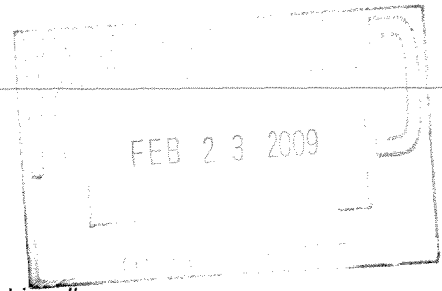
William Burrus
President

APWU #: HQTG200810
USPS #: Q06C4QC08268987
Certified Mail # 7000 0600 0021 2294 5057

Dispute Date: 7/14/2008
Contract Articles: ;

cc: Industrial Relations

WB/LB
OPEIU #2
AFL-CIO



February 19, 2009

Mr. William Burrus
President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Certified Mail Tracking #:
7099 3400 0009 0506 1946

RE: Q06C-4Q-C 08268987 / HQTG200810
Washington, DC 20260-4100

Dear Bill:

We met on several occasions to discuss the above-captioned American Postal Workers Union (APWU)-initiated dispute at the fourth step of our grievance/arbitration procedures. In accordance with Article 15.2.Step4.a, this constitutes the Postal Service's understanding of the issue involved and the facts giving rise to this interpretive dispute. The interpretive issue presented is:

Are the provisions of Section 6.B.4 invoked when the Postal Service offers voluntary early retirement (VER) to its employees?

Background:

In July 2008, the Office of Personnel Management granted the Postal Service authorization to offer VER to certain employees. By letter dated July 14, 2008, the Postal Service informed the APWU of this decision.

Article 6.B.4 of the 2006 USPS/APWU National Agreement states:

***Preconditions for Implementation of Layoff and Reduction In Force.** Before implementation of reassignment under this Article or, if necessary, layoff and reduction in force of excess employees within the installation, the Employer will, to the fullest extent possible, separate all casuals within the craft and minimize the amount of overtime work and part-time flexible hours in the positions or group of positions covered by the seniority unit as defined in this Agreement or as agreed to by the parties. In addition, the Employer shall solicit volunteers from among employees in the same craft within the installation to terminate their employment with the Employer. Employees who elect to terminate their employment will receive a lump sum severance payment in the amount provided by Part 435 of the Employee and Labor Relations Manual, will receive benefit coverage to the extent provided by such Manual, and, if eligible, will be given the early retirement benefits provided by Section 8336(d)(2) of Title 5, United States Code and the regulations implementing that statute.*

Article 6, page 2 of the USPS/APWU Joint Contract Interpretation Manual (JCIM) states, in part:

***Layoff Preconditions** – Employees in the affected craft must be offered the opportunity to voluntarily terminate their employment as a precondition to implementation of Article 6. Those employees not eligible for retirement would receive severance pay as outlined in Part 435 of the Employee and Labor Relations Manual. Additionally, if eligible, such employees will be given early retirement benefits in accordance with Section 8336(d) (2) of Title 5, United States Code.*

Article 6.C.1 of the 2006 USPS/APWU National Agreement defines "lay-off" and "reduction-in-force" as follows:

Definition. *The term "layoff" as used herein refers to the separation of non-protected, non-preference eligible employees in the regular work force because of lack of work or other legitimate, non-disciplinary reasons. The term "reduction in force" as used herein refers to the separation or reduction in the grade of non-protected veterans' preference eligible in the regular work force because of lack of work or other legitimate non-disciplinary reasons.*

Section 435.1 of the Employee and Labor Relations Manual outlines eligibility for severance pay. It states:

Any career Postal Service employee who is involuntarily separated and who has been employed continuously by the Postal Service and/or other federal agency for at least 12 consecutive months (without break in service of 3 or more consecutive days) immediately prior to the separation is eligible for severance pay, except in the following circumstances:

- a. The employee is entitled to an immediate retirement annuity.*
- b. At the time of separation, the employee is offered and declines to accept a position in the Postal Service or in any other federal agency of like seniority, tenure, and pay within the same commuting area.*
- c. The employee is separated because of entry in the military service*
- d. The employee is separated for cause on charges of misconduct, delinquency, or inefficiency.*
- e. The employee, at the time of separation, is receiving compensation as a beneficiary of the Federal Employees Compensation Act except when receiving this compensation concurrently with postal pay.*

By letter dated July 14, 2008, the APWU initiated the instant dispute.

Position of the Parties:

It is the APWU's position that every time the Postal Service offers a VER, it invokes a reduction-in-force action which necessarily triggers the provisions of Article 6, Section 4B. Thus, in the APWU's view, those employees who voluntarily elected early retirement are entitled to severance pay.

The Postal Service disagrees. The current VER offerings are not associated with a proposed layoff or reduction-in-force of bargaining unit employees. In addition, neither the APWU nor any APWU-represented bargaining unit employees have been notified that a layoff or reduction-in-force may be necessary or that they may be involuntarily separated from their employment due to lack of work or for any other non-disciplinary reasons. (See Article 6.B.1,2,3). The mere fact that the Postal Service requested and was granted the authority to offer a VER to APWU-represented bargaining unit employees does not automatically invoke Article 6 preconditions. Put another way, every VER offering does not lead to layoffs or reductions-in-force as defined in Article 6.

Indeed, employees in the affected craft within the installation must be offered the opportunity to voluntarily terminate his/her employment as a precondition to implementing Article 6. (See Article 6.B.4) However, the Postal Service interprets that precondition to apply after it has made a determination that a layoff or reduction-in-force will be necessary. No such determination has

been made, to date. Since that is the case, it is reasonable to conclude that employees who voluntarily participated in the current VER offerings are not entitled to severance pay. Furthermore, bargaining unit employees may be entitled to severance pay under the terms of Article 6 of the National Agreement if the employee receives an involuntary separation due to a layoff or reduction-in-force. (See Publication 164, *Compensation, Relocation Benefits, and Reinstatement Policies for Career Employees in Transition: Q's & A's /sic/*). Again, to date, no such notice has been given to bargaining unit employees in connection with the current VER.

Moreover, reassignments under Article 12 of the National Agreement should not be confused with reassignments under Article 6. Bargaining unit employees involuntarily reassigned under Article 12 are similarly not entitled to severance pay.

Additionally, past practice, negotiation history, case law, handbooks, manuals, and a reading of the contract as a whole support management's position in this case.

For the foregoing reasons, it is the Postal Service's position that the layoff and reduction-in-force provisions of Article 6 are not invoked with the current VER offerings.

Step 4 time limits for the exchange of the 15-day statement were extended by mutual consent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Hércules".

Mary Hércules
Labor Relations Specialist
Contract Administration (APWU)