Exhibit 1

b. The test key shall be used as follows: With the lock in a locked position and with the door or panel closed, insert the test key in the key slot in the same manner as is done with the regular arrow key. If the lock can be opened with the test key, it indicates the lock is defective and must be replaced immediately.

c. To ensure immediate identification of defective locks, a red pressure-sensitive label has been provided which readily adheres to the surface of these locks. The label is imprinted *Defective Lock — Send to Nearest Mailbag Depository*. The printing is so arranged that when affixing the label to the lock, with some overlap, the indicated instructions can still be seen. This label is identified as Label 60, *Defective Lock*.

d. Send defective arrow or inside locks and padlocks to the Mail Equipment Shops in accordance with Handbook AS-701, *Material Management.* Defective arrow or inside locks and padlocks may be shipped as quantities justify, but must not be held longer than 8 months. Be sure that a red label is attached to every defective lock sent to the depositories and that the label is not put on any lock unless it is known to be defective. Ship defective locks in lock container pouches. Enclose small quantities in cartons or heavy envelopes securely wrapped.

e. When defective locks are reported by carriers or by others, the locks must be promptly repaired or replaced. These include arrow or inside locks and padlocks on collection, storage, office mail chutes, non-personnel rural postal units, and apartment house letter boxes, and on postal mailroom doors in office and apartment buildings. Withdraw from service immediately all mail locks on letter boxes that are defective in the slightest degree.

134.5 Safety

During any period of street supervision, every opportunity must be taken to emphasize safety while driving, walking on sidewalks, walking up and down steps, crossing streets, collecting mail, or delivering relays or parcels.

14 Adjustments

141 Minor Adjustments

141.1 Route Adjustment Without Special Inspection

141.11 Minor Adjustments

141.111 The routes must be maintained in reasonable adjustment throughout the year. In order to fulfill this requirement, local managers may find it necessary to make minor route adjustments, to provide relief, add deliveries, capture undertime, etc.

141.112 When considering if a mail count and route inspection is necessary, review the nature and scope of the adjustments needed. If the review discloses that

only minor adjustments are necessary, the adjustments should be made from current management records and information.

141.113 When it is observed that a delivery unit is regularly exceeding its daily authorized carrier hours, as indicated on the latest PS Form 3998, *Unit Summary of City Delivery Assignments* (see chapter 3), management must first ensure that the applicable procedures in this chapter are fully implemented and enforced. Particular attention must be given to carrier scheduling, receipt of mail, and carrier work methods in the office and on the street. Some other areas that should be reviewed are delivery unit changes in office routines, street management, and additional or more beneficial segmentations of mail.

141.12 Office Routines

141.121 Delivery managers must continually review carrier office routines in order to determine whether all unnecessary time consuming practices have been eliminated or reduced to an absolute minimum. A review should be made of the unit layout to ensure that the workroom is arranged to minimize travel and to facilitate an orderly flow of mail. All excess and unnecessary equipment should be removed from the workroom floor. If this is not possible, place it in an area where it will not interfere with an efficient operation.

141.122 Where possible, at least 80 percent of the carrier's mail should be on the case ledge prior to the carrier reporting. At offices where it is impractical to place mail on or near the carrier's case prior to the reporting time, management should consider establishing a fixed schedule for mail withdrawals or establishing a minimum number of controlled withdrawals. The withdrawals should be scheduled to coincide with the receipt of mail or the distribution needs of the office. Carriers must not be allowed to withdraw their mail except under controlled conditions in order to facilitate the volume recording process. However, regardless of the procedure used in the office, mail received from the main office or mail distributed at the unit while the carriers are on the street should be on the carrier cases when they return from the street.

141.13 Street Management

141.131 Delivery managers must ensure that carriers hold the number of park points, swings, loops, and relays to the absolute minimum necessary to provide delivery. Unnecessary movement of vehicles and vehicle stops not only expand street time, but also waste energy.

141.132 Where carriers use public conveyances for transportation to and from their routes, leaving and returning times must be arranged to reduce carrier transportation waiting time to a minimum. In addition, relay runs should be arranged so that carriers do not have to wait for relays.

141.133 Deadheading and unnecessary retracing should be eliminated. Lines of travel as indicated by the case layout must be followed by the carrier. Unauthorized deviations generate customer complaints, waste both time and energy, and conflict with the order which the letters are placed in under Delivery Point Sequencing. When it is determined that more efficient travel patterns are

218 Estimating an Office Time for DPS Planning Purposes

When Delivery Point Sequencing is to be implemented in a delivery unit, the following methodology will be used to estimate the impact on the affected city delivery routes:

a. Determine the percentage of letter-sized mail targeted to be received in DPS order on the date when the adjustments will be implemented;

b. Multiply percentage determined in step "a" by the average letter-sized mail received during the week of count and inspection (from Form 1840, column 1) to determine the number of letters for each route, targeted to be received in DPS order;

c. Divide letters targeted to be received in DPS order (as determined in step "b") by 18;

d. Divide letters targeted to be received in DPS order (as determined in step "b") by 70;

e. Add results of steps "c" and "d" to determine estimated impact;

f. For routes where the carrier was under standard time during the week of count and inspection, multiply results of step "e" by percentage of standard office time used during the week of count and inspection; the result is the estimated impact.

22 Conducting the Count of Mail

221 Schedules and General Rules Governing Count

221.1 Letter Routes

221.11 Schedule

The count of mail on all letter delivery routes, regular and auxiliary, must be for 6 consecutive delivery days on one-trip routes and for 5 consecutive delivery days, exclusive of Saturday, on two-trip routes or one-trip routes with abbreviated or no delivery on Saturday. It is not mandatory that mail counts begin on Saturday and continue through Friday so long as they are made on consecutive delivery days.

221.12 Use of Forms

221.121 PS Forms 1838 and PS Form 1838-C must be used as appropriate. (See Chapter 9 of Handbook M-41 for details on completion by carrier.)

221.122 All count forms should be completed daily in their entirety by the manager who is also required to post daily from PS Form 1838 the time items for columns A through G and the volume items for columns 1 through 7 on PS Forms 1840 for his or her group of routes. This is required to detect errors or irregularities on forms so that the manager may immediately discuss the matter with the carrier and, if necessary, initiate corrective action before the next day's count so that the mistake will not be repeated.

d. *Determining Possible Deliveries.* To determine the number of possible deliveries to be removed or added, divide the time being considered for removal or addition by the time per delivery.

25 ÷ .80 = 31.3 or 31 possible deliveries

e. *Computing Route Total Time.* Add to or subtract from route involved:

Route 3671	8:25
	– :25
	8:00

Individual computation (if desired):

Office Time = .30 x 31 = :09	3:10 – :09 =	3:01
Street Time = .50 x 31 = :16	5:15 – :16 =	4:59
	Route	8:00

(See Exhibit 141.18.)

f. *Unusual Conditions.* If unusual conditions exist, the character of the area being transferred must be considered and a fair application of time should be made to office and/or street time allowances.

g. *Adjustment Procedures.* Adjustments should be made as outlined in 243.2.

h. *Decrease or Increase in Total Carrier Workhours.* The District office must be notified of any decrease in the total carrier workhours due to minor adjustment. Any increase in total carrier workhours should be approved by the District office prior to implementation of the adjustments. In any event Form 3998 must be submitted to the District office.

i. *Evaluation of Adjustments.* The adjustments should be evaluated as outlined in 243.6.

j. *Disposition of Summary Worksheet.* Original of summary worksheet must be sent to the office of the manager in charge of delivery services and one copy retained at the delivery unit.

141.2 Special Office Mail Counts

When management desires to determine the efficiency of a carrier in the office, a count of mail may be made. The carrier must be given one day's advance notification of this special count. Use PS Form 1838-C to record count and time items concerned. The carrier must be advised of the result of the office mail count.

142 Extension of City Delivery Service

142.1 Requirements for Extension

The requirements for extension of city delivery service are outlined in section 611 of the *Postal Operations Manual*. These instructions are supplemented by Management Instructions which can be obtained from the designated district.

Exhibit 2

2 Mail Counts and Route Inspections

21 Advance Preparations

211 Selecting Period for Mail Counts and Route Inspections

211.1 In order to achieve and maintain an appropriate daily workload for delivery units and routes, management will make at least annual route and unit reviews consisting of an analysis of items listed in 214, and workhours, volumes, and possible deliveries. Items listed in 213 may also be utilized in the review. These reviews will be utilized to verify adjustments which have been taken by management, or need to be taken by management, in order to maintain efficient service. The results of the review will be shared with the local NALC President, or designee, and the regular letter carrier(s) serving the route(s) that require adjustment. In some units it may be necessary to proceed with mail counts and route inspections on one or more routes. These inspections will be conducted between the first week of September and May 31, excluding December.

211.2 The period selected for the mail count and route inspections should be determined as far in advance as possible, and the local union should be notified of this schedule. If it is necessary to change the period, the local union should be notified of the revised schedule as far in advance as practicable.

211.3 In selecting the count period, remember that all route adjustments must be placed in effect within 52 calendar days of the completion of the mail count, and no major scheme changes should be made between the period November 15 and January 1. Exceptions must be approved by the district manager in accordance with the Memorandum of Understanding dated July 21, 1987, related to Special Count and Inspection — City Delivery Routes. The local union will be notified promptly of any exception(s) granted. An important item to consider when granting an exception is the different types of relief laid out in 243.21b.

211.4 Absences, for other than emergencies, will not be granted during the week of count and inspection. If it can be anticipated that there will be a count and inspection of the carrier routes at an installation, to the extent possible, planning for that inspection should normally be completed before annual leave bidding begins. This will enable management to exclude from leave charts the week selected for count and inspection.

218 Estimating an Office Time for DPS Planning Purposes

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a. Determine the percentage of letter-sized mail targeted to be received in DPS order on the date when the adjustments will be implemented;

b. Multiply percentage determined in step "a" by the average letter-sized mail received during the week of count and inspection (from Form 1840, column 1) to determine the number of letters for each route, targeted to be received in DPS order;

c. Divide letters targeted to be received in DPS order (as determined in step "b") by 18;

d. Divide letters targeted to be received in DPS order (as determined in step "b") by 70;

e. Add results of steps "c" and "d" to determine estimated impact;

f. For routes where the carrier was under standard time during the week of count and inspection, multiply results of step "e" by percentage of standard office time used during the week of count and inspection; the result is the estimated impact.

22 Conducting the Count of Mail

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221.122 All count forms should be completed daily in their entirety by the manager who is also required to post daily from PS Form 1838 the time items for columns A through G and the volume items for columns 1 through 7 on PS Forms 1840 for his or her group of routes. This is required to detect errors or irregularities on forms so that the manager may immediately discuss the matter with the carrier and, if necessary, initiate corrective action before the next day's count so that the mistake will not be repeated.

Exhibit 4

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

NOV 13 1978

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: N. Bellus
Ann Arbor, MI
NC-C-12007/5DET-3766

Dear Mr. Riley:

On October 5, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The M-39 Handbook provides for a one (1) day count of mail when necessary. Under the circumstances, we find no violation of the National Agreement and the grievance is denied.

However, a one (1) day count of mail should be utilized for the purposes intended by the M-39 Handbook and local officials are to ensure that one (1) day counts are not used for the purpose of harassment.

Sincerely,

James J. Facciola

James J. Facciola
Labor Relations Department

Exhibit 6

C-21452

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	
	)	Grievant: George Rankin
UNITED STATES POSTAL SERVICE	)	
	)	Case No.: F94N-4F-C 96019290 95
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	
	)	

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Employer: Mr. Dave Beauvais

For the Union: Mr. Phil Russ

PLACE OF HEARING: Palos Verdes Peninsula, California

DATES OF HEARINGS: August 15, 2000
August 21, 2000

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated the parties' collective bargaining agreement by adjusting and abolishing the grievant's assignment to Intercity 1 without following mandated contractual procedures. Since no remedy was explored at the arbitration hearing, the parties shall have 90 days from the date of this report to attempt to fashion an appropriate remedy. Either party may activate the arbitrator's jurisdiction during this time to determine a remedy if negotiations prove to be unproductive. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: 11-27-00

REGULAR ARBITRATION PANEL

IN THE MATTER OF ARBITRATION	)	
BETWEEN	)	
UNITED STATES POSTAL SERVICE	)	ANALYSIS AND AWARD
AND	)	Carlton J. Snow Arbitrator
NATIONAL ASSOCIATION OF LETTER CARRIERS (Geoge Rankin Grievance) (Case No. F94N-4F-C 96019290 95)	)	

I. INTRODUCTION

This matter came for hearing pursuant to the 1994-1998 collective bargaining agreement between the parties. Due to a miscommunication between the parties, the hearing occurred in two segments. The first part of the hearing took place by telephone conference call on August 15, 2000. The remainder of the hearing occurred on August 21, 2000 in a conference room of the Postal Facility located at 944 Deep Valley Drive in Palos Verdes Peninsula, California. Mr. David Beauvais, Labor Relations Specialist, represented the United States Postal Service.

Mr. Phil Russ, Executive Vice-president, represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The arbitrator tape-recorded the proceeding as an extension of his personal notes. The advocates fully and fairly represented their respective parties.

There were no challenges to the substantive or procedural arbitrability of the dispute, and the parties stipulated that the matter properly had been submitted to arbitration. They authorized the arbitrator to retain jurisdiction in the matter for 90 days after issuing an award. The parties elected to submit the matter on the basis of evidence presented at the hearing as well as oral closing arguments after which the arbitrator officially closed the hearing. An injury to the arbitrator's hand followed by his secretary's eye surgery delayed preparation of a report.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Did the Employer violate Articles 5, 7, 13, 19, or 41 of the National Agreement when it performed a minor adjustment and subsequently abolished the Intercity 1 assignment? If so, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 3 - MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

C. To maintain the efficiency of the operations entrusted to it.

D. To determine the methods, means, and personnel by which such operations are to be conducted.

ARTICLE 5 - PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 19 - HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

IV. STATEMENT OF FACTS

In this case, the Union challenged the Employer's decision to alter and abolish the Intercity 1 assignment held by the grievant. The grievant served as a City Letter Carrier and Chief Shop Steward at the Palos Verdes Post Office. Since 1989, the grievant's full-time assignment was Intercity 1, and it was comprised of a combination of duties, including collections, express mail, and special mail. On September 13, 1995, management made a minor adjustment to Intercity 1 by instructing the grievant to report to Unit C for router duties, effective September 14, 1995. The route was also altered by eliminating the Redondo Beach and San Pedro runs, effective September 16, 1995.

During the week of September 25-29, 1995, an office-wide inspection took place. The inspection of the grievant's route included the Palos Verdes branch run as well as the Redondo run (except on September 26), but the inspection did not include the San Pedro run. On November 3, 1995, a notice to all employees announced the elimination of Intercity 1. The elimination became effective on January 1, 1996.

The Union filed separate grievances with regard to the minor adjustment of Intercity 1 (Grievance No. 95PVC 139) and the abolishment of Intercity 1 (Grievance No. 95PVC 187). After denials at Steps 1 and 2, the matter proceeded to Step 3. During Step 3 on January 16, 1996, the parties agreed to consolidate the two grievances; and subsequently the Employer denied the combined grievance. On February 2, 1996, the Union filed a complaint with the National Labor Relations Board alleging that the Employer violated Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act by disciplining the grievant for engaging in union activities and not bargaining with the Union. On February 9, 1996, the Union submitted a request for arbitration of the consolidated grievance. On March 20, 1996, the National Labor Relations Board referred the unfair labor practice complaint to arbitration pursuant to *Collyer Insulated Wire*. (*See* 192 NLRB 837 (1971).)

V. POSITION OF THE PARTIES

A. The Union

The Union maintains that the Employer improperly adjusted and abolished Intercity 1. According to the Union, the Employer used invalid data to evaluate the routes in violation of M-39 guidelines. Since the grievant started the route in 1989, there allegedly were no route inspections until September 25, 1995. The Employer's estimate of 119 minutes for the San Pedro run, Redondo Beach, and Palos Verdes branch runs allegedly failed to isolate the number of minutes dedicated to the various runs from other combined duties performed on the way to the selected offices. Moreover, the Union argues that any commitment to Delivery Point Sequencing had or would have no effect on the grievant's route because the grievant did not sort mail.

The Union contends that, during the inspection of September 25-29, 1995, several inaccuracies occurred. The Employer allegedly failed to consider the hours of overflow that the grievant turned over to light and limited duty employees in order to assist him in completing his route. Because the Redondo run was not performed on September 26 and the Redondo carrier took express deliveries before the grievant arrived on September 25, the inspection average for that run and express deliveries

was inaccurate, according to the Union. Despite the numerous alleged inaccuracies, the Union argues that inspection data, nevertheless, showed that the grievant's route averaged 8.22 hours a day. Based on that fact and adding the runs which failed to be included in the inspection because of the minor adjustment, the Union contends that the original Intercity 1 route averaged 9.22 hours a day. The Union maintains that the Employer never consulted the grievant about the adjustment, or the abolishment, or the data collected on his route. The failure to do so allegedly violated M-39 guidelines as well as Article 5 of the parties' collective bargaining agreement.

The Union also contends that the Employer's concerns with efficiency were misplaced. While recognizing that the San Pedro run was no longer needed, the Union argues that the Employer failed to consider the fact that it was performed in conjunction with the Branch run as well as in connection with making express deliveries. Second, the Union contends that the Redondo run was also performed in conjunction with making express deliveries. The Union maintains that, during the ten years the grievant performed the Redondo run, there were no more than two occasions when he waited for mail or had no express mail to pick up. The grievant allegedly resolved even this difficulty by calling ahead to make

certain that Redondo had mail for him. Third, the Employer stipulated that transporting Branch Office mail was assigned to a clerk for the sole purpose of transporting the mail to the Branch. The Union argues that this run also had been performed in conjunction with express mail deliveries.

The Union contends that the Employer violated the parties' National Agreement by transferring runs to limited and light duty employees. The Employer stipulated that the delivery of express and special delivery mail had been assigned to limited and light duty employees. They were Employees Bartleson and Wong. Additionally, a limited duty carrier in Redondo helped perform such services. It was also stipulated that the Branch run had been assigned to a clerk.

Finally, the Union maintains that the adjustment and abolishment of Intercity 1 constituted retribution. It allegedly was retribution imposed by management on the grievant for engaging in union activities and, in the opinion of the Union, violated the National Labor Relations Act. According to the Union, there was no reason for the abolishment because all work on Intercity 1 was still being performed. The adjustment and abolishment allegedly were achieved without due process, as required by the parties' National Agreement. Other carriers allegedly had less than eight hours of work, while the grievant still had eight hours of

work. Since the relevant Postmaster took her position, the Union contends that grievances had doubled and that, as Chief Steward, the grievant obtained a number of significant awards against the Postmaster who was in office at the time of the grievance.

B. The Employer

The Employer maintains that management properly adjusted and abolished Intercity 1. According to the Employer, the actions of management were consistent with Article 3 which authorizes the Employer to maintain efficiency and to determine appropriate methods of operation. The Employer argues vigorously that the challenged operational changes generated efficiencies and were devoid of any other motivations. As the Employer sees it, a Zip Code change in San Pedro caused the San Pedro office to move to Palos Verdes. Because San Pedro carriers were working out of Palos Verdes, there was no need for the grievant to take mail to San Pedro. Second, the Redondo Beach run occasionally had no express mail for the grievant or, alternatively, required that he wait for the express mail to arrive. Elimination of the run insured that there was no waiting, no

needless trips, and no wasted time calling Redondo Beach to inquire if the grievant needed to make the run. Third, the Palos Verdes Branch Office eliminated a full-time clerk, which made it necessary for a Main office clerk to box and sort the mail. The clerk also delivered the mail between the offices to prevent duplicative runs by the grievant and the clerk. Fourth, the abolishment of Intercity 1 eliminated unproductive time spent on rest breaks, comfort stops, vehicle maintenance, and special instructions, in the opinion of the Employer.

The Employer contends that it complied with the parties' agreement when abolishing Intercity 1. According to the Employer, the route was an eight-hour shift; and after the minor adjustment, it was reduced by 119 minutes. The institution of delivery point sequencing in 1996 allegedly eliminated carrier office duties and further reduced minutes from the route. The Employer maintains that there was no reason to consult the grievant due to the fact that the decision to abolish the route was made prior to the inspection, and the grievant allegedly had knowledge of that decision. As the changes just described reduced the route to under eight hours, the Employer contends that it had authority to terminate the assignment pursuant to the M-39 Handbook.

It is also the position of the Employer that it had authority to reassign any remaining duties of Intercity 1 to light and limited duty employees because doing so involved no detriment to the grievant. The Employer contends that the grievant continued to work a full shift and later successfully bid on another route. Hence, the Employer maintains that reassigning the duties to limited and light duty employees did not constitute a contractual violation.

Finally, the Employer categorically rejects the assertion that changes in Intercity 1 were a result of the grievant's union activities. According to the Employer, the route abolishment was due to managerial concerns with efficiency as well as with making legitimate operational changes. According to the Employer, there was no hint of anti-union animus in the changes that affected the grievance. Hence, the Employer concludes that no contractual violation occurred and that the grievance must be dismissed.

VI. ANALYSIS

A. Burden of Proof

A common sense approach to allocating the burden of proof and the burden of going forward is helpful in resolving this dispute. A party who is allocated the burden of proof must prove a fact or facts in dispute. As one court observed, the burden of proof can be described as "the duty resting upon one party or the other . . . to establish by a preponderance of the evidence a proposition essential to the maintenance of the action." (*See Kohlsaat v. Tarkersburg & Marietta Sand Co.*, 226 F. 283, 284 (4th Cir. 1920).) The burden of proof must be contrasted with the burden of going forward. The burden of going forward with the evidence may shift from party to party during an arbitration proceeding.

The burden of proof is on the party who asserts the affirmative of an issue, and it remains with that party. But the burden of going forward with the evidence is always on the party against whom a decision would be made if no further evidence were submitted to the arbitrator. A party to whom the burden of going forward with the evidence has shifted cannot overcome its burden merely by asserting that the other party has failed to carry its burden of proof. These evidentiary concepts involve far more than mere legal jargon and provide a helpful analytical framework for sorting out

disputed facts and making objective decisions. In other words, there is a shifting burden of persuasion that must be borne by each party in order to support or justify its claim without regard to who might be said to bear the burden of proof.

Once a party with the burden of proof has done more than merely assert a claim but has gone forward and submitted evidence to establish the validity of a claim, the risk of nonpersuasion shifts to the other party. In some cases, even if a party must prove the universal negative, the obligation to do more than merely assert a claim and to support such a claim with actual evidence remains with the party asserting a violation of its rights. This is not a discipline or discharge case, and the initial responsibility remained with the Union. The "universal negative" argument, however, helps determine the location of the burden of going forwrd with the evidence. What many decision-makers have concluded is that, if a party initially is faced with proving a universal negative, it will require only slight proof to shift the burden of going forward with the evidence to the other party. (*See, e.g., Giblin v. Dudley Hardware Co.*, 117 Alt. 418 (1922); *Joost v. Craig*, 131 Cal. 540, 63 Pac. 840 (1901).) For example, if a party were required to prove as its initial claim that the other party did not have legitimate reasons of efficiency for making a decision, it would be faced

with proving a negative assertion. In such a circumstance, the burden of going forward with the evidence could be shifted by slight proof because essential evidence to proving the negative would lie within the primary control of the other party.

B. The Right to Make Assignments

Article 3 of the National Agreement is clear about the fact that management possesses an exclusive right to "maintain the efficiency of the operations entrusted to it." (*See* Joint Exhibit No. 1, p. 5.) It is for management to direct and assign employees, to maintain efficiency, and to determine the methods and personnel by which operations are to be conducted. Such rights, however, are subject to any restrictions in the rest of the parties' agreement. Article 19 incorporates by reference the M-39 Handbook as part of the parties' negotiated agreement. Section 141.113 of the M-39 Handbook requires that management follow definite adjustment procedures.

Procedures set forth in the M-39 Handbook for a minor adjustment emphasize the need for "reasonably current" count and inspection data for the route with the specific carrier. Sections 141.19 and 251 of the M-39 Handbook specify that Forms 1840 and 3999 are to be

used in calculating hours. Consultation with the carrier is required pursuant to Sections 141, 243, 252, and 254. Moreover, notice to the Union is required in Section 141. Additionally, Article 5 of the parties' negotiated agreement imposes notice and conference obligations on the Employer.

The arbitrator received unrebutted testimony that Intercity 1 had not been inspected by the Employer since 1989. Moreover, the carrier was not consulted regarding his hours or the adjustments made to his route prior to September 14, 1995. Such evidence was supported by the inspection data from 1995. It contained no reference to carrier comments. (*See* Joint Exhibit No. 3, pp. 6-14.) Notice to the Union came in the form of a memorandum given to Shop Steward Joe Shay on September 13, 1995, the day before the adjustment became effective. (*See* Joint Exhibit No. 3, p. 49.) The evidence went unrebutted.

The arbitrator received no other documentation of earlier inspections except a time sheet used on September 13, 1995 to time the three runs eliminated from Intercity 1. (*See* Joint Exhibit No. 3, p. 4.) This particular document is not a form referred to in M-39 Handbook procedures. Evidence submitted to the arbitrator failed to support a conclusion that the Employer fully implemented or enforced M-39 adjustment procedures as outlined in its handbook. While the Employer

retained a contractual right to make minor adjustments, the right is subject to procedures referenced in or incorporated by the parties' negotiated agreement. The fact that the M-39 procedures were not followed in this case constituted a violation of the parties' National Agreement.

C. The Right to Abolish an Assignment

Like the right to make adjustments, abolition of an assignment remains within the retained rights of management, subject to the parties' negotiated agreement. Section 243.22 of the M-39 Handbook provides for eliminating routes that require less than eight hours in duration. In the absence of other references to abolishing assignments in the parties' National Agreement, a useful source of guidance is to be found in arbitration decisions on the subject. The parties submitted a profusion of material with respect to the Employer's right to abolish assignments. Most of the Employer's data arose in disputes with another collective bargaining unit. (*See* Employer's Exhibit Nos. 2, 3, 4, 5, 7, and 8.) Some of the decisions arose under earlier collective bargaining agreements between the parties. At least one of the decisions did not implicate the propriety of procedures used under the M-39 Handbook, as is the case in this dispute. (*See* Employer's Exhibit No. 10.) Another of the decisions was different from the fact

pattern in this dispute in that it involved inspections prior to the abolishment that showed the existence of routes requiring less than eight hours to perform the work. (*See* Employer's Exhibit No. 11.) Instructive guidelines found in one of the decisions merit repetition. Arbitrator Gentile stated in March, 2000:

> Applying the standards of review to test an abolishment found in the arbitral authority, these are the inquiries:
>
> > Do the facts establish management's decision was either arbitrary (without a factual foundation); capricious (without a full consideration of efficiency, reasonable business considerations and not the result of impulsive decision-making); unreasonable (without a fair, realistic and practical balance of the attendant concerns); or discriminatory (affected employees were treated without a reasonable and rational justification for how the abolishment took place).
> > (*See* Employer's Exhibit No. 11, p. 11.)

Evidence submitted to the arbitrator established that the Employer's decision in this case was not consistent with relevant guidelines. When asked if the grievant was working an eight hour day "right after the minor adjustment," Postmaster Joan Durazo testified:

> I would assume he was.
> He is an eight hour regular employee.

Inspection data for September 25, 1995 indicated that the grievant's routes required an average of 8.22 hours a day. (*See* Joint Exhibit No. 3, pp. 6-14.) That evidence stood unrebutted. Additionally, contentions that the

inspection process failed to include auxiliary assistance hours and also that not all runs were performed on certain days remained unrebutted. The arbitrator received sufficient evidence from the Union with regard to these matters to shift the burden of going forward with the evidence to the Employer, and management did not do so. Legitimate questions were also raised about the inspection reports because the inspection runs included a mixture of the original routes and the adjusted routes. It is reasonable to conclude that the Employer did not know the actual duration of Intercity 1 before or after the adjustment. The inability of the Employer accurately to classify Intercity 1 as either above or below eight hours supported a conclusion that M-39 procedures had been violated.

The Employer failed to follow M-39 procedures in this case. This left management with an uncertain evaluation of the routes. Such facts support a conclusion that management acted unreasonably in making a decision to abolish the route without a fair balancing of all relevant concerns as is required by the M-39 procedures. In the absence of relevant data, the Employer could not have fully considered the efficiency of its decision. It is reasonable to conclude that making a decision under such circumstances was arbitrary and capricious.

D. The Unfair Labor Practice Complaint

The Union filed a complaint with the National Labor Relations Board alleging that abolishing Intercity 1 constituted disciplinary action against the grievant due to his union activities and that such discipline violated Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act. Pursuant to *Collyer Insulated Wire*, the National Labor Relations Board deferred the matter to arbitration on March 20, 1996. NLRB deferral policy requires (1) that an arbitration proceeding be fair and regular; (2) that the Unfair Labor Practice issue which gave rise to the charge be considered and decided by the arbitrator; and (3) that any arbitration award be consonant with purposes and policies of relevant labor legislation. (*See Spielberg Manufacturing Company*, 112 N.L.R.B. 1080 (1955); and *Olin Corporation*, 268 N.L.R.B. 573 (1984).)

The parties submitted evidence in arbitration relevant to resolving the unfair labor practice dispute. By making a change in the grievant's assignment, management modified a condition of his employment. The Union received notice of the minor adjustment the day before the adjustment became effective. (*See* Joint Exhibit No. 3, p. 49.) A memorandum on an office bulletin board directed to all employees on November 3, 1995 gave notice of the abolition of Intercity 1. (*See* Joint

Exhibit No. 2, p. 11.) The abolishment became effective on January 1, 1996, 59 days after the posting. Section 8(b) of the National Labor Relations Act imposes a duty on the parties to bargain collectively and requires that they confer in good faith. Modification of a term or condition requires 60 days of notice, and the Union did not receive reasonable notice in this case.

The Employer also failed to bargain with the Union about the unilateral change in working conditions. No evidence submitted to the arbitrator established that the Employer conferred, consulted, or otherwise discussed with the Union the substantial change in the grievant's working conditions. The failure to bargain was inconsistent with requirements of the National Labor Relations Act. Such conduct was inappropriate in view of the parties' contractual and statutory obligations.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated the parties' collective bargaining agreement by adjusting and abolishing the grievant's assignment to Intercity 1 without following mandated contractual procedures. Since no remedy was explored at the arbitration hearing, the parties shall have 90 days from the date of this report to attempt to fashion an appropriate remedy. Either party may activate the arbitrator's jurisdiction during this time to determine a remedy if negotiations prove to be unproductive. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

Carlton J. Snow
Professor of Law

Date: 11-21-00

Exhibit 7

C-23986

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	Grievance: Class Action
	)	
UNITED STATES POSTAL SERVICE	)	Post Office: Rialto, California
	)	
	)	Case No.: F98N-4F-C 02062648 3982102C
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Postal Service: Mr. Timothy Arntz

For the Union: Mr. Manuel L. Peralta

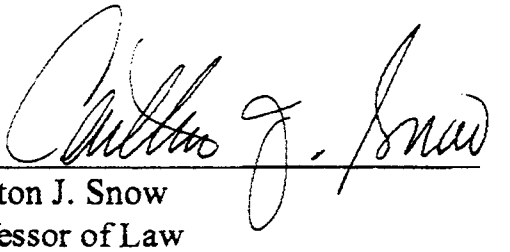
PLACE OF HEARING: Rialto, California

DATE OF HEARING: November 15, 2002

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes the Employer violated the parties' National Agreement when it changed the employees' Start Time in this case. The Employer shall reinstate the original Start Time of 8:15 A.M., unless management can prove compliance with factors in Section 122.11 of the M-39 Handbook. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow
Professor of Law

Date January 22, 2003

IN THE MATTER OF ARBITRATION	)	
BETWEEN	)	
UNITED STATES POSTAL SERVICE	)	ANALYSIS AND AWARD
AND	)	Carlton J. Snow Arbitrator
NATIONAL ASSOCIATION OF LETTER CARRIERS (Class Action Grievance) (Case No.: F98N-4F-C 02062648 3982102C	)	

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from 1998-2001. A hearing occurred on November 15, 2002 in a conference room of the postal facility located at 241 West Rialto Avenue in Rialto, California. Mr. Timothy Arntz, Labor Relations Specialist, represented the United States Postal Service. Mr. Manuel L. Peralto, Regional Administrative Assistant, represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The arbitrator tape-recorded the proceeding as an extension of his personal notes. The advocates fully and fairly represented their respective parties.

There were no challenges to the substantive or procedural arbitrability of the dispute, and the parties stipulated that the matter properly had been submitted to arbitration. The parties authorized the arbitrator to retain jurisdiction in the matter for 90 days after issuance of a decision, and they submitted the matter on the basis of evidence presented at the hearing as well as oral closing arguments, and the arbitrator officially closed the hearing on November 15, 2002. An ear infection slowed production of a report.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Did the Employer violate the parties' National Agreement and/or Local Agreement when it changed the start time from 8:15 A.M. to 8:40 A.M. and, then, to 8:30 A.M.? If so, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 3 - MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE 19 - HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable.

IV. STATEMENT OF FACTS

In this case, the Union challenged the decision of the Employer to change the Start Time of employees. On December 29, 2001, the Employer changed the Start Time of Letter Carriers from 8:15 to 8:40 A.M. Management explained to employees that the time change needed to be made in an effort to increase productivity. In a memorandum to Letter Carriers, the Employer stated that the "case feet per hour" was then 2.9 but that it should be 3.60 feet per hour. (*See* Joint Exhibit No. 2, p. 17.) The "case feet per hour" is the total caseable mail divided by the minutes used to case the mail. The Employer also cited other productivity goals of reducing sick leave and overtime as a justification for the operational change of the Start Time.

The Union challenged the decision of the Employer to make the time change and cited Section 122.11(b) of the M-39 Handbook. Section 122.11(b) requires the Employer to set work schedules to coincide with the receipt and dispatch of mail. The M-39 Handbook states that:

> At least 80% of the carriers' daily mail to be cased should be on or at their cases when they report to work.

On January 12, 2002, the Union requested time card "rings" from December 1, 2001 through January 12, 2002 for all clerks and casual workers at the Annex and "data showing daily mail volume distributed to routes prior to 'begin tour' from January 1, 2001 to December 31, 2001." (*See* Joint Exhibit No. 2, p. 11.) Management believed that the Information Request was unreasonable and informed the Union that "if we furnish you with this we are going to charge the union for the time it takes us." (*See* Joint Exhibit No. 2, p. 11.) Approximately 90 days later the Union received some of the requested information.

In February, the Union grieved management's decision to change the Start Time. Steward Farley testified that at least two or three "Step A" meetings took place. As a part of the Union's investigation into the dispute, Steward Farley interviewed the Employer's Step A representative and Officer in Charge, Mr. Elijah Stephens. Mr. Stephens told Mr. Farley

that the first truck arrives at the facility at 5:00 A.M.; the second truck arrives at 6:00 A.M.; and the final truck is expected to arrive at 8:00 A.M. (*See* Joint Exhibit No. 2, p. 14.)

When asked how management determines that 80% of the mail is at the carrier's case, Mr. Stephens stated that, "We count the mail every day." (*See* Joint Exhibit No. 2, p. 14.) Mr. Stephens also stated, however, that he did not know the volume of mail for three routes at the center of the conflict. (*See* Joint Exhibit 2, p. 15.) What Mr. Stephens knew was that, if the trucks were on time, 80% of the caseable mail will be at the carriers' case in a timely fashion. (*See* Joint Exhibit No. 2, p. 15.) In a 20-day period from December 27, 2001 through January 16, 2002, the 6:00 A.M. truck was late an average of 10 minutes on 13 of the 20 days. For the same time period, the 8:00 A.M. truck was late an average of 21 minutes on 15 days. (See Joint Exhibit No. 2, p. 80.)

According to Shop Steward Farley, the Employer never established when the mail was received at the carriers' cases prior to the allegedly improper time change. Mr. Farley also testified that, prior to the emergence of the grievance, Letter Carriers never had to wait for the mail. Nor did he have knowledge of anyone else who had to wait. When the

parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. The Union

The Union argues that the Employer violated the parties' National Agreement when it changed the Start Time from 8:15 to 8:40 A.M. The Union asserts that the Employer is relying on an internal productivity standard, rather than relying on the M-39 Handbook. The Union contends that the M-39 Handbook requires management to fix schedules so that at least 80% of the mail is in carriers' cases when they report to work. The Union contends that management cannot tell from the Mail Volume Report when 80% of the mail is at the carriers' cases. Hence, the Union concludes that the Employer violated the parties' agreement by making the time change in the absence of an appropriate justification for doing so.

B. The Employer

The Employer argues that it is completely within management's right to alter the Start Time based on the "management rights" provision of the National Agreement. According to the Employer, management changed the Start Time in this case to increase productivity. It is the position of the Employer that the change in starting time was due to low mail volume, dispatch trucks arriving late, and a poor mail flow. The Employer asserts that managers made employees aware of these problems and changed the Start Time in an effort to overcome the productivity deficiencies.

The Employer points out that the time change was pushed forward by 25 minutes and made "out-of-schedule" premium pay inaccessible to employees. Although only a 25 minutes change, it allegedly had a significant impact on the efficiency of the operation and, according to the Employer, "produces better productivity since it is not necessary for the carrier to wait for DPS volume or go to streets and return when DPS is available because of a late truck." *See* Joint Exhibit No. 2, p. 183.) In view of the positive impact on the efficiency of the operation, the Employer concludes that the changed Start Time did not violate the agreement of the parties and that, therefore, the Employer must prevail in this case.

VI. ANALYSIS

The Union objected in this case when, on December 29, 2001, the Employer unilaterally changed the Start Time of employees from 8:15 to 8:40 A.M. It is indisputable that the Employer has a right to determine the method, means, and personnel by which operations are to be conducted and also to make reasonable decisions that maintain the efficiency of the operation. Managerial control of work schedules, however, is not totally unfettered or without limitations. The M-39 Handbook specifies that schedules must be fixed to coincide with the receipt and dispatch of mail. Section 122.11(b) of the M-39 Handbook states:

> Consider the following factors in establishing schedules:
>
> (b) Fix schedules to coincide with receipt and dispatch of mail. At least 80% of the carriers' daily mail to be cased should be on or at their cases when they report for work. (*See* Joint Exhibit No. 2, p. 172, emphasis added.)

The instruction is not a suggestion but is stated as an imperative. The Handbook, which pursuant to Article 19 of the labor contract has been incorporated into the parties' collective bargaining agreement, eliminates a manager's unfettered control over Start Times. Start Times remain within management's control but must be exercised after giving due deference to the M-39 Handbook.

The Employer responded to the Union's case by asserting that management made a change in the Start Time to increase productivity and efficiency. An arbitrator is as obliged to follow contractual procedures as is a manager, and the parties' agreement expressly states that a factor a manager must consider in establishing the work schedule at a facility is the fact that 80% of the mail must be present at the carriers' cases when they report to work. The arbitrator did not receive proof from management covering this crucial evidentiary link. The Employer did not establish whether or not 80% of the mail had been delivered to cases at the original Start Time prior to management's changing the work schedule. What the Employer premised its case on was the fact that the 6:00 A.M. and 8:00 A.M. trucks were frequently late, and this fact alone allegedly justified changing the Start Time. (*See* Joint Exhibit No. 2.)

Part of the evidence used by management to support its decision failed to be persuasive. Management relied, in part, on the fact that the 6:00 A.M. trucks were generally late over a 20 day period from December 27, 2001 to January 16, 2002. But such evidence was far from conclusive in light of the fact that the Letter Carriers' Start Time was normally 8:15 A.M. The on average 15 minute delay of the 6:00 A.M. truck failed to provide sufficient justification for management's decision. It, however, is relevant that the 8:00

A.M. trucks were an average of approximately 20 minutes late over the same 20 day period and were late 15 of the 20 days. (See Joint Exhibit No. 2, p. 80.)

It was reasonable for management to take such a delay into consideration when setting the work schedule, but the time frame considered by management occurred immediately after the holiday season and provided circumstances that logically contributed to the lateness of the trucks. A 20 day test period under such circumstances failed to provide sufficient evidence of a clear pattern of lateness that justified the change. The point is that the lateness of the 8:00 A.M. trucks, without other supportive data, failed to establish that less than 80% of the mail was at the carriers' cases when they arrived for work. The point is that the Union, as the moving party, established a prima facie case that the Employer was not complying with the M-39 Handbook.

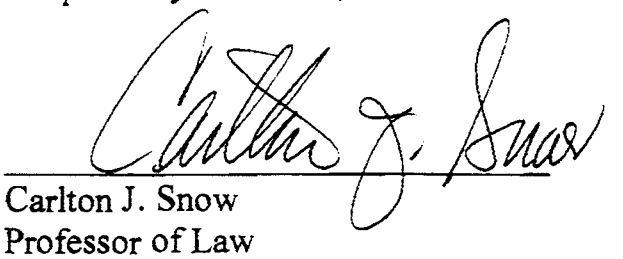
Once the Union made a prima facie case, the burden of going forward with the evidence shifted to the Employer to prove that it complied with the parties' agreement. The Employer elected to present no witnesses at the hearing and offered only a limited explanation to justify the schedule change, namely, to foster productivity. In the absence of evidence, it cannot be concluded that the Employer carried its burden of going forward with the

evidence. Management did not establish that it complied with relevant contractual provisions or that it gave consideration to the amount of mail actually at the carriers' cases at the start of the shift prior to making the schedule change. In order to justify a change in the work schedule, management must show (once the Union presents a prima facie case) it complied with the parties' agreement and considered the factors set forth in Section 122.11 of the M-39 Handbook before changing the Start Time.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes the Employer violated the parties' National Agreement when it changed the employees' Start Time in this case. The Employer shall reinstate the original Start Time of 8:15 A.M., unless management can prove compliance with factors in Section 122.11 of the M-39 Handbook. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow
Professor of Law

Date January 22, 2003

Exhibit 8

FW: Saturday carriers in the office over 2, carriers on the street over 10

To Paul Boulanger <paulb1228@comcast.net>

Paul,

I am also in receipt of this email in the event it pertains to your RFI.

Thank you,
Aamber-Rose McIntyre
Supervisor, Customer Service Support
7 Perimeter Rd.
Manchester NH 03103-9999
603-235-9600

From: Bugbee, Regina M - Portland, ME <Regina.M.Bugbee@usps.gov>
Sent: Monday, February 13, 2023 4:35 PM
To: NNE-DL-CITY DELIVERY <NNE-DL-CITYDELIVERY@usps.gov>
Cc: NNE-DL-POOMs <NNE-DL-POOMs@usps.gov>
Subject: RE: Saturday carriers in the office over 2, carriers on the street over 10

Dave

All

As discussed last week in order to improve our City Delivery Performance we are following the TWO and TEN Play...

Any route in the office more than 2 hours needs an 1838 the next day
Any route over 10 hours on the street needs a 3999 within a week

All Activity must be tracked via the GIS Dashboard.

This started last week so any site below must take action.

Thank you.

Saturday Carriers on the street over 10 hours - 7 . Carriers in the office over 2 hours - 176

MPOO	Delivery Facility	Route Number	Actual Carrier	Street Hours

involving the constitutionality of existing or future legislation prohibiting Federal employees from engaging in strike actions. The parties further agree that the obligations undertaken in this Article are in no way contingent upon the final determination of such constitutional issues.

(The preceding Article, Article 18, shall apply to City Carrier Assistant Employees.)

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for