

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS
UNION, AFL-CIO

Grievant: Class Action

Issue: Article 12.4.B

Installation: Eastern Region (NY 3)

USPS Case No: 4B 21C-4B-C 22475769

APWU Case No: E2023102

BEFORE:

Joseph A. Harris, Arbitrator

APPEARANCES:

For the U.S. Postal Service:

Cody Bennett

For the Union:

Peter Coradi

Place of Hearing:

1000 Westchester Ave, White Plains, NY 10604

Dates of Hearing:

May 19 and June 26, 2023

Briefs Submitted:

July 28, 2023

Date of Award:

August 28, 2023

Relevant Contract Provisions:

Articles 5, 12, 15, 17, and 31

Contract Year:

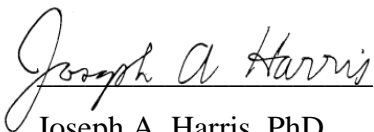
2021 – 2024

Award Summary:

The grievance is sustained. Management implemented a new Area-wide policy or guideline regarding its obligation to meet with the Union regarding the Utica S&DC plan. Management will cease and desist all Article 12.4.B violations and retract its new policy. Any pending reassignment/excessing events related to the Utica S&DC will be canceled and all reassignment/excessing noticed rescinded.

The Parties are instructed to meet to determine all impacted employees, and the Parties will determine a plan to make these employees whole. If the Parties are unable to come to an agreement, I retrain jurisdiction *sine die* to settle any disputes.

The Union's request for reimbursement for all associated costs is denied.



Joseph A. Harris, PhD
Arbitrator

ISSUE

Did the USPS institute any new or changed Area-wide policy, instruction, or guideline as it relates to Article 12.4? If so, what shall be the remedy?

COLLECTIVE BARGAINING AGREEMENT (2021-2024)

ARTICLE 12. PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

Section 4. Performance of Bargaining Unit Work

B. When a major relocation of employees is planned in major metropolitan areas or due to the implementation of national postal mail networks, the Employer will apply this Article in the development of the relocation and reassignment plan. At least 90 days in advance of implementation of such plan, the Employer will meet with the Union at the National Level to fully advise the Union how it intends to implement the plan. If the Union believes such plan violates the National Agreement, the matter may be grieved.

Such plan shall include a meeting at the Regional Level in advance (as much as six (6) months whenever possible) of the reassignments anticipated. The Employer will advise the Union based on the best estimates available at the time of the anticipated impact; the numbers of employees affected by craft; the locations to which they will be reassigned; and, in the case of a new installation, the anticipated complement by tour and craft. The Union at the Regional Level will be periodically updated by the Employer should any of the information change due to more current data being available.

ARTICLE 15. GRIEVANCE-ARBITRATION PROCEDURE

Step 3:

(f) In order to discourage the filing of multiple local grievances involving any new or changed District or Area-wide policy, instructions, or guidelines, the APWU Regional Coordinator or National Business Agent may file one (1) grievance concerning such policy, instructions, or guidelines, directly at Step 3 of the grievance procedure. The grievance may be filed within fourteen (14) days of the date on which such Union representative first learned or may reasonably have been expected to have learned of the implementation of such policy, instructions, or guidelines. Timely local grievances, which had already been filed concerning such policy, instructions, or guidelines, will be held at or returned to Step 2 of the grievance procedure, as applicable, pending the resolution of the grievance filed directly at Step 3. Thereafter, local grievances will be finally adjudicated in accordance with the resolution of the grievance filed directly at Step 3. If not resolved, the grievance filed directly at Step 3 may be appealed to arbitration within twenty-one (21) days and placed at the head of the appropriate arbitration docket.

BACKGROUND

On July 29, 2022, James Lloyd, Director of Labor Relations Policies and Programs for the USPS (“Management”) sent a letter to Mark Dimondstein, President of the APWU (“Union”), to notify him of the Service’s plan to create several new Sorting and Delivery Centers (“S&DC”). Management’s plan involves the conversion of the Utica Processing and Distribution Facility (“P&DF”) into a S&DC, which is the focus of the instant grievance.

On August 12, 2022, Director Lloyd sent President Dimondstein an updated list of proposed S&DC sites, as well as impacted post offices in the associated regions. Director Lloyd wrote that the Utica S&DC move date is February 25, 2023, and the plan would impact the following twenty-five sites and post offices:

- Utica PO ● Barneveld ● Cassville ● Clinton PO ● Cold Brook
- Deansboro ● Frankfort PO ● Herkimer PO ● Holland Patent ● Ilion PO
- Little Falls PO ● Marcy PO ● New Hartford PO ● NewPort ● Oriskany PO
- Poland ● Remsen ● Rome PO ● Sauquoit ● Vernon PO
- Vernon Center ● Verona ● Waterville ● Whitesboro PO ● Yorkville PO

On September 02, 2022, Labor Relations Specialist (LRS) James Craven sent a letter to officially notify the Union’s Eastern Region Coordinator, A.J. Jones, of Management’s intent to excess Clerk Craft employees from the following installations during “Phase 1” of the Utica S&DC conversion:

Installation	Impact Number	Status	Craft
Clinton, NY PO	1	FTR	Clerk
Clinton, NY PO	1	PTF	Clerk
Frankfort, NY PO	1	FTR	Clerk
Herkimer, NY PO	2	PTF	Clerk
Marcy, NY PO	1	FTR	Clerk
New Hartford, NY PO	2	FTR	Clerk
Oriskany, NY PO	1	FTR	Clerk
Whitesboro, NY PO	1	FTR	Clerk
Whitesboro, NY PO	1	PTF	Clerk
Yorkville, NY PO	1	FTR	Clerk

(Joint Exhibit 2, or “J-2” p. 134-135)

On September 19, 2022, LRS Craven sent an updated letter which added an additional FTR Clerk position to be excessed from the Herkimer, NY PO. All other impact numbers remained the same. (J-2 p. 136-137) The 90-day requirement of Article 12.4.B required the Parties to meet on or before November 27, 2022. The Union proposed from the start that the Parties meet in person, and it maintained this position throughout the Parties' efforts to schedule a meeting.

The Parties initially planned to meet on October 05, 2022, to discuss the proposed plan. On September 26, Management canceled the October 05 meeting because of a HQ meeting in Atlanta, Georgia. Area Manager Michael Faber emailed Coordinator Jones on September 28:

AJ—good evening and thanks so much for speaking with me earlier.

As discussed, due to mutual unavailability, we will be unable to adhere to the tentative schedule outlined below and will have to look to reschedule the Regional Meetings beginning the week of October 31.

[James Craven] and Tracy [Wood] will handle the scheduling of the Regional Meetings henceforth, so if you would please provide them your availability for the aforementioned timeframe, I will appreciate it and they will coordinate with you accordingly. (J-2 p. 33)

LRS Craven provided a written statement detailing his alleged communications with Mr. Jones regarding scheduling of the Utica S&DC conversion plan. (J-2 p. 80-82) Craven states that he emailed back and forth with Mr. Jones on September 29, October 05, and October 11 regarding possible meeting dates, although the case file does not include these communications.

On October 13, LRS Craven emailed Mr. Jones to let him know that he would be unavailable from October 15 through October 31 because his wife was having surgery. The two emailed back and forth to set up a telephone conversation on the same day. (J-2 p. 120-121) Following their telephone conversation, LRS Craven emailed Manager Faber:

Mike:

I just wanted to update you on the scheduling of dates for the meetings with A.J. Jones.

A.J. and I talked today and all he kept saying was that he really could not figure out how we were going to meet on all of his impacted offices. He committed to meeting on the NY 3 Offices in Utica on Thursday November 10. (Although he committed to that date prior to checking with his local people.)

The only other dates he says he can make it are November 21, 22 and 23 (Thanksgiving week) and he knows that a lot of people usually take time off that week. (J-2 p. 39)

On October 14, Coordinator Jones sent the following email to LRS Craven and Manager Faber following another telephone conversation with Mr. Craven:

As I said I would, I am following up from our phone discussion late this afternoon, 10/14/2022, concerning Article 12 Regional meetings related to the implementation of Sorting and Delivery Centers (SDCs) in Utica NY, New Castle PA, Williamsport PA and Annapolis MD.

We originally had tentative dates set in early October 2022 to conduct these meetings. At that time the Union had made it known that we were not in receipt of all necessary information to facilitate a Regional meeting and requested all information in order to have a proper meeting. While waiting for this information I learned that USPS HQ scheduled a meeting in Atlanta GA and unfortunately our Utica NY on Oct. 5 and Annapolis on Oct. 7 meetings had to be canceled. This also caused our two locations in PA, New Castle and Williamsport to be canceled as well, in part waiting for the necessary information.

As of our discussions today in a continued effort to reschedule the meetings the Union still has not been provided the information necessary to conduct a Regional meeting. As a result of our discussions and after making several attempts to reschedule Regional meetings we were left with a very limited window of opportunity as a result of leave and previous commitments on both sides.

I wanted to touch on a few points that came up during our discussion in an effort to schedule these meetings.

Information that we have not yet received must be provided in order to conduct a Regional meeting. I am working with you in an effort to schedule these meetings with the understanding this information is forthcoming. So far all we have, a month later, is work hour impact reports, so this can only mean that is all that has been relied on to support the action.

I asked if the impact notices dated 9/2/2022, and later corrected notices dated 9/19/2022, were all the offices that will be impacted resulting from the entire SDC implementation. You indicated no, these offices identified are part of Phase One and other impacts will come later. You also indicated that in some cases land will need to be purchased and construction will need to take place. I did remind you the parties have agreed to move dates, merged seniority lists, as well as, Priority consideration which are effective the date of the Regional Article 12 notification of impact. This phased in approach interferes with and violates these and other agreements.

Only a small number of impacts have been received allowing a select few to have priority consideration while others, who may very well be senior, are left out in the cold. For example, in Utica NY there are 25 offices involved yet I am in receipt of only 8 offices impacted, equaling about 32% of the total offices. Clearly as you indicated these will not be the only offices impacted. This will also negatively affect seniority rights as impacted offices will have first shot at positions yielding the same result of senior employees not being able to select utilizing their seniority...

The Postal Service is rushing this implementation along at all costs including violating our agreements. As I stated on the phone, I am requesting that these impacts be canceled as there are too many outstanding issues to move forward. (J-2 p. 118-119)

On November 02, 2022, LRS Craven notified Coordinator Jones that it was postponing many planned Atlantic Area excessing events until June 2023. Management did not postpone the Utica S&DC move date of February 25, 2023. (J-2 p. 40)

On November 03, 2022, LRS Craven emailed Coordinator Jones a workforce impact checklist for the eight post offices impacted by “Phase One” of the Utica S&DC conversion. Mr. Jones responded that he had not heard back from the USPS “since [October 14 when] we reviewed possible dates concerning a meeting next week.” (J-2 p. 41) He requested a call the following day.

LRS Craven indicates in his written statement that he texted Mr. Jones on November 04 to request that they speak about possible dates for the Utica S&DC plan, although there is no evidence of this text in the case file. He further states that Mr. Jones texted on November 08, “Looks like we are still meeting on Thursday [November 10]. I spoke with [Faber] a bit ago, [he] will get back to me. As I said before, I have folks who cannot make it.” (J-2 p. 81)

LRS Craven, Manager Faber, Coordinator Jones, and National Business Agent (“NBA”) Peter Coradi agreed to a conference call on November 08. During this call, Mr. Jones reiterated his request that the Utica excessing event be postponed until June 2023. Mr. Faber reportedly stated that Management would get back to the Union regarding meeting dates. (J-2 p. 123)

LRS Craven texted Mr. Jones the following day, November 09 at 7:25pm, “I have a suggestion...you gave me 3 other dates when we kicked this around before, I think those days were the 16th, 17th and 18th... Can we just use one of those dates for the Utica discussion? Please say yes.” Mr. Jones responded the same day, “I’m in DC from the 13th to the 17th. I’m working on this to see what can be done.” (J-2 p. 81)

On November 10, LRS Craven emailed Mr. Jones, “I have to get a date for the Utica meeting from you. I really thought that I would have one by this morning based on our text messages last night.” (J-2 p. 124) Mr. Jones responded the same day in relevant part:

I am a bit perplexed by your email this morning concerning a date for the Utica Article 12 Regional meeting. I find it to be very misleading...

Nowhere in [our text messages on November 09] does it indicate in any way, nor can I understand how you would conclude that you would have a date by this morning. It doesn’t make sense that I would give you dates when I am scheduled to attend National APWU meetings.

...

Please see attached email string that I sent to you and copied [Faber] after our last discussion on 10/14/2022 addressing many of same concerns. On this date 10/14/2022 we also went through our calendars to see what opportunities there were to reschedule as we had done many times. Keep in mind at this point I was informed that you would be on leave for the next two weeks October 15-31. I also notified you that I would be in DC November 13 through 17 for APWU meetings and on leave the week of November 21-25. I offered November 9-10, 18, and even said I knew early enough I might be able to do a day between 21-23 which didn't seem to go over well as it is Thanksgiving week.

I note that I never received a response from management on this email and as a result Thanksgiving week is no longer available as I have leave and confirmed family plans. Upon your return 10/31 I didn't hear from you until 11/2/2022 clearly because the necessary information still had not yet been gathered. Why is it ok for you to take leave uninterrupted and then expect me to not have the same opportunity.

...

I also informed you I received an additional email from you with a last minute scramble attempt to provide more information, but not all information and certainly not sufficient to have a meeting, all in an effort to push the Utica meeting through so you could say you met and check the box. The incomplete checklist provided on 11/2/2022 had a work hour impact report that was dated 11/2/2022, the same day of the postponement of the other events. I mention the new corrected impact notices which increased and changed the number of potentially impacted employees and that would provide for a new 6 month period. I also said it was unreasonable for the USPS to take months to gather information and then expect and demand the APWU get through all of it in just a few days and come to a meeting.

We all have folks to be accountable to and I understand that. I am asking for you folks to understand that as well. We are dealing with human beings who deserve the process to be followed in a proper manner. The USPS had plenty of opportunities to get this done in a timely manner and the rushing and pushing is not proper.

Jim, you and I after many attempts to find other dates over the last month yielded us no opportunities. Therefore, I am again requesting that this event be included in the postponement as the others were for very similar reasons. (J-2 p. 122-123)

On Saturday, November 12, Director of Field Labor Relations Jill Miniard emailed Coordinator Jones to see if the Union was available on November 18 (a date which Jones had offered to Craven on October 14). She stated, "All other regional meetings for the S&DCs and Feb move date have taken place across the country. Your members are the only ones not getting information and the opportunity to apply for positions currently being posted." (J-2 p. 47)

Mr. Jones responded to Ms. Miniard on November 15 with the following, in relevant part:

There are 12 events across the country that have been postponed until June 2023. Not sure where you are getting the information that "All other regional meetings for the S&DCs and Feb move date have taken place across the country." In fact, in the Eastern Region under

the Atlantic Area both in PA and one in MD had no such meetings and all three have been postponed. I also have an event in the Central Area that, for some of the same reasons as Utica, has been canceled.

I did offer 11/18/2022 back on 10/14/2022 when [Craven] and I spoke. I never heard back from anyone about 11/18/2022 until your email dated 11/12/2022, I am not sure how long you expected APWU to hold dates without any communication at all; unfortunately APWU is not available that date and will be in Arbitration 11/18/2022. (J-2 p. 46)

Director Miniard responded the same day that the USPS did not intend to postpone the February 25, 2023, Utica move date. She offered to have a “team member” look at the Union’s scheduled arbitration on November 18 to see if it could be resolved or rescheduled, with Management offering to pay any fees incurred. (J-2 p. 46) On November 16, Ms. Miniard followed up with an offer to schedule the Utica meeting for the afternoon of November 18 if the Union’s advocate thought the arbitration hearing might not take the entire day. (J-2 p. 44) In both cases, the Union replied that it was not available on November 18.

On November 16, NBA Coradi replied to Director Miniard:

I am the APWU advocate for the November 18 hearing. As [Mr. Jones] mentioned, we are not available on that date. I won’t get into the very long story about this hearing date and the case in question.

I’ve been involved in Article 12 events for some time now. Based upon what we’ve received for the 8 events in question, I offer the friendly suggestion to take a close look at what management has generated in support of the intended excessing. With due respect, the supporting documentation is weak at best.

As for the meeting date, and reading the back and forth, I fully support everything [Mr. Jones] has articulated. (J-2 p. 43)

Director Miniard replied that the Union should let Management know its earliest opportunity to meet. (J-2 p. 43)

On November 21, LRS Craven emailed Coordinator Jones that he had made numerous unsuccessful attempts to reach him by phone and email, although the case file includes no record of such communications. LRS Craven’s written timeline also does not mention any communications between Director Miniard’s November 16 email and Craven’s November 21 email. In any case, Mr. Craven wrote to Mr. Jones: “I am now requesting your attendance for the Regional meeting set to take place via Zoom on Wednesday [November 23] at 10:00am.” (J-2 p. 49) Coordinator Jones did not respond to Craven’s email. Mr. Craven also sent a scheduling notice to Mr. Jones via Certified Mail regarding the November 23 meeting. A tracking receipt shows it

was delivered to the Union on November 23 at 10:35am. (J-2 p. 116) There is no evidence that the Union acknowledged receipt of Management's invitation nor accepted the proposed date prior to the meeting.

On November 23, 2022, the following Management officials attended the Zoom meeting: LRS Craven; LRS Tracy Wood; Manager Faber; Latrayer Sumter Moreau, District Manager of HR; Mark Donahue, Manager of Safety; Andrea Burchette, Field Workforce Planning Specialist; and Steven Radakovits, Post Office Operations Manager. No representatives from the Union attended the meeting. On November 23, LRS Craven sent Mr. Jones, via Certified Mail, a letter notifying the Union of Management's position that, "The Regional Meeting is now conducted..." (J-2 p. 114) A tracking receipt shows this letter was delivered to the Union on November 29, 2022.

On November 30, Coordinator Jones responded to Director Miniard's November 16 email to offer December 13, 2022, as a date for the Parties to conduct the Utica Regional meeting. The Union did not acknowledge the November 23 meeting invitation.

On December 01, Manager of Labor Relations Connie Marvin emailed Coordinator Jones:

I'd like to introduce myself and my reasons for sending this message. I am going to be handling all Article 12 events for the Atlantic Area. You will be communicating with me as the Article 12 liaison going forward.

Thank you for offering the date of December 13 for a meeting. We accept this date for follow up discussion of the Regional meeting that took place on November 23, 2022. I will be setting up a ZOOM meeting for this discussion, for 10:00am, as I am unable to guarantee that all USPS personnel involved will be able to attend in person. (J-2 p. 92)

Coordinator Jones responded on December 02, in relevant part:

Thank you for informing us that you will be handling all Article 12 events for the Atlantic Area. The union intends to work with you but will not be dictated by you as to who we will communicate with. You may not be aware but you are the fifth (5) Labor Relations person involved in the process of trying to confirm an Article 12 regional meeting for the 8 events involved in the Utica S&DC since September 2022.

I see your email is making reference to what you are calling a "Regional meeting that took place on November 23, 2022." Let me be clear that there was no Article 12 meeting on November 23, 2022 that conforms with the CBA. This meeting you speak of was unilaterally scheduled by the Service while all of you knew I was on leave and not available. Then to accuse me of failing to attend is ridiculous. These kinds of shenanigans are unfortunate at our level, yield the Service no leverage, and falls short of complying with the necessary contractual provisions.

The Union offered December 12, 2022 as the date for our Regional meeting as Jill Miniard Director of Labor Relations Atlantic Area requested us to provide a date. If you still agree,

this meeting will be the required Regional level meeting necessary as outlined in the CBA. It will not be recognized as a follow up discussion, as you have suggested. (J-2 p. 90-91)

On December 08, 2022, Coordinator Jones followed up on his previous email to ask Management to confirm the December 13, 2022, meeting date as the first Regional meeting for the Utica S&DC conversion. (J-2 p. 89-90) Atlantic Area Labor Relations Specialist Rebecca Langa responded, on December 09, in relevant part:

...Your email states that if [Ms. Marvin] is in agreement to have the [December 13] meeting, it will be considered the required Regional level meeting necessary as outlined in the CBA and will not be recognized as a follow up discussion.

The Postal Service's position is that the meeting is a follow-up discussion and will be recognized by the Service as such. An agreement to meet does not change that position as your email suggests. (J-2 p. 88)

At this point, Mr. Coradi submitted a formal Request for Information ("RFI") for the names and titles of all attendees to the November 23, 2022, meeting. Management complied with the request on December 12 and confirmed that no Union representatives attended the November 23 meeting. (J-2 p. 86-88) This officially ends the Parties' attempts to schedule the Utica S&DC Regional meeting.

On December 09, 2022, the Union filed a direct appeal to Step 3 per Article 15.2.Step 3(f), alleging a new Area-wide policy, instruction, or guideline relative to the Article 12.4.B meeting requirement. It supported this claim by alleging that Atlantic Area Management adopted the same posture with Northeastern Regional Coordinator Tiffany Foster. It argued that on November 23, 2022, (the same day that Management scheduled the alleged Eastern Regional meeting) Atlantic Area Management met without the Northeastern Regional representatives' agreement or attendance to advance the Woburn, MA S&DC conversion.

NBA Coradi met with Manager Faber on December 16, 2022, for the Step 3 meeting. Manager Faber issued Management's Step 3 Denial on December 23, 2022. The Union then appealed to arbitration on December 23, 2022.

Arbitrator Joseph Harris held hearings on the matter on May 19 and June 26, 2023. The Parties were afforded full opportunity to present oral and written evidence, to engage in oral arguments and otherwise support their positions. The Parties submitted Closing Briefs on July 28, 2023, after which the file was closed. The evidence of the Parties and their positions and arguments presented at arbitration have been fully considered in the issuance of this opinion and award.

POSITIONS OF THE PARTIES

Union

The Union challenges the contention that it improperly appealed directly to Step 3. It contends that Management continues to push its arbitrability argument in spite of my bench ruling to proceed with the merits of the case. The Union further asserts that the threshold issue and the merits issue are inextricably intertwined—even in Management’s framing of the issues. As such, the Union maintains that it is only proper to consider the merits of the case.

The Union submitted three national arbitration awards to support its position that Management should be barred from introducing new evidence at arbitration: Arbitrator Richard Mittenthal (Case No. H8N-W-0406); Arbitrator Carlton Snow (Case No. B90N-4B-C 94027390); and Arbitrator Benjamin Aaron (Case No. NC-E-11359).

The Union contends that Management violated Articles 1, 5, 12, 17, and 31 when it convened a Regional meeting on November 23, 2022, without the Union’s agreement or attendance. It argues that Management violated Article 12.4.B, which requires the Parties to meet at least 90 days in advance of a reassignment/excessing event. It believes Management’s actions also violated Article 5’s prohibition of unilateral action. The Union argues that Management violated Articles 17 and 31 when it failed to fulfill a December 09, 2022, Request for Information regarding the Union’s alleged confirmation of the November 23, 2022, Utica meeting date.

The Union asserts that Management has not provided a single contractual provision or other justification for its position that it satisfied the requirements of Article 12.4.B when it met without the Union. The Union emphatically declares that Management’s central position is absurd.

More specifically, the Union maintains that Atlantic Area Management adopted a new Area-wide policy, instruction, or guideline to justify its actions. It notes that several Management officials—including LRS Craven, Manager Marvin, and Atlantic Area LRS Langa—clearly stated Management’s position that the November 23, 2022, Utica meeting satisfied the requirements of Article 12.4.B. The Union argues that the Service’s continued support of this illogical position throughout the arbitration proceedings confirms that it amounts to a new Area-wide policy, instruction, or guideline. It cites Northeast Regional Coordinator Tiffany Foster’s un rebutted testimony—that Management adopted the exact same policy regarding a Woburn, MA excessing event—to support its position that Management implemented this policy across the Atlantic Area.

The Union rejects Management's argument that it utilized stall tactics to prevent the Parties from meeting on or before November 27, 2022. The Union notes that the Parties agreed to meet on October 05, 2022, to discuss the Utica S&DC event. According to the Union, Management canceled the October 05 meeting, only to remain non-responsive through November 02, 2022. After this point, Management suggested a series of dates in mid-November which the Union had tentatively offered as early as October 14, 2022. It maintains that Management did not engage with or commit to any of these proposed dates until after November 02. The Union argues that it cannot be expected to hold dates indefinitely while Management is unresponsive.

The Union argues that the Service's "Phase One" plan in Utica—which involves only eight of the twenty-five total impacted post offices (listed above)—violates various agreements previously agreed to by the Parties. For example, rather than employing a merged seniority list in the Region, the phased approach improperly bestows priority consideration to employees in post offices that are impacted by Phase One while leaving other, possibly more senior, employees disadvantaged at later phases. Coordinator Jones testified that Management's actions negatively impact holiday and vacation scheduling, as well as overtime opportunities in the Eastern Region.

For the above stated reasons, the Union asks that Management cease and desist these violations and immediately comply with the referenced contractual provisions. It asks that Management retract its new policy regarding the 90-day requirement of Article 12.4.B. The Union wants Management to cancel the Utica S&DC conversion event, cancel all withholding of residual vacancies, and rescind any and all applicable excessing notifications. It asks that all impacted clerk craft employees be made whole, and the APWU be reimbursed for all associated costs in the processing of the instant grievance, up to and including arbitration.

Management

Management initially advanced a threshold challenge that the Union improperly appealed directly to Step 3. It denies that it implemented any new Area-wide policy, instruction, or guideline regarding the November 23, 2022, Utica meeting which would justify the requirements of Article 15.2.Step 3(f). It contends that the Union denied Management the right to meet and discuss the issue at Steps 1 and 2. As such, it maintains that the instant case is not arbitrable.

Regarding the merits, Management contends that the Union utilized stall tactics to prevent the Parties from meeting on or before the contractually mandated November 27, 2022, deadline. It

asserts that the Union repeatedly reneged on meeting dates that it had previously offered—despite generous offers by Management to accommodate the Union’s schedule. Management believes the correspondence in the case file demonstrates that the Union did not act in good faith to schedule the Utica meeting.

Management denies implementing any new Area-wide policy, instruction, or guideline relating to Article 12.4.B. It maintains that it convened the November 23, 2022, Utica meeting to ensure that the Parties could abide by the November 27, 2022, deadline. It argues that Article 12.4.B obligates both Parties to meet; Management believes that the Union’s failure to meet this obligation should not negate the Service’s good faith efforts. Management submitted awards by Arbitrator Hamah King (Case No. G94C-4G-C 971083399) and Arbitrator Jacquelin Drucker (Case No. A06T-4A-C 09268664) to support its position that the Union has failed to meet the burden of proof to demonstrate a new Area-wide policy, instruction, or guideline.

Regarding the Union’s assertion that it applied the alleged new policy in the Northeastern Region, Management maintains that the Union’s Eastern and Northeastern representatives utilized the same stall tactics in an effort to compromise the procedural integrity of the excessing events in Utica, NY and Woburn, MA. It argues that the Union’s Step 3 Appeal in the Northeastern Region is exactly the same as in the instant case, which demonstrates the Union’s joint effort. Management denies implementing a new policy, instruction, or guideline across the Atlantic Area.

Additionally, Manager Faber testified that the Service successfully met with Union representatives in the Southern Region prior to the Article 12.4.B deadline, which it states is under the umbrella of the USPS’s Atlantic Area. Management cites the Southern Region meeting as evidence that it did not institute a new policy in the Atlantic Area.

Finally, Management contends that the Union’s requested remedy amounts to unjust enrichment. It argues that the Union has not demonstrated harm to any employees. Management proposes that the only appropriate remedy would be for Management to rescind the alleged Area-wide policy. In any case, it asks that the grievance be denied.

ARBITRATOR'S DISCUSSION

Timeliness

I made a bench ruling to proceed with the merits of the grievance because the arbitrability issue and the merits issue, as presented to me, are one and the same. For example, Management in its Opening Brief framed the issues as follows:

(Arbitrability) Is this grievance arbitrable and properly before you today? Did the APWU file this grievance, via their “Step 3 Direct Appeal,” in a manner consistent with the CBA/JCIM?

(Merits of Case) Did the Postal Service institute any new or changed Area-wide policy, instructions, or guidelines as it relates to Article 12.4 of the CBA/JCIM?

Article 15.2.Step 3(f) allows the Union to appeal directly to Step 3 when the issue involves a new or changed District or Area-wide policy, instruction, or guideline. Thus, when Management asks if the Union properly appealed directly to Step 3, it is asking whether the Service implemented a new or changed Area-wide policy, instruction, or guideline. This cannot be determined without allowing the Union an opportunity to present its evidence on the merits. Arbitrator Drucker came to the same conclusion in the award submitted by Management (cited above).

Merits

Before proceeding with the issue posed by the Parties, I must address Management’s central argument that the November 23, 2022, Eastern Regional meeting satisfies the requirements of Article 12.4.B. This provision obligates the Parties to meet at least 90 days prior to a reassignment/excessing event, such as the Utica S&DC plan in question. Management presented no contractual provision or any other justification to support its position that the November 23, 2022, meeting—which had no Union members in attendance—satisfied Article 12.4.B. Management’s only defense is that it met without the Union in order to meet the deadline established by Article 12.4.B. Its position is inherently illogical because it can only satisfy this provision by meeting *with the Union* on or before November 27, 2022.

Management presented no evidence that the Union ever acknowledged the invitation to the November 23 meeting, or that it ever confirmed the date. The Union submitted a Request for Information on December 09 relating to the Union’s alleged confirmation of the November 23 meeting date, and Management did not provide any such evidence.

Furthermore, there is ample evidence that Management knew Eastern Regional Coordinator Jones was on annual leave on November 23 for the Thanksgiving holiday. LRS Craven claimed to have attempted to communicate (via email and telephone) with Coordinator Jones in the days prior to his November 21 email in which he scheduled the November 23 meeting, although the case file includes no evidence of such efforts. (J-2 p. 49) Mr. Craven's scheduling letter, sent via Certified Mail, did not reach the Union until after the November 23 meeting had occurred. (J-2 p. 116)

Management argues that the Union utilized stall tactics to prevent the Parties from meeting prior to the Article 12.4.B deadline, which prompted Management to unilaterally schedule the November 23 meeting. However, the evidence in the case file does not support this finding. In fact, the Parties originally arranged to meet on October 05, 2022, until Management canceled on September 26. There is absolutely no indication or evidence that the Union planned to postpone the October 05 meeting. Management's position would require me to ignore this fact.

LRS Craven—who served as Management's point man in these negotiations—was unavailable from October 15-31. After speaking with Coordinator Jones on October 14, he did not reestablish communication with the Union until November 02. (J-2 p. 33, 41, 120-121) This left the Parties a window of about two weeks to schedule and conduct the Utica S&DC meeting (accounting for Coordinator Jones' unavailability from November 13-17, and for the Thanksgiving holiday). From this point on, the case file shows, Management proposed dates that the Union had offered more than two weeks prior, with no response, on October 14, 2022. (J-2 p. 41, 118-119, 121-123) The Union rightfully objects that it cannot be expected to indefinitely hold several possible meeting dates while Management is unresponsive. Similarly, Management provided no evidence that the Union ever accepted the November 10 or November 18, 2022, meeting dates.

It must also be noted that Coordinator Jones and NBA Coradi periodically raised concerns that the Parties would not be able to conduct the Eastern Regional meeting prior to the contractual deadline. (J-2 p. 43, 46, 118-119, 122-123) LRS Craven expressed a similar concern about the tight deadline in an October 13 email to Manager Faber:

[Coordinator Jones] told me he was going to have to talk to his local people about Nov. 21, 22 and 23 but that still does not provide a date for a meeting at Annapolis in MD, even if we meet on PA 1 (Williamsport and New Castle) on any 2 of the 3 dates listed. After that his schedule is full and the Regional Meeting must occur no later than November 27. (J-2 p. 39)

On November 02, 2022, Management postponed many other excessing events scheduled for February 25, 2023, although it did not postpone the Utica event. Management has not provided an explanation for its decision to proceed with the Utica event in spite of the obvious difficulties described above. The fact that Management postponed many other excessing events to June 2023 undermines its position. Certainly, granting the Parties an additional three months to conduct the contractually obligated meeting would be more agreeable suitable than unilaterally scheduling and conducting a meeting without the Union's presence.

It is clear, therefore, that USPS Atlantic Area Management violated Article 12.4.B when it conducted an (APWU) Eastern Region meeting on November 23, 2022, without the Union's agreement or attendance. The question now turns to whether Management implemented any new or changed District or Area-wide policy, instruction, or guideline in relation to the Article 12.4.B meeting on November 23.

A rational person examining this case would quickly determine that Management's central position is plainly illogical and self-contradictory. Management cannot meet *without* the Union and somehow satisfy the contractual requirement that it meet *with* the Union. As such, it is difficult to believe that various Atlantic Area Management officials—including LRS Craven, Manager of Labor Relations Connie Marvin, and Atlantic Area LRS Rebecca Langa—would continue to maintain such a position without being instructed to do so.

The fact that the USPS has continued to defend this position throughout the grievance procedure supports the Union's contention that it amounts to a new policy, instruction, or guideline. It is unclear whether one of the many officials involved in the scheduling negotiations made the initial determination that Management should schedule a meeting regardless of the Union's availability. However, this position has since been granted the imprimatur of the Service. In short, Atlantic Area Management has adopted a policy or guideline that it can unilaterally schedule and convene a Regional meeting—regardless of the Union's knowledge or attendance—if it appears that the Parties would not otherwise be able to meet the Article 12.4.B deadline.

Management applied this policy or guideline in the APWU's Northeastern Region, as well, which constitutes a major part of the USPS's Atlantic Area. Northeastern Regional Coordinator Tiffany Foster testified that Management utilized the same tactics in their negotiations over an excessing event in Woburn, MA. Management unilaterally scheduled a Northeastern Region meeting on November 23 (the same date and time as the Eastern Region meeting) despite knowing

that Coordinator Foster was on annual leave for the holiday. It met without the Union's agreement or attendance. In this manner, Management applied its policy or guideline across the Atlantic Area.

Management's brazen defense of this policy distinguishes the instant case from the Drucker award submitted by Management. Arbitrator Drucker did not find evidence of a new policy because the Union's case rested on a "stray comment" by a USPS representative. The Service otherwise denied any policy of noncompliance, and it did eventually provide the Union with all requested staffing packages. In the instant case, Management denies an Area-wide policy while it openly admits its purposeful violation of Article 12.4.B across the Eastern and Northeastern Regions.

Management notes that its representatives successfully met with officials from the Union's Southern Region prior to the November 27 deadline. It reasons that this meeting proves that it did not adopt an Area-wide policy regarding the Article 12.4.B meeting requirement. However, even if it is true that the Southern Region is within the Atlantic Area, it would not negate the policy or guideline described above. The new policy seems to apply only when the Parties hit an impasse in their efforts to schedule a meeting date. Similarly, the policy would not apply if Management had postponed the excessing event to the June 2023 move date, as it did for many other excessing events in the Area.

The grievance is therefore sustained.

Remedy

Management will cease and desist all Article 12.4.B violations and retract its new policy relative to the 90-day Area/Regional meeting requirement. Any pending reassignment/excessing events related to the Utica S&DC will be canceled and all reassignment/excessing notices rescinded.

The Parties are instructed to meet to determine all impacted employees, and the Parties will determine a plan to make these employees whole. If the Parties are unable to come to an agreement, I retain jurisdiction *sine die* to settle any disputes.

AWARD


The grievance is sustained. Management implemented a new Area-wide policy or guideline regarding its obligation to meet with the Union regarding the Utica S&DC plan. Management will cease and desist all Article 12.4.B violations and retract its

new policy. Any pending reassignment/excessing events related to the Utica S&DC will be canceled and all reassignment/excessing noticed rescinded.

The Parties are instructed to meet to determine all impacted employees, and the Parties will determine a plan to make these employees whole. If the Parties are unable to come to an agreement, I retrain jurisdiction *sine die* to settle any disputes.

The Union's request for reimbursement for all associated costs is denied.

August 28, 2023



Joseph A. Harris, Ph.D.
Arbitrator