

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION

BETWEEN

EMPLOYER
UNITED STATES POSTAL SERVICE

AND

UNION
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

GRIEVANT: CLASS ACTION, CLERK

POST OFFICE: DES MOINES, IA GMF

CASE NO: I94C-1I-C 97020059

BEFORE: GEORGE EDWARD LARNEY

APPEARANCES:

FOR THE POSTAL SERVICE:

MARCIA G. GRANT
Labor Relations Specialist
Hawkeye District

FOR THE UNION:

LANCE A. COLES
President, Des Moines, IA
Area Local

PLACE OF HEARING:

1165 2nd Avenue
Des Moines, IA

DATE OF HEARING:

DECEMBER 1, 1999

DATE OF AWARD:

FEBRUARY 25, 2000

CONTRACT YEAR:

1994-1998

TYPE OF GRIEVANCE:

Contract

AWARD SUMMARY

Based on the rationale set forth in the preceding Opinion section, the Arbitrator finds that the Postal Service did not violate Article 5 or, any other articles of the National Agreement (Jt. Ex. 1) or, any of its own regulations when it unilaterally required BMEU Clerks to perform the duty of accepting checks from customers in payment for Postal services. Accordingly, the Arbitrator rules to deny the subject grievance in its entirety.


GEORGE EDWARD LARNEY
Arbitrator

WITNESSES: (in order of respective appearance)

FOR THE EMPLOYER

DAVID M. HEARN
Bulk Mail Technician
Level 6

CHRISTIANA (CHRIS) CHAPMAN
Manager, Business Mail Entry
Unit

FOR THE UNION

LINDA PRICE
Bulk Mail Acceptance
Clerk

SALLY WHITMAN
Bulk Mail Acceptance Clerk

OTHERS IN ATTENDANCE AT HEARING:

FOR THE EMPLOYER

NONE

FOR THE UNION

JON ARNOLD
Technical Assistant

ISSUE

Absent a stipulated statement of the issue, each Party framed the issue in dispute, properly before the Arbitrator for resolution on the merits to be as follows:

UNION

Did the Postal Service violate Article 5 of the 1994-98 National Collective Bargaining Agreement (Jt. Ex. 1), when it unilaterally changed the check acceptance procedures in the Bulk Mail Entry Unit (BMEU) in and around September 10, 1996?

If so, what shall be the proper remedy?

EMPLOYER

Did the Postal Service violate applicable provisions of the 1994-98 National Collective Bargaining Agreement (Jt. Ex. 1) when it issued instructions to the Bulk Mail Acceptance Clerks in the Bulk Mail Entry Unit (BMEU) to accept checks from customers in payment for Postal services?

If so, what shall be the appropriate remedy?

RELEVANT DOCUMENTATION**I. APPLICABLE CONTRACT PROVISIONS (Jt. Ex. 1)**

- Articles 3, 5, and 37

II. APPLICABLE HANDBOOKS, MANUALS, POSTAL BULLETINS, AND STANDARD OPERATING PROCEDURES (SOP) (Jt. Exs. 3, 7, 5, 8, 4, respectively)

- Postal Bulletin 21849, pp. 4-5 (9-2-93) [Jt. Ex. 3]
- SOP No. 26 (9-27-93) [Jt. Ex. 7]
- Standard Position Description - Bulk Mail Technician, PS-06 (11-02-94) [Jt. Ex. 5]
- Postal Bulletin 21908, p. 9 (12-7-95) [Jt. Ex. 8]
- F-1 Handbook (Nov. 1996 revised through 7-1-99) Sections 312.2 [1 through 6] [Jt. Ex. 4]

III. OTHER

- National Labor Relations Act (NLRA), Section 9 [Un. Ex. 3]

BACKGROUND

By Postal Bulletin 21849 dated September 2, 1993 (Jt. Ex. 3), the Postal Service amended Section P040.5.5 of the Domestic Mail Manual (DMM) to allow all Business Mail Entry Units (BMEUs) to accept customer checks for bulk mail deposits as a way of providing customers with greater convenience and service. This revision mandated, among other things, that the supervisor responsible for BMEU oversight implement an already developed standard operating procedure (SOP) prior to allowing customers to present checks. The SOP for BMEU Check Procedure dated September 27, 1993 and identified as SOP No. 26 (Jt. Ex. 7, SOP File No. 18) set forth the following procedure for the BMEU at the Des Moines General Mail Facility (GMF):

- 1) Verify that the issuer of the check is not on the bad check list. If the customer is on the list, do not accept the check.
- 2) Ensure that the customer's permit account is written on the check and the check is made payable to the U.S. Postal Service or "Postmaster", by title only.
- 3) Write BMEU on the face of the check. Also, include permit #.
- 4) Complete Form 3544, Post Office Receipt for Money in triplicate. Give the original to the customer. Attach duplicate to the check and place in the lock box. The triplicate will be retained in the BMEU. When checks are accepted for payment of annual fees, send the triplicate copy to the administrative office responsible for maintaining the mailer records (i.e., Mailing Requirements, Postal Business Center, Finance, etc.) All Forms 3544 must have the correct AIC number assigned.
- 4) Copy receipt and check together and place in folder.
- 5) At the end of the day, send all checks to the window unit which is responsible for processing permit account deposits for the BMEU. Include a buck slip indicating the number of checks, the Form 3544 Receipt Numbers, and total dollar amount enclosed. Include any Forms 3544 that have been voided. Checks must be hand carried to the window unit or sent via

Registered Mail, depending on the location.
(Currently Supervisor or assigned clerk is
doing).

(Jt. Ex. 7)¹

The amendment to Section P040.5.5 of the DMM apprised BMEU supervisors that it was their responsibility for assigning specific employees to accept check deposits and they should limit the number of employees who would be accepting checks to the minimum necessary to provide coverage sufficient to meet customer needs.

Bulk Mail Acceptance Clerk (BMAC), also known as BMEU Clerk, Linda Price, a Postal Service employee of 26 years, and a BMAC for the last ten (10) years, testified that when the check procedure was put into effect at the Des Moines BMEU, she was selected to be among the four (4) to five (5) BMEU Clerks initially chosen to perform the duty of accepting checks. According to Price, she does not recall ever having seen or been aware of SOP No. 26 (Jt. Ex. 7) and maintains that she never received any formal training relative to the added duty of accepting checks. Rather, Price asserted that her supervisor just briefly instructed her on the procedure of accepting checks, which included verifying checks against a "bad

¹ The Arbitrator notes that although this SOP was dated September 27, 1993, it was not approved by the then incumbent BMEU Manager, Victor S. Fenimore until April 27, 1995, accompanied by the signature of the then incumbent day supervisor, Pauline Bauer and initialed by the incumbent night supervisor, Brian K. Fisher. The SOP reflects that the Des Moines GMF's BMEU was found to be in compliance with the check procedures as of May 1, 1995. The Arbitrator further notes that subsequently, the check procedure set forth in SOP No. 26 (Jt. Ex. 7), was supplemented with the following additional procedures that were approved nearly six (6) years later on April 14, 1999:

- Input the deposit in the Permit System using the photocopied PS Form 3544 and check and mark a red ✓ on it when done (if the money is for a bulk mail fee, write "bulk fee." also in red).
- Two "Permit System Input Transaction Records" will be printed. Staple one copy to the back of the photocopied PS Form 3544 and check. Put the other copy in the recycle bin.
- Place the two stapled sheets in the folder of the book that contains the "Bad Check List."

(Jt. Ex. 9)

check" list of customers that was not always kept up-to-date and, making out receipts. Price admitted that since a great many customers who patronize the BMEU are repeat customers, she does not always verify checks she accepts against the bad check list. As one example, Price noted, she has accepted checks as large in amount as a million dollars from the Donnelly Company and has not verified their checks against the bad check list simply based on the fact that Donnelly is a frequent and big mailer.² However, Price acknowledged that just recently, one of the other BMEU Clerks accepted a bad check from a regular customer who makes fairly big mailings. Price related that within the last six (6) months Mailtech, a regular customer of the BMEU, presented a bad check and, as a result, Accounting advised the Unit not to accept any further checks from Mailtech. However, Price explained, Mailtech's credit status vacillated over a short period of time where it was okay to accept their checks, then it was not okay and again reverted back to being okay. Given this situation of uncertainty, Price testified Mailtech presented her with a check and even though Mailtech, at the time, was not on the bad check list, thereby obligating her to accept the check pursuant to the check acceptance SOP, she nevertheless declined to do so on her own authority. In the alternative, she advised the Mailtech employee to return for the receipt and, in the interim, she had the BMEU supervisor sign for the check.

Sally Whitman, a Postal employee of twenty (20) years and a BMEU Clerk for the last five (5) years, coming to the BMEU at around the time the check acceptance procedure was instituted at the Des Moines, GMF, testified that when she bid the position of Bulk Mail Technician, Level 6, she was not aware of the duty on the part of BMEU Clerks of accepting customer checks, as there was no mention of this job responsibility in the job posting.³ Whitman asserted

² Price noted that the smallest amount she has accepted by check was for less than a dollar. In terms of the mix of checks, Price indicated the vast majority are business checks but some are personal checks as well.

³ The Arbitrator notes that a perusal of a job vacancy notice for the position of Level 6 Bulk Mail Technician posted for the Des Moines GMF in November of 1998 (Arb. Ex. 1), reveals no reference in the Comments section of the posting to the duty/responsibility of accepting customer checks. However, in the Standard Position Description for Level 6 Bulk Mail Technician issued November 2, 1994, approximately fourteen (14) months after Section P040.5.5 of the DMM was amended (Jt. Ex. 3), there are at least two (2) references under the Duties and Responsibilities section of the Position Description that can reasonably be associated with the duty of having to accept customer checks, to wit: (1) verifies adequacy of funds on deposit to cover mailing; (continued...)

in her testimony that while she has never seen the written "Check Acceptance Procedure" (Jt. Ex. 9), and does not recall ever seeing SOP No. 26 (Jt. Ex. 7), she is familiar with the BMEU's check acceptance procedure from having been shown the procedure by another clerk in the Unit.⁴ Whitman related she has knowledge as to how to prepare receipts for accepting checks and, she also has knowledge of the existence of the bad check list. Like Price, Whitman admitted that at those times she has been extremely busy servicing customers in the Unit, she has not always verified a customer's check against the list. Like Price, Whitman too asserted, with greater certainty, that there are times when the check list is outdated. Whitman related that while she was not opposed to the inclusion of accepting customer checks as part of the duties of her position, she was aware that there were some clerks in the Unit that wanted absolutely nothing to do with accepting checks. Prior to September of 1996, Whitman noted, there were only certain BMEU Clerks that assumed the responsibility of the duty to accept customer checks while others who did not assume this duty were not exposed to the check acceptance procedure. However, according to Whitman, prior to September of 1996, this division among the Unit Clerks created a problem in that all clerks were assigned to perform the position of meter-greeter on a rotation basis and, one of the duties of the meter-greeter is to accept customer checks.⁵ According to Whitman, whenever a clerk who declined to accept checks or was not trained to accept checks assumed the meter-greeter position, it required other clerks in the Unit to assist the meter-greeter to perform the check acceptance duty. Whitman identified other circumstances that occur in the Unit, as well, that results in other clerks in the Unit assisting the meter-greeter in accepting checks from customers, even when, the clerk performing the meter-greeter work assignment is a clerk that has no problem with performing the check acceptance procedure. For example, a customer might present the meter-greeter with multiple checks or, there may be numerous customers who present themselves in the Unit at the exact same time or, the meter-greeter is on the telephone and customers are waiting to be served. Prior

³(...continued)

and (2) maintains the tabulation and recording of all fees (Jt. Ex. 5).

⁴ According to Whitman, she first became aware that acceptance of customer checks was a duty that was part of the duties of a BMEU Clerk during both her on-the-job training for the position and the 112 hours of classroom instruction she received.

⁵ The record evidence reflects that for any customer entering the BMEU, the clerk in the Unit serving as the meter-greeter is the first employee the customer makes contact and interacts with. All other clerks in the Unit are performing the myriad other duties of a Bulk Mail Technician.

to September of 1996 when such circumstances arose, the only clerks in the Unit that were able to assist the meter-greeter were those clerks that possessed the knowledge as to how to perform the check acceptance procedure. Whitman testified that while she was one of the clerks who performed the check acceptance duty prior to September of 1996, she did have concerns then, as she does today, in performing this duty when presented with checks involving a large sum of money.⁶ According to Whitman, her concern centers on issuing a receipt for large checks that are processed on a small piece of paper and handing over such a small sized receipt to the customer who may be someone other than the issuer of the check. In other words, Whitman explained, her concern in the broader sense has to do with the tracking of receipts. Whitman testified she is aware of resistance on the part of BMEU Clerks, even now, to embrace the duty, as part of their job, to accept checks. In fact, according to Whitman, she knows of one male employee in the Unit, one Terry Semmens, who, in the past, flat out refused to accept checks. Whitman related that Semmens is still assigned to the BMEU today but she does not know whether he still refuses to accept checks; although, she noted, she has observed him performing the meter-greeter position as a result of being rotated to the job.

David Hearn, a Level 6 Bulk Mail Technician who has worked in the BMEU since March of 1989 and is an on-the-job instructor, one of three in the Unit, testified in corroboration of Whitman's testimony that, in the three (3) years between 1993 when the check acceptance procedure was first instituted and September of 1996 when an incident occurred that resulted in the training of all BMEU Clerks in the check acceptance procedure, there existed tension between those clerks who accepted checks and those clerks who did not perform this check acceptance duty. Hearn related that during these three (3) years, he trained other clerks in the check acceptance procedure and asserted that, while most of the clerks subsequently fell into the group that performed the check acceptance procedure, a few of the clerks did not.⁷ Hearn testified his own personal view of this division among clerks, was that, if he had to perform the duty of accepting checks then every clerk in the Unit should have been required to accept checks. This uniformity of every clerk in the Unit performing the check acceptance procedure came about as a result of an incident stemming from a disagreement over having to perform the check acceptance procedure. According to a written statement of the incident that

⁶ Whitman attested that the largest sum of money she accepted by check was in the amount of \$50,000.00.

⁷ Hearn made clear in his testimony that those employees who comprised the dissident group who would not accept checks as a part of their duties as Level 6 Bulk Mail Technicians nevertheless, were knowledgeable as to how to perform the check acceptance procedure but simply refused to do so.

occurred on September 6, 1996, authored by BMEU night shift Supervisor, Brian K. Fisher (Emp. Ex. 2), and confirmed by Union Advocate, Lance Coles, as a fairly accurate account of the incident, as ironically, Coles was a major participant in the incident, Fisher entered the Unit at 3:30 p.m. and observed seven (7) customers waiting in line to either deposit their mail or deposit a check. At this time, Fisher observed two (2) BMEU Clerks in the Unit, one of whom was Coles and the other was Len Odegaard. According to Fisher, Odegaard was accepting a check and he thought that Coles was helping a customer. Fisher reported he proceeded to move behind one of the available stations with the intention of helping one of the seven (7) waiting customers when Coles informed him that if he should continue in his endeavor to help customers, he (Coles) would file a grievance for his performing work of the Clerk Craft. Additionally, Fisher reported, Coles told him he was not qualified to accept checks, he was not bonded to accept checks, it was not his job to accept checks and he was not going to accept checks. Fisher further reported that Coles was agitated when he spoke to him and that Coles was speaking in a louder tone of voice than what would be considered as normal, all in the presence of customers. Fisher reported he inferred from Coles' demeanor that the situation he encountered when he first entered the Unit had already been ongoing and was well into an advanced stage. That being the case, Fisher reported he replaced Coles with BMEU Clerk, Bryan Moore who, at the time, was working in the back of the Unit. Fisher reported he next accompanied Coles outside the Unit on the plant side where he held a discussion with Coles to ascertain the reason for his behavior. According to Fisher, prior to his (Fisher) arrival in the Unit, Acting Supervisor Jim Eginore had given Coles a direct order to perform his duties meaning, in this instance, to accept customer checks and that he refused to perform this duty. Fisher reported that while he was discussing the matter with Coles, Eginore appeared and again issued a direct order to Coles to perform the duty of accepting checks and Coles again refused to do so as directed. At this point, according to Fisher, he warned Coles of the potential consequences of failing to follow supervisory directives informing him of the possible corrective action of removing him from service without pay until the situation was settled. Fisher reported that Coles responded he was aware of the disciplinary consequences that could possibly befall him but stated that, "we were going to pay him anyway." Fisher reported that he reacted to Coles' response by officially taking him "off the clock" and directing him to report for duty on his next scheduled work day. Following this action, Fisher reported he then discussed the situation with Eginore (Emp. Ex. 2).

Christiana Chapman, Manager of the BMEU at Des Moines and Cedar Rapids since August of 1996, one month prior to the incident that occurred involving Coles' refusal to accept checks, testified that as head of the Unit, she investigated the incident and, as part of her investigation, she solicited written statements from both Fisher and Eginore. Chapman related that her investigation

revealed that Coles and Odegaard proceeded to have an argument in front of the customers in the Unit waiting to be served and that the argument was over Coles' refusal to accept customer checks. At some point during the argument which had the effect of upsetting the customers, Acting Supervisor, Eginore, who was a new supervisor at the time, intervened and a verbal interchange with voices raised ensued among the three of them. Chapman testified that as the incident occurred on a Friday, the incident was not brought to her attention until the following Monday, September 9, 1996. At that time, Chapman related, she immediately commenced her investigation and was told, incorrectly, no SOP existed regarding the procedure for accepting customer checks.⁸ Chapman testified she immediately acted to rectify the situation by instructing the BMEU supervisors, Fisher and Eginore, to conduct a Service Talk addressing the topics of acceptance of customer checks and exhibiting inappropriate behavior in front of customers.⁹ Given the immediacy of the situation, Chapman related she informed Fisher and Eginore to conduct the Service Talk at once and, the record evidence reflects that Eginore convened his Service Talk the very next business day, Tuesday, September 10, 1996 (Jt. Ex. 6 and Emp. Ex. 1). As reported in a written account of the Service Talk recorded on a BMEU Service Talk Log Sheet bearing the pre-printed names of the BMEU Clerks who, at the time, were required to initial and date the form signifying they had attended the Service Talk (Jt. Ex. 6 and Emp. Ex. 1), the very first topic that was addressed was "Accepting Checks." Under this topic, the following written notation followed:

Accepting checks is a national policy and part of the responsibility for all BMEU staff. All BMEU staff are required to accept checks without exception.

The second topic that was addressed was "Inappropriate Behavior" and, under this topic, the following written notation followed:

Negative, degrading or abusive language or behavior will not be tolerated especially in the presence of customers. Any employee observed doing so may be subject to discipline in the form of a Letter of Warning.

The record evidence reflects that Coles was present among the BMEU Clerks who attended this Service Talk but it was notated beside his

⁸ Chapman explained in her testimony that it was not until much later on that she learned of the existence of SOP No. 26 dated September 27, 1993 (Jt. Ex. 7).

⁹ Chapman explained that Service Talks are held once a week but that given the circumstances of the September 6, 1996 incident, she directed Supervisors Eginore and Fisher to convene the Service Talk immediately.

name at the bottom of the BMEU Service Talk Log Sheet (Emp. Ex. 1) that he refused to sign. Chapman testified that subsequent to the holding of the September 10, 1996 Service Talk, Coles persisted in his refusal to perform the duty of accepting customer checks and, as a result, Management acted to discipline him. However, Chapman related, after she and Coles had a discussion regarding the September 6, 1996 incident and he was given the opportunity to air his concerns, the discipline issued to Coles was subsequently dropped. Chapman asserted in her testimony that the Coles' incident aside, she has not encountered another incident subsequent to September 6, 1996 of an employee in the Unit refusing to perform the duty of accepting customer checks.

Chapman explained that notwithstanding the September 2, 1993 amendment to Section P040.5.5 of the DMM (Jt. Ex. 3), limiting the number of BMEU Clerks responsible for the acceptance of checks, she concluded, based on the information that came to her attention through the investigation of the September 6, 1996 incident, that the number of clerks needed in the Des Moines BMEU to provide coverage sufficient to meet customer needs required that all BMEU Clerks needed to be qualified in the check acceptance procedure. Chapman further explained she arrived at the conclusion that all BMEU Clerks needed to be cross-trained enabling them to perform all the duties of the Bulk Mail Acceptance Clerk position simply because of the fact that the meter-greeter job was performed on a rotational basis and it was vital in meeting customer needs to have the meter-greeter be able to accept customer checks.¹⁰ Chapman, in her testimony, also noted that a secondary beneficial effect of having all BMEU Clerks cross-trained is, that it affords more opportunities for employees on the Overtime Desired List (OTDL) to work overtime assignments. Chapman related that her objective of having all BMEU Clerks cross-trained was accomplished by sending them all to receive supplemental training.

Chapman testified that it was not until today's arbitration hearing that she became aware for the first time, three (3) years after the subject grievance was filed, that BMEU Clerks were not aware that they were not liable relative to their job duty of accepting customer checks.¹¹ Chapman indicated the Clerks' unawareness of

¹⁰ Chapman explained that she discerned from the information revealed to her during her investigation of the incident that if the situation at the Des Moines BMEU remained status quo, that is, that some clerks would accept customer checks while other clerks would not, that the incident that occurred involving Coles on September 6, 1996 could very well and, in all probability would occur again.

¹¹ The Arbitrator notes that by Postal Bulletin 21908 dated December 7, 1995, a revision to the F-1 Handbook was issued

(continued...)

this fact is a failure on the part of Management which she intends to immediately address and correct. Chapman testified that she did learn from the occurrence of the incident that the bad check list maintained at the BMEU was outdated most of the time and that, as a corrective measure, she requested the Finance Division to provide the BMEU a more current list. Chapman explained that she learned recently, within the last three (3) weeks, that the bad check list is going to be updated regularly by E-mail but that even on this basis, the list will still not be updated on a fixed frequency basis.

The record evidence reflects that on the same date Eginoire held his Service Talk, September 10, 1996 wherein, pursuant to Chapman's directive, he informed the BMEU Clerks that they would all be required to accept customer checks as part of their job, without exception, Coles initiated the subject grievance alleging the Postal Service had violated Articles 5 and 37 of the National Agreement (Jt. Ex. 1) by unilaterally effecting a change in duty assignments for the Clerks in the BMEU. In its written grievance, the Union asserted that Management's requiring all BMEU Clerks to accept checks from customers was contrary to past practice wherein only those clerks who wanted to accept checks had done so and those clerks who did not want to accept checks were not required to do so. The Union advanced the argument that clerks who opted not to accept customer checks should not be forced to perform this duty on

¹¹(...continued)

pertaining to Permit Mailings - Nonsufficient Fund Checks. This revision reads in pertinent part as follows:

Effective January 1, 1996, the collection procedures will change for checks used to pay postage on permit imprint mailings that are returned for insufficient funds (NSF). The current procedure is described in Postal Bulletin 21838 (4-1-93, page 22). **The writer of the NSF check for bulk mailings is solely liable.** The Postal Service will no longer pursue collection efforts against the permit holder unless the permit holder is also the writer of the check. *** (Emphasis by Arbitrator)

(Jt. Ex. 8)

Chapman also noted that BMEU Clerks are under a misimpression that Window Clerks are bonded and are held liable for accepting bad checks. Chapman explained that Window Clerks are not bonded and are not held liable for accepting bad checks when bad checks are received as a result of following established procedure.

several grounds, to wit: (1) the amendment set forth in Postal Bulletin 21849 (Jt. Ex. 3) clearly provided that acceptance of checks should be limited to the minimum number of employees necessary to provide coverage sufficient to meet customer needs and that "limited" did not mean "all" clerks; (2) that the "bad check list" was not kept current so it was possible that a clerk could accept a bad check and therefore be liable for the amount involved; and (3) personal liability for accepting bad checks was a likely outcome as BMEU Clerks were not bonded. As a remedy, the Union requested that the practice of taking checks from customers for permit accounts and fees cease immediately in the BMEU area.

As the Parties were unable to reach a mutually acceptable resolution of the issue in dispute at the lower steps of the grievance procedure preceding the terminal step of arbitration, the issue comes now before this Arbitrator for a final and binding determination.

CONTENTIONSUNION'S POSITION

The Union, at hearing, reasserted all argument it originally set forth in the subject grievance in favor of its position the Postal Service acted wrongly and, in violation of the National Agreement (Jt. Ex. 1), when it unilaterally required all, rather than a limited number of BMEU Clerks, to accept customer checks as part of the job duties of their position as Bulk Mail Acceptance Clerks. In addition to this argument, the Union also asserted at the hearing that the Postal Service violated applicable provisions of the National Labor Relations Act (NLRA) by unilaterally effecting the change in a Clerk's working conditions by mandating the duty of accepting customer checks without first giving the Union advanced notice of the change. The Union states the NLRA provides that any changes in employment conditions that significantly affect one or more employees, including changes in work rules, job assignments, subcontracting and other past practices must first be submitted to the Union. The Union contends that the change in requiring all rather than a few BMEU Clerks to accept customer checks was a change in working conditions that significantly affected more than one employee and that the change represented a marked departure from past practice that had been in effect for as long a period of time as three (3) years; yet, the Postal Service made no attempt to bargain with the Union over this change in working conditions.

The Union argues that the duty of accepting customer checks as an added duty to the Level 6 Bulk Mail Technician position cannot be disputed as this duty is nowhere referenced in the Bulk Mail Technician Standard Position Description (Jt. Ex. 5). The Union further contends that contrary to the Postal Service's assertion it acted in consonance with the added duty by training the BMEU Clerks in the check acceptance procedure, the Postal Service has not so acted. The Union maintains that Eginore, the day supervisor who instituted the subject change, was not even aware of the SOP No. 26 issued in September of 1993 and therefore, as a result, clerks have not been trained in this procedure. Instead, the Union asserts, employees are shown a book containing "Check Acceptance Procedures" (Jt. Ex. 9) that instructs clerks what to do but these instructions are in variance from the 1993 SOP No. 26 guidelines. Notwithstanding the Postal Service's position that the "bad check list" would be kept up-to-date after the duty of accepting checks was added to the duties of all BMEU Clerks, the bad check list continues to be out-of-date for long periods of time. This has possible consequences for Clerks who accept customer checks per the check acceptance procedure since, even though the Postal Service contends Clerks will not be held liable for accepting bad checks, it has never addressed what action, if any, it would take in a situation where the accepted check is either lost or stolen. This

particular concern is real in that the box into which the customer checks are deposited by the Clerks sits unsecured atop a table located near the main entrance of the BMEU. The Union asserts this location is well within the reach of any person entering the Unit through the automatic doors to the BMEU and, oftentimes, this area is left unattended thus, leaving the check box accessible for the taking. The Union asserts that under these lax security conditions, it is very concerned with the potential liability Clerks are exposed to, noting that, with respect to cash drawers assigned to Window Clerks, the Postal Service requires that said cash drawers are to be beyond the reach and sight of customers. The Union submits that the same degree of security ought to attach to the check box retained in the BMEU.

Based on the foregoing arguments asserted, the Union requests that the Arbitrator sustain the subject grievance in its entirety.

EMPLOYER'S POSITION

The Employer submits that pursuant to Article 3, the Management Rights clause of the National Agreement (Jt. Ex. 1), specifically with regard to its right to direct employees in the performance of official duties and its right to determine the methods, means, and personnel by which such operations are to be conducted, it was not a violation of the Agreement (Jt. Ex. 1), as the Union alleges, when it made the determination to require all BMEU Clerks to perform the duty of accepting customer checks. Even though the amendment to Section P040.5.5 of the DMM set forth by Postal Bulletin 21849 (September 2, 1993) advises that the acceptance of checks should be limited to the minimum number of employees necessary to provide coverage sufficient to meet customer needs, the Employer argues this advisory does not specify what this minimum number should be and does not prohibit Management from determining that the minimum number be confined to a number of employees less than the total number of clerks staffing a BMEU if the entire complement of clerks is needed to fulfill the objective of providing coverage sufficient to meet customer needs. The Employer argues that it did not violate past practice, as so alleged by the Union, when it acted to increase the number of BMEU Clerks able to perform the duty of accepting customer checks from a few, to all Clerks in the Unit, since it became evident through the incident that occurred on September 6, 1996 that the handful of Clerks in the Unit that had been "trained" in the check acceptance procedure was no longer an adequate number of Clerks to provide coverage sufficient to meet customer needs. Nothing in the amendment to Section P040.5.5 of the DMM, the Employer argues, prohibits the expansion in the number of Clerks to be utilized in accepting customer checks, recognizing that, conditions are ever

changing and the central objective is providing coverage sufficient to meet customer needs. The Employer contends therefore, predicated on this latter point, that even though a BMEU operates for some substantial period of time, here three (3) years, with a relatively fixed number of Clerks who are trained to accept customer checks, this fixed number does not become ensconced as a past practice simply because, the reality is that, conditions of service to customers are ever changing.

As to the several security issues raised by the Union, the Employer submits all are red herrings. First, with respect to an individual Clerk's liability exposure, there is virtually none even in light of the fact that the "bad check list" is not always up-to-date and the check box is not secured to any fixture and, is therefore, subject to being taken from the Unit, although the check box, at most times, remains locked. Postal regulations exist that exempt Clerks from being liable for accepting bad checks when those checks are received pursuant to following the check acceptance procedure. Support for this position is found in the fact that, to date, no BMEU Clerk has ever been held liable for having accepted a bad check. The Postal Service argues that since BMEU Clerks are not responsible for handling cash at any time or dealing in cash transactions, there is no need, as the Union seems to think there is, for BMEU Clerks to be bonded. The Employer asserts the best support for its position on this point is the fact that Window Clerks who do handle cash transactions are not bonded.

Based on the foregoing arguments asserted, the Employer requests the Arbitrator find that the Union failed in its burden to prove it violated any provision of the National Agreement (Jt. Ex. 1) when it determined to require all BMEU Clerks to perform the duty of accepting customer checks and, accordingly, that the Arbitrator rule to deny the subject grievance in its entirety.

OPINION

At the outset, the Arbitrator finds he is compelled to reject the Union's argument that the Employer violated applicable provisions of the National Labor Relations Act by unilaterally instituting the check acceptance procedure rather than making advance notification of its intention to effect this change in working conditions for the BMEU Clerks and to engage in bargaining over the impact of said change. The reasons for the rejection of this argument are essentially two-fold, to wit: (1) While the Union alleged in its written grievance that the Postal Service violated Article 5 of the National Agreement (Jt. Ex. 1) which pertains to the prohibition of effecting unilateral action as it pertains to wages, hours and other terms and conditions as defined in Section 8(d) of the National Labor Relations Act which violate the terms of the Agreement (Jt. ex. 1), the Union never fully developed this allegation throughout the lower steps of the grievance procedure preceding the terminal step of arbitration. In effect, then, the more fully developed allegation set forth in this arbitral proceeding by the Union that the Postal Service violated Article 5 of the Agreement (Jt. Ex. 1) is judged by the Arbitrator to, in effect, constitute new argument which precludes the argument from further consideration by him in reaching a determination as to the final disposition of the issue here in dispute. But, even assuming arguendo this argument had some merit and applicability to resolving the subject grievance, it is clear the Union failed in its burden of proof in this proceeding to show that the unilateral change of adding the check acceptance procedure to the duties of **some** BMEU Clerks at first, and then to **all** BMEU Clerks three (3) years later, in 1996, constitutes a change in a condition of employment as conditions of employment are contemplated and envisaged in the National Labor Relations Act. For example, a condition of employment would be the requirement that a person hired by the Postal Service successfully complete a probationary period of ninety (90) calendar days prior to becoming eligible to accrue seniority. An example of a unilateral change in this condition of employment would be if the Postal Service effected, on its own volition, without notice to, or bargaining with the Union, a longer probationary period, changing the ninety (90) days to one hundred twenty (120) days. The Arbitrator is not persuaded by any evidence before him that adding, subtracting, changing or, in any other way modifying an employee's job duties that fit within the general scope and jurisdiction of one's established job classification, rises to the level of a change in the condition of one's employment as envisaged by the National Labor Relations Act and noted by the aforesaid example. A review of Section 8(d) of the National Labor Relations Act (NLRA) establishes that it addresses the obligation by both parties (Employer and Union) to bargain collectively with respect to wages, hours, and other terms and conditions of employment and that where, as here, a collective bargaining agreement is in effect, the obligation on the parties to

bargain collectively also means that neither party shall terminate or modify such contract, unless the party desiring such termination or modification acts to reopen collective negotiations. It is obvious that Article 5 (Jt. Ex. 1) pertains to those issues which are mandatory topics of collective bargaining and adding a specific job duty does not fall into this category of issues. If it did, the Union could allege that any change unilaterally effected by Management that pertained to one's job was subject to ongoing collective bargaining which would result in a total absurdity. Rather, the Postal Service's position that the subject added duty of check acceptance by BMEU Clerks falls under its management rights to effect is a more rational argument and the one the Arbitrator deems as the controlling authority; and (2) even assuming arguendo the Union had raised this argument in its more fully developed state in the preceding lower steps of the grievance procedure, the substance of the argument asserted is stale, as it should have been raised in 1993 when the check acceptance procedure was first announced in Postal Bulletin 21849 (Jt. Ex. 3) and then put into effect. The substance of the argument as advanced by the Union is, that under the provisions of the National Labor Relations Act, the Postal Service was required to bargain the check acceptance procedure instead of unilaterally imposing the procedure yet, at the point in time the procedure was first instituted, the Union stood mute and did not raise any objection that this "change in working condition," as the Union now characterizes the procedure, represented a violation of federal law. Having remained mute on the claim for three (3) years, the Arbitrator finds the Union is now precluded in this arbitral proceeding, from raising this claim as a legitimate argument. Additionally, the Arbitrator notes, such an argument is more properly raised as an unfair labor practice before the NLRB rather than before an arbitrator.

The Union next alleges that the Postal Service is prohibited by its own regulations, as initially issued in Postal Bulletin 21849 (Jt. Ex. 3), from requiring that all BMEU Clerks assume the added job responsibility of accepting customer checks, as the revision to Section P040.5.5 of the DMM clearly states that BMEU Management is to limit the duty of acceptance of customer checks to a minimum number of employees. While the Arbitrator would generally concur in the Union's position that placing a limitation on the number of employees to perform any job duty to a minimum number would preclude extending the job duty to all employees, the fact is, that such a conclusion ignores other language included in the revision that qualifies that the number of employees constituting this minimum number should be adequate to provide coverage sufficient to meet customer needs. The record evidence reflects that even though the arrangement of training and requiring a handful of BMEU Clerks to perform the check acceptance procedure was a viable arrangement when first instituted, it nevertheless was fraught with problems at the outset, such as, resentment among employees who were uneasy about performing the added duty and assuming a greater degree of responsibility but, nevertheless, did so, as opposed to BMEU Clerks

who just flat out refused to accept customer checks, a resentment that came to the fore in the form of a full-blown explosion between Clerks Coles and Odegaard in front of customers three (3) years after the check acceptance procedure had been effected. It is clear to the Arbitrator, as it was to Chapman after she became aware of the situation through her investigation of the incident, that the number of Clerks required to accept customer checks was no longer adequate to provide sufficient coverage to meet customer needs and, in addition, if the reality continued to exist where some clerks performed the check acceptance procedure and others refused to perform this duty, that the dissension which existed between these two groups of clerks would result in other confrontations identical to the one that occurred between Coles and Odegaard. Because the limitation to a minimum number of employees language in the amendment of Section P040.5.5 of the DMM did not specify either a percentage of an employee population or, a finite number of employees, the Arbitrator is not persuaded that the limitation of a minimum number of employees makes it mutually exclusive to restricting the number to less than the total employee population affected, here all BMEU Clerks. Certainly, absent a finding the Postal Service violated Article 5 of the Agreement (Jt. Ex. 1), it cannot be maintained with any degree of merit, that the Postal Service lacks the management right to effect changes or modifications in the specific duties of a particular job classification where the changes are not inconsistent with the broader duties as set forth in the formal job descriptions. The Arbitrator is not persuaded by any of the arguments advanced by the Union that the added duty performed by the BMEU Clerks of accepting customer checks was inconsistent with their overall job responsibilities of their position as Level 6 Bulk Mail Technicians even taking into account the fact that the existing Standard Job Description is currently out-dated.

As to the other allegations raised by the Union centering on security issues, the Arbitrator concurs in the Union's position that problems exist in this area and that, in some respects security may even be deemed as being lax. However, the Arbitrator is also convinced that the concerns the Union raises regarding security issues do not serve as justification on the part of BMEU Clerks to refuse to perform the duties associated with the check acceptance procedure since, it is abundantly clear, that BMEU Clerks have no liability exposure at all in connection with performing this job duty. The fact that the "bad check list" continues to be out-dated for significant periods of time is Management's problem and not the BMEU Clerks and, therefore, any problems that arise when a clerk accepts a bad check due to the fact the bad check list is out-dated is no fault of the Clerks' as long as the Clerk followed the procedure he/she was trained to follow. The fact that the box into which checks are deposited is not secured to any fixture in the Unit and, therefore, left vulnerable to being stolen, is again a problem for Management and not the Clerks. It should be heartening, however, to note the now

long-time experience in the Unit of nearly seven (7) years that there has never been an incident involving the check box being stolen. It is perhaps ironic that on the morning this Arbitrator visited the BMEU that the check box which usually is locked was not, nevertheless, even this laxness in security could not be attributed to someone other than the employee responsible for locking and unlocking the box and, even here, it is not clear as to what liability exposure that employee would be expected to bear. As to the Union's contention that not all employees were trained in the check acceptance procedure after Management decided to train all BMEU Clerks in the procedure, the Arbitrator must necessarily dismiss this contention as being inaccurate as it cannot seriously be held that such training could only be accomplished by following the procedure as initially set forth in SOP No. 26, since that procedure has been modified, though very slightly, over the seven (7) years the procedure has been in existence. Even the Union acknowledged in its prepared opening statement (Un. Ex. 1) that a written description of the check acceptance procedure is kept in a book in the Unit and that clerks can refer to this procedure anytime they feel it necessary to consult. Since the procedure as set forth in writing is fairly simple and straightforward, it does not appear to the Arbitrator that a great deal of training would be required in order to qualify a clerk as being proficient in performing the procedure.

Based on the foregoing analysis and discussion the Arbitrator finds the subject grievance lacks merit and, accordingly rules to deny the grievance in its entirety.

A W A R D

Based on the rationale set forth in the preceding Opinion section, the Arbitrator finds that the Postal Service did not violate Article 5 or, any other articles of the National Agreement (Jt. Ex. 1) or, any of its own regulations when it unilaterally required BMEU Clerks to perform the duty of accepting checks from customers in payment for Postal services. Accordingly, the Arbitrator rules to deny the subject grievance in its entirety.

GRIEVANCE DENIED



GEORGE EDWARD LARNEY
Arbitrator

Chicago, Illinois
February 25, 2000