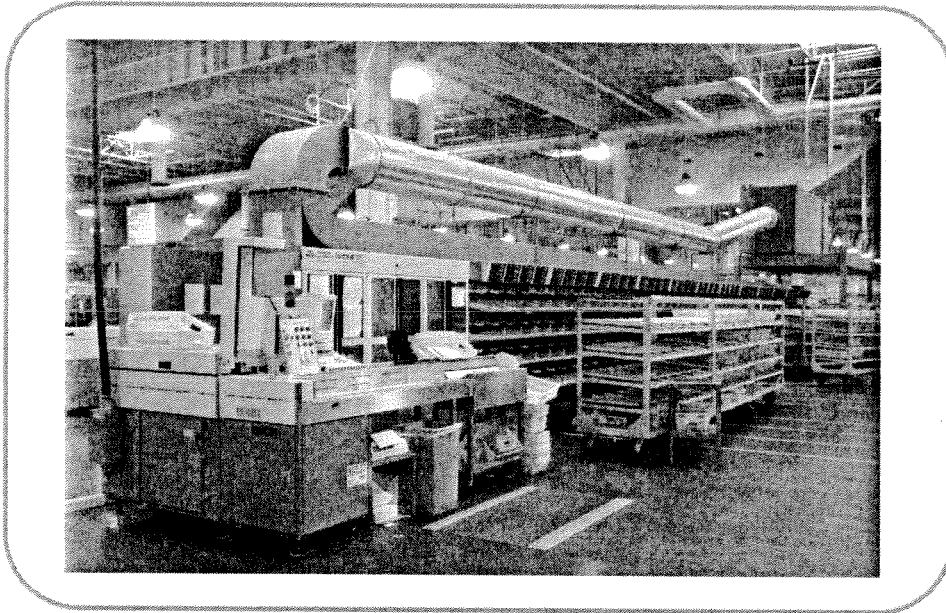


# **DELIVERY BAR CODE SORTER (DBCS) STAFFING, SAFETY AND GRIEVANCE STRATEGIES**

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## **THE STRATEGY BOOK SERIES**

**WRITTEN AND PRODUCED BY**

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# **INTRODUCTION**

## **DBCS STAFFING, SAFETY AND GRIEVANCE STRATEGIES (The Strategy Book Series)**

This Handbook – number 21 in the ongoing Strategy Book Series – combines for the first time the Collective Bargaining Agreement and JCIM provisions with necessary evidence, arbitral reference, interview illustrations and applicable remedial remedies to formulate an overall strategic plan to combat the U.S. Postal Service’s continued assault on contractually required DBCS machine staffing.

In what has become an increasingly widespread epidemic throughout the country, the U.S. Postal Service is ramping up its circumvention of the “normal” staffing of two DBCS operators and attempting to create a one operator norm.

We believe this Strategy Book will empower you to successfully prosecute U.S. Postal Service’s violations and best protect Members’ bargaining unit work and jobs.

Should you have any questions or need further information on this, or any books in the Strategy Series, please contact us at 856-740-0115 or via email at [jkehlert@apwu.org](mailto:jkehlert@apwu.org), [jjackson@apwu.org](mailto:jjackson@apwu.org) or [rromanowski@apwu.org](mailto:rromanowski@apwu.org).

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## **BACKGROUND AND THE BURDEN OF PROOF**

The Delivery Bar Code Sorting Machine (DBCS) staffing agreement between the American Postal Workers Union and the U.S. Postal Service is clear – ‘normal’ staffing is two Mail Processing Clerks. The U.S. Postal Service has – as its own strategy – made the decision to consistently violate that ‘normal’ staffing of two in nearly every mail processing facility throughout the United States. The U.S. Postal Service is clearly intent upon making every effort to devolve and amend the National Agreement to a ‘normal’ U.S. Postal Service staffing of only one DBCS operator.

While the burden of proof in a contractual violation case is on the Union, the DBCS staffing grievances are unique in that the initial burden on the Union immediately shifts to the U.S. Postal Service, as the USPS is invoking its ‘exception defense.’ Within that exception defense, the U.S. Postal Service contends that the ‘normal’ staffing of two operators was necessarily circumvented to only one operator. The U.S. Postal Service must present bonafide and convincing evidence to prove the ‘normal’ staffing of two operators could not be achieved.

While the U.S. Postal Service bears a heavy rebuttal burden, we always have the contractual obligation to initially present evidence proving our arguments. Should the U.S. Postal Service present argument and supporting evidence in support of their rebuttal burden, we must then present our own evidence driven argument in order to be successful.

Some Regional Arbitrators – in front of whom we have been unsuccessful – have relied upon the lack of American Postal Workers Union requested, developed and presented evidence. Statements, interviews, end-of-run and volume reports – these are all critical to our success in challenging the U.S. Postal Service’s shorting of normal DBCS staffing.

# **GENERAL GRIEVANCE OUTLINE**

## **The Issue**

Management staffs the DBCS machines with one operator instead of the "normal" staffing of two operators.

## **The Collective Bargaining Agreement**

Article 2 - Discrimination

Article 14 – Safety & Health

Article 19 – Handbooks & Manuals - Employee & Labor Relations Manual Chapter 6  
Employee & Labor Relations Manual Chapter 8

## **The JCIM**

Article 37 – DBCS Staffing Agreement

## **The Evidence Needed**

Interviews with Witnesses

Witness Statements

Overtime Desired Lists

Time and Attendance Records (Clock Rings)

Duty Assignment Postings

Volume Report(s)

Past Records and Practices (Statements/Interviews)

End of Run Report(s)

Availability of Employee(s) (PTF/PSE/FTR)

JSA (Job Safety Analysis)

Past Grievances Filed List

Citable Settlements/Resolutions

## **Remedial Remedies**

1. Overtime Desired Lists Clerk(s) shall be paid at the overtime pay rate for all hours DBCS was staffed with one clerk. (Available OTDL Clerks).

2. Lone DBCS Operator shall be paid an additional 100% for all hours required to staff DBCS alone.
3. Lone DBCS Operator shall be paid a 'hazard premium' of an additional 50% for all hours required to staff DBCS alone.
4. Part-Time Flexible/PSE Operators (if applicable) shall be paid for all hours the DBCS was staffed with one clerk.
5. Payment to the Local APWU for all USPS refusal to comply with 'normal' staffing of two.
6. Cease and Desist.

**Specific Written Resolution Language:**

1. The U.S. Postal Service will follow the recommended safety and health guidelines as it pertains to the operation of the DBCS machines.
2. The DBCS machine shall be a properly staffed machine with two people.
3. Cease and Desist.

# **THE COLLECTIVE BARGAINING AGREEMENT**

## **Article 2 NON-DISCRIMINATION AND CIVIL RIGHTS**

### **Section 1. Statement of Principle**

The Employer and the Union agree that there shall be no discrimination by the Employer or the Union against employees because of race, color, creed, religion, national origin, sex, age, or marital status.

In addition, consistent with the other provisions of this Agreement, there shall be no unlawful discrimination against handicapped employees, as prohibited by the Rehabilitation Act.

(See Memo, page 302)

## **Article 14 SAFETY AND HEALTH**

### **Section 1. Responsibilities**

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force.

## **ARTICLE 19 HANDBOOKS AND MANUALS**

### **Section 1. General**

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.

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 **PSEs** only to the extent consistent with other rights and characteristics of **PSEs** negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to **PSEs** pursuant to the same standards and procedures found in Article 19 of this Agreement.

# The JCIM

## Article 37

### JCIM PAGE 274

#### **OCR – BCS – DBCS STAFFING**

Normal staffing for the OCR, BCS and/or DBCS will be two Mail Processing Clerks to perform the loading, feeding and sweeping functions.

1. Does the settlement mean that there must always be two Mail Processing Clerks assigned to the OCR, BCS and/or DBCS?

Response: No, that is the normal staffing.

2. Would it be a violation if there was only one clerk working on the OCR, BCS and/or DBCS at the start of the run?

Response: No. There may not be a need for two Mail Processing Clerks at start up or close out.

3. Would it be a violation if there was only one clerk working on the OCR, BCS or DBCS because of the limited volume for that sort of program?

Response: Once again, the “normal” staffing is two Mail Processing Clerks, but there may be circumstances where the staffing is reduced.

4. Would low volume zone runs be an example?

Response: Yes, if the volume available for the DPS zone is such that there is no or minimal sweeping activity required during the run, one operator may be sufficient. One operator may also be sufficient if the volume is such that one operator can load, and then sweep before the bins fill up, and then return to loading.

This settlement addresses minimum staffing, and is not intended to impact those offices where there have been agreements involving more than two operators per machine (due to unique rotations or other local factors.)



# THE EMPLOYEE AND LABOR RELATIONS MANUAL

## Chapter 6 Employee Relations

### 665.23 Discrimination

Employees acting in an official capacity must not directly or indirectly authorize, permit, or participate in any action, event, or course of conduct that subjects any person to discrimination, or results in any person being discriminated against on the basis of race, color, religion, sex, national origin, age (40+), physical or mental disability, marital or parental status, sexual orientation, or any other nonmerit factor, or that subjects any person to reprisal for prior involvement in EEO activity.

### 666.12 Prohibited Discrimination

The following provisions apply:

b. *Individual Status.* No person may be discriminated against because of race, color, religion, sex, age (40+), national origin, disability, reprisal based on protected activity, marital or parental status, or sexual orientation in connection with examination, appointment, reappointment, reinstatement, reemployment, promotion, transfer, demotion, removal, or retirement.

c. *Conduct That Does Not Adversely Impact Performance.* No person may be discriminated for or against on the basis of conduct that does not adversely impact that person's performance or the performance of others. In determining suitability or fitness of that person, any conviction for any crime under the laws of any state, the District of Columbia, or of the United States may be taken into account.

## Chapter 8 Safety, Health, and Environment

### 811.21 Management Commitment, Involvement, and Accountability

Managers must:

- a. Demonstrate a commitment to providing safe and healthful working conditions in all Postal Service owned and leased installations,
- b. Become involved in day-to-day safety performance, and

c. Be held accountable for safety performance and compliance with OSHA standards and regulations (see Handbook EL-802, Executives' and Managers' Safety and Health Program and Compliance Guide).

### **811.24 Safety Philosophy**

The safety philosophy of the Postal Service is stated below:

- a. Any occupational injury or illness can be prevented. This goal is realistic, not theoretical. Supervisors and managers have primary responsibility for the well-being of employees and must fully accept this principle.
- b. Management, which encompasses all levels including the first-line supervisor, is responsible and accountable for the prevention of accidents and control of resultant losses. Just as the line organization is responsible for attaining production levels, ensuring quality of performance, maintaining good employee relations, and operating within cost and budget guidelines, supervisors and managers must likewise accept their share of responsibility for the safety and health of employees.
- c. It is possible to safeguard against all operating exposures that can result in accidents, injuries, and illnesses. It is preferable to eliminate the sources of danger. However, where this is not practical, management must use protective measures, including:
  - (1) Administrative controls,
  - (2) Machine guards,
  - (3) Safety devices, and
  - (4) Personal protective equipment.
- d. All employees must be trained in proper work procedures and must be educated to work safely and to understand that they are responsible for doing so. Management is responsible for the adequate safety training and education of employees. However, all employees are responsible for working safely, and in doing so, they benefit not only themselves but also their organization.
- e. It is good business practice in terms of efficiency and economy to prevent personal injuries on and off the job. Injuries cost money, reduce efficiency, and cause human suffering.

## THE THREE GRIEVANCE INITIATIVE & STRATEGY

We have developed the **Three Grievance Strategy**. This multi-armed attack will bring the most 'resolution pressure' to bear on the USPS and give your grievances the best chance of success for both remedies and potential future violations' deterrence. They are:

The First Grievance: Safety and Health Concerns;

The Second Grievance: The DBCS Operator working alone;

The Third Grievance: The Second Operator not permitted to staff the DBCS

On the following pages are the recommended composition of what each grievance should include – at a minimum – for optimal opportunity of successful resolution/adjudication.

## **SAFETY & HEALTH: THE FIRST GRIEVANCE**

### **JCIM & Collective Bargaining Agreement**

- Article 37 DBCS Staffing Agreement
- Article 14 Safety and Health
- Article 19 E&LRM Chapter 8 Safety, Health and Environment

### **The Facts/Contentions/Arguments**

- Date of Lone Staffing
- Staffing was One
- Identification of Lone Operator
- Duration of Lone Operator Staffing
- Normal Staffing is Two
- Excessive Feeding Was Necessary
- Overuse & Fatigue
- Increased Chance of Fatigue Based Injury
- Stacking of Trays More Than 'Two High'

### **The Evidence**

- Operator Statement
- Operator Interview
- Supervisor Interview
- MDO Interview
- PS Forms 1767 (Report of Hazard, Unsafe Condition or Practice)
- Job Safety Analysis
- Steward's Statement: To Include the Number of Other Grievances Previously Filed, i.e., Safety, Lone Staffing, Second Operator (Include Specific ID of Each Grievance # and Grand Total of Those Previously Filed); History of Settlements for DBCS Staffing Grievances
- Citable Settlements/Resolutions of DBCS Staffing Grievances
- Documented Injuries to DBCS Operators
- Time and Attendance Records (Clock Rings)

## **The Remedy**

Written Decision:

- Cease and Desist
- Properly Staff with Two Operators
- Adherence to Articles 14, 19 and Safety & Health Requirements in the Future
- Amount Specific Payment - an Additional 50% - to Lone Operator for Performing 'Hazardous Work'

**Note:** In addition to the filing of Grievance One, a PS Form 1767 – Report of Hazard, Unsafe Conditions or Practice Form - must be filed for every instance of lone operator staffing. This brings additional pressure to bear on the USPS to address the safety and health aspect of the DBCS and generates important evidence for each grievance.

## **LONE OPERATOR: THE SECOND GRIEVANCE**

### **JCIM & Collective Bargaining Agreement**

- Article 37 DBCS Staffing Agreement
- Article 19 E&LRM Chapter 6 – Disparate Treatment

### **The Facts/Contentions/Arguments**

- Date of Lone Staffing
- Staffing was One
- Identification of Lone Operator
- Duration of Lone Operator Staffing
- Normal Staffing is Two
- Excessive Feeding Was Necessary
- Overuse & Fatigue
- Increased Chance of Fatigue Based Injury
- Stacking of Trays More Than 'Two High'

### **The Evidence**

- Operator Statement
- Operator Interview
- Supervisor Interview
- MDO Interview
- End of Run Report
- Steward's Statement: To Include the Number of Other Grievances Previously Filed, i.e., Safety, Lone Staffing, Second Operator (Include Specific ID of Each Grievance # and Grand Total of Those Previously Filed); History of Settlements for DBCS Staffing Grievances
- Citable Settlements/Resolutions of DBCS Staffing Grievances
- Documented Injuries to DBCS Operators
- Time and Attendance Records (Clock Rings)

### **The Remedy**

- Cease and Desist
- Amount Specific Payment – an Additional 100% - to Lone Operator for Performing 'Double Work'

- Payment To Local APWU for Punitive, Habitual Violation and Harm to Union's Image and Ability to be Effective – at a Determined Remedial Sum Which Will Increase Dependent Upon the Extent and Duration of USPS' Violations and Refusal to Comply.

## **SECOND, REQUIRED OPERATOR EXCLUDED: THE THIRD GRIEVANCE**

### **The JCIM & Collective Bargaining Agreement**

- Article 37 DBCS Staffing Agreement
- Article 19 Disparate Treatment

### **The Facts/Contentions/Arguments**

- Date of Lone Staffing
- Staffing was One
- Identification of Lone Operator
- Duration of Lone Operator Staffing
- Normal Staffing is Two
- Excessive Feeding Was Necessary
- Overuse & Fatigue
- Increased Chance of Fatigue Based Injury
- Stacking of Trays More Than 'Two High'

### **The Evidence**

- Operator Statement
- Operator Interview
- Supervisor Interview
- MDO Interview
- End of Run Report
- Time Records
- Overtime Desired List
- Steward's Statement: To Include the Number of Other Grievances Previously Filed, i.e., Safety, Lone Staffing, Second Operator (Include Specific ID of Each Grievance # and Grand Total of Those Previously Filed); History of Settlements for DBCS Staffing Grievances
- Citable Settlements/Resolutions of DBCS Staffing Grievances
- Documented Injuries to DBCS Operators
- Time and Attendance Records (Clock Rings)

### **The Remedy**

- Cease and Desist
- Amount Specific Payment to Employee (Specifically Identified With Name and EIN Who was Denied Operational Utilization)



- Second Operators Shall be Utilized on the DBCS in the Future
- Payment To Local APWU for Punitive, Habitual Violation and Harm to Union's Image and Ability to be Effective – at a Determined Remedial Sum Which Will Increase Dependent Upon Extent and Duration of USPS Violation and Refusal to Comply.

**Again, three grievances filed - per DBCS and per instance of lone operator - is the strategy.**

We must not only make the USPS pay remedies for their violations, we must make them pay for the violations through our on-the-clock investigation, evidence gathering, compilation and the writing of each grievance.

If the USPS stops violating, much in USPS resources could be saved.

## INTERVIEW RECOMMENDATIONS

Our grievances, including interviews, continue to be an extremely valuable resource and element of evidence. And when done properly, it exponentially increases USPS costs to pay for its violations. In the cases of DBCS staffing violations, interviews can prove many crucial facts. Among them are:

- Date of Lone Staffing
- Lone Operator Staffing
- Duration of Lone Operator Staffing
- DBCS Staffing Past Practice
- Second Operator Availability
- Lack of USPS Reason for Lone Operator Staffing
- Conflicting Management Reasons for Lone Operator Staffing

Often, important evidence cannot be generated through review of records or documents, but only through our Article 17 interview process.

The following are several interview illustrations. These are, in no way, all that an interview might include. (For in depth examination of the strategic interview process, refer to the Interviews As Evidence Strategy Book).

### **History of DBCS Staffing**

How long have you been staffing the DBCS?

How many days per week?

Did you operate the DBCS with another person?

How often?

Never?

How many times, on average per week?

Did management staff with one operator based upon a particular mail volume?

What was it?

How do you know?

Who told you?

Was there a directive/policy in writing?

Who conveyed that to you?

When?

Where?

### **USPS Low Volume Lone Operator Decision (For Supervision & Management)**

What is your 'low volume' number?

Not a set number?

Is it in Writing?

Did it generate with you?

Did it generate with the MDO?

Who?

Are you and the MDO in agreement on that number?

You have communicated that number to operator John Doe?

When?

Where?

Has the DBCS been run at that volume number with two operators?

When?

### **Employee Availability**

Were you on the Overtime Desired List on March 4, 2016?

Had you worked on the DBCS prior to March 4, 2016?

Did you work on March 4, 2016?

What schedule did you work?

Did you work on DBCS # 2 on March 4, 2016?

Do you know who did?

### **DBCS Grievance Filing History**

Aren't grievances filed every day/week regarding USPS's Lone Operator DBCS staffing in this installation on Tour 3?

Have you resolved any of those grievances with the APWU?

Have you resolved any of those grievances for a monetary remedy?

Isn't it true that had you the proper authority you would normally staff the DBCS machines on your Tour with two operators?

Whose decision is it to normally staff with one operator?

## **A WORD ON SAFETY AND HEALTH**

The Postal Service continues to blatantly and willfully expose postal employees to ergonomic risks and health hazards due to one operators staffing of the DBCS, even after those risks and hazards have been documented and presented to the USPS. In addition to ignoring Occupational Safety and Health Administration and The National Institute for Occupational Safety and Health reports, the Postal Service continues to ignore its own handbooks and manuals and DBCS training program, as well as the equipment manufacturer's manuals for the safe and healthful operation of the DBCS. Employees are exposed to ergonomic hazards and the risk of ergonomic related injuries due to improper equipment installation including foot-print allocation, support equipment placement and organization, improper allocation of heavy volumes of mail to higher risk sorting bins, loading procedures, sweeping procedures and various administrative issues such as work-rest cycles/rotation, training both initial and refresher and equipment maintenance.

In the United States Postal Service field training manual dated January 2013, it is clear that trays should not be stacked more than 2 high on the top shelf 1226 F racks. In the Train-the-Trainer DBCS Course Guide dated October 2012 it specifically states that a rotation should occur between feeding and sweeping at least every two hours and that the rotation should start with a different task from that of the previous day. We can use their language to show lack of rotation when a person is forced to work a DBCS machine alone. An ergonomic issue evaluation conducted by certified professional ergonomists dated 11/28/11 and revised on 7/13/12 also corroborates these findings.

In a study done by OSHA in 2011, that Agency states that the manufacturer recommends a rotation on a 30 minute basis. Further, the manufacturer finds that without proper rotation, there may be inadequate recuperation time and the chance of fatigue and injury is greatly increased. OSHA also reported that the United States Postal Service headquarters documents a recommended rotation every 30 minutes. There may be variation on when the rotations occur but these should not be longer than 60 minutes. The rotations are intended to reduce the chance of overuse of a single body part since the sweeper and feeder have somewhat different emphasis on the part of the body used. OSHA also emphasizes training to all supervisors - including 204B's - in work related ergonomic injury assessment and reporting procedures. This is to ensure that the OSHA records accurately represent the injury that occurs at the DBCS or any other machines used by clerks.

If we utilize Safety and Health issues as well as the contractual staffing language, our chance of success on the grievance procedure will be greatly improved.

The following resources are available to further support the Union's position that USPS' short staffing of the DBCS is ergonomically unsound and places the lone operator at greater risk to injury and /or occupational hazard:

1. OSHA DBCS Worker Complaints Evaluations and Finding, January 4, 2011
2. OSHA DBCS Inspections Findings, January 4, 2011
3. OSHA DBCS Ergonomic Issues Evaluation and Field Tests of Controls, July 13, 2012
4. USPS DBCS Processing Methodology Field Trainer – ATF, January 2013
5. USPS DBCS Processing Methodology Train – the Trainer, October 2012

Upon request, the above resources are available from our office.

## **THE ARBITRATORS**

While Regional Arbitration Awards are not elements of evidence within your strategic grievances' filings, they do provide educational insight and argument support. Here is a sampling of the best arbitral reference on DBCS staffing violations:

**Arbitrator Leroy R. Barman, Ed. D., USPS Case No. H06C-1H-C 09327917, APWU No. 09-069**

### **DISCUSSION AND OPINION**

The Union in the instant matter has met, in the Arbitrator's opinion, its burden of proof that the parties have previously agreed that the normal staffing of the DBCS machine will be two (2) clerks. Given that fact, the burden now shifts to the Postal Service in its affirmative defense to show that the decision in this case on Tour 1, Sundays, has been to assign at times only (1) clerk to operate a DBCS machine.

Management does, as it contends in "Article 3, Management's Rights", have the right to justify assigning one clerk to a machine if (emphasis added) the volume of mail going through the machine justifies a single clerk. The JCIM, as an example, expressly recognizes that the staffing of DBCS machines may (emphasis added) be reduced from two to one clerk under appropriate circumstances.

In this case, the Postal Service did not justify its assessment and decision to assign one clerk on the Sunday Tour 1 as grieved. The data provided by the Union of the mail count for the days found in Joint Exhibit 2A does not justify the Service's contention that the decreases in volume were enough to justify its decision to reduce staffing on the DBCS machine in the Arbitrator's opinion.

The Service also did not present any statistical evidence to support its decision or prove that one clerk could load and sweep the DBCS machine; thus, allowing the exception of having one operator. As stated above, the data available for analysis by the Arbitrator was not sufficient (emphasis added) to indicate that the volume on the dates in question justified a reduction of staffing (emphasis added) in accordance with the JCIM and Step 4 agreement letter cited above.

### **AWARD**

The Postal Service violated the National Agreement and Joint Contract Interpretation Manual (JCIM) and the Step 4 joint agreement. The Postal Service shall cease and desist staffing the DBCS machines at the facility in question with only one (1)

clerk; except in those limited circumstances set forth in the JCIM. The Postal Service is ordered to compensate those employees that the Union names on the Tour 3 Overtime Desired list (OTDL) for Sunday night (actually Monday morning) by making them whole for the hours not used to staff the DBCS on Sunday night Tour 1 up to four (4) hours and eight (8) hours overtime at the applicable rate beginning fourteen (14) days prior to the filing date of the grievance until the violation ceases.

**Arbitrator Ann S. Kenis, USPS Case Nos: J10C-1J-C 14005256/J10C-1J-C 14006867**  
**APWU Nos: 6323913/6327013**

## **FINDINGS AND DISCUSSION**

Arbitrators agree that disagreements under this provision must be analyzed within the framework of a shifting burden of proof. The Union bears the initial or *prima facie* burden of establishing that the Postal Service did not comply with the "normal" staffing level for DBCS machines. If the Union is successful, the burden then shifts to the Postal Service to justify the departure from the normal staffing requirements.

The JCIM specifies that two mail processing clerks normally staff the DBCS machines to perform loading, feeding and sweeping functions. To the extent that the Postal Service argues that "normal" staffing means that most, but not all DBCS machines have two clerks assigned, the argument is not persuasive. "Normal" staffing in the context of the JCIM means that there are two mail processing clerks to perform the work on a DBCS machine, not the overall number of clerks assigned on a particular shift. In the instant case, unlike some of the awards relied upon by the Service, there is no dispute that a single clerk operated each of the DBCS machines in question on October 8, 2013 and October 14, 2013. Thus the Union successfully met its threshold burden of showing that the DBCS machines were not operated in accordance with the normal staffing level of two clerks.

There are, of course, some circumstances in which a reduced staffing level on a DBCS machine may be appropriate. The Q&A's in the JCIM permit one clerk on a DBCS machine at start up or close out, where there is limited volume for a sort run, and where the volume available for a DPS zone is such that a single operator can handle both loading and sweeping. Management's defense must rest on one of these circumstances in order to establish that working one clerk on October 8 and October 14, 2013 was justified.

In my view, the Postal Service did not meet its evidentiary burden. With regard to the events of October 8, 2013, management offered various reasons for working Grievant Vosswinkel alone on the DBCS machine for six hours. At Step 1, MDO Reynolds

denied the grievance due to the Service's that evening. At Step 2, the Postal Service took the position that the DBCS is an operator-paced machine that would have allowed the Grievant to feed and sweep at her own pace.

There is no doubt that the Postal Service does possess the managerial authority to reduce its DBCS staffing levels in certain circumstances as provided in the JCIM. It must be emphasized, however, that if DBCS machines are not staffed at the normal level of two mail processing clerks, the Postal Service must provide the necessary proofs to establish that one of the circumstances set forth in the JCIM was the bona fide reason for doing so. I am not convinced that any of the reasons advanced by the Service during the grievance and arbitration process provided the basis for staffing Grievant Vosswinkel's DBCS machine with only one employee.

Moreover, MDO Reynolds admitted that management makes every effort to staff the DBCS machines with two clerks and in fact she did so as soon as she learned that Grievant Vosswinkel was working alone. Thus, it is reasonable to conclude that this was not a deliberate decision by the Postal Service to utilize one clerk on a DBCS machine based on low or limited volume, or for any of the other reason asserted later by the Postal Service. Rather, there was an error in staffing on the evening of October 8, 2013 that was rectified when the MDO was informed of the situation. While I understand that the error appears to be inadvertent and not the result of an intentional decision to staff Grievant Vosswinkel's DBCS machine with only one employee, such errors are not identified in the Q&A section of the JCIM as a circumstance permitting reduced staffing on a DBCS machine.

It must be remembered that the burden here was on the Postal Service to prove that working one clerk at each of these two machines was warranted under the Q&A's referenced in the JCIM. Reduced staffing may be justified if volume drops to the point that one operator has minimal sweeping activity or where the operator can perform both the loading and sweeping functions. The Postal Service argues that there is probative evidence to tip the burden of proof in its favor. Management provided data indicating that the mail volume on the DBCS machines worked by Carstens and Dupree-Jackson was ranked lower than the mail volume run on most of the other DBCS machines that night. As the Union correctly pointed out, however, that result would not be surprising since Carstens and Dupree-Jackson were working alone while the other DBCS machines were staffed with two clerks. It would be expected that two clerks working together to perform the sweeping and feeding functions would be able turn more mail than a single clerk who could not perform those functions simultaneously.

The Postal Service did not provide data that would permit a valid comparison between the operations of the two DBCS machines under a normal range of mail volume when two clerks were assigned to those machines on a weekend holiday. Essentially, the Postal Service is conflating cause and effect. It cannot be determined



with any degree of certainty that the mail volume run on the two DBCS machines at issue actually dropped to the point that justified a staffing reduction in accordance with the Q&A provisions in the JCIM.

Management also argues that the JCIM permits the staffing of a single clerk when the volume is such that the operator can safely load, sweep, and then return to loading. The Postal Service emphasizes that the DBCS machine is operator-driven and therefore a single clerk can safely perform the loading, sweeping and feeding functions simply by turning off the machine when the bins appear full. That argument misses the mark, in my view. If management's argument were accepted, there would be no reason for the parties to agree that "normal" staffing for a DBCS machine is two mail processing clerks. The Postal Service could simply staff all the DBCS machines with one operator and claim that they could perform all the machine functions at their own pace. Moreover, the operator-paced nature of the DBCS machine does not address or refute the testimony of Carstens and Dupree-Jackson which indicates that they were performing more than minimal sweeping on October 14, 2013.

The remaining issue concerns the remedy. The Postal Service claims that any monetary remedy in this case would be improper because there is no justification for paying employees an additional fifty percent of their base rate for a period of time that is their regularly scheduled day.

However, this Arbitrator believes that there are proper and sound reasons for following the rulings of arbitrators who have previously addressed this subject and have awarded a monetary remedy when the Service violated the staffing provisions under Article 37 of the JCIM. One reason is to provide a disincentive for the Service to engage in the same conduct in the future. Additionally, additional monetary compensation is appropriate where a single clerk must perform work normally performed by two clerks. Accordingly, the two grievances in this case must be sustained in their entirety.

## **AWARD**

The two grievances are sustained in their entirety. The Postal Service violated the National Agreement and the JCIM by assigning only one clerk to a DBCS machine on October 8, 2013 and by assigning only one clerk to each of two DBCS machines on October 14, 2013. The Postal Service is hereby ordered to cease and desist staffing the DBCS machines with only one clerk except in such circumstances as provided in the JCIM. The Postal Service is also ordered to compensate each of the three identified clerks the differential between their normal hourly rate and the applicable overtime rate for the hours they operated the DBCS machines unassisted.

**Arbitrator Peter R. Meyers, USPS Case No. E06C-1E-C 08370422, APWU Case No. EDDC7508**

**DECISION**

The first question to be resolved is whether a normal staffing level for this particular type of machinery has been established by the parties. A review of the various agreements show that a normal staffing level for DBCS machines has, in fact,

been established. The JCIM clearly and unequivocally provides that two clerks normally shall staff DBCS machines. While establishing two clerks as the minimum staffing level for DBCS machines, the JCIM fully recognizes that circumstances will occur when a different staffing level will be appropriate.

In the Q&A section of the JCIM, there is a discussion that highlights some of the different situations in which a reduced staffing level on a DBCS machine might be appropriate. These include during start up or close out, where the volume is low enough that there is little or no sweeping activity required during the run, and where the volume is such that a single operator can handle both loading and sweeping. The language of the JCIM therefore makes clear that although two clerks normally shall staff the DBCS machines, this staffing level may be reduced to one clerk under appropriate circumstances.

In arguing that the DBCS machines in question should have been staffed with two clerks, the Union is fully supported by the clear and unambiguous language of the JCIM. Given that language, there can be no serious dispute that the normal staffing level for a DBCS machine is, in fact, two clerks. The Union therefore has met its initial burden of proof by establishing that, in accordance with the parties' agreements, two clerks per machine constitutes the normal staffing level for the DBCS machines in question.

Because the Union successfully established that two clerks represents the normal staffing level, the burden of proof shifts to the Postal Service. The Postal Service must show that its decision to reduce the staffing level on the two DBCS machines in question to a single clerk was justified.

In support of its position that it was appropriate to assign a single clerk to operate each of the DBCS machines in question, the Postal Service has argued that the volume of mail going through these machines justified assigning a single clerk to operate each one. This argument rests squarely on the Postal Service's managerial authority to seek efficiencies in its operations.

There is no question that the Postal Service does possess managerial authority, and even has the obligation, to run its operations in as efficient a manner as reasonably possible. Altering machine-operator staffing levels in response to a significantly

reduced mail volume certainly is one example of an appropriate exercise of such authority. The language of the JCIM, for example, expressly recognizes that the Postal Service may reduce the staffing of DCBS machines from two clerks to one under appropriate circumstances, including a reduction in mail volume to a point where there is little or no need for sweeping.

It is important to note, though, that if the Postal Service elects to reduce the DBCS staffing level, it must have a sound reason for doing so. It is not enough for the Postal Service to simply claim that such a staffing reduction increases efficiency. The Postal Service must be able to prove that claim with evidence, such as mail volume data.

In the instant case, the Postal Service suggested that a decrease in mail volume justified its decision to assign only one clerk to operate each of the DBCS machines in question, but the data relating to mail volume does not fully support this assertion. Although mail volume may have decreased to some extent, a drop in mail volume is not enough, by itself, to justify a decision to reduce staffing on the DBCS machines.

As the Q&A section of the JCIM makes clear, a drop in mail volume justifies a staffing reduction only if volume drops to the point where, for example, there is little or no sweeping work necessary, or where a single clerk can easily and safely perform both the loading and sweeping functions. The Postal Service did not provide data that would allow for a complete and valid comparison between the operations of the two DBCS machines under a normal range of mail volume with the operations of these machines under the volume experienced on the date in question. The mail-volume data in the record simply is not sufficient to show that the volume on the date in question had dropped to the point that it justified a staffing reduction in accordance with the principles set forth in the JCIM.

As for the suggestion that the clerks assigned to the DBCS machines preferred to work alone, alleged employee preferences simply cannot justify a reduction in staffing that fails to comply with the parties' agreements. The parties' agreements do not, and cannot, allow for an individual employee to agree to a modification of any of the provisions in the various agreements between the Postal Service and the Union.

Again, the Postal Service possesses the managerial authority and discretion to seek increased efficiencies in its operations, but its efforts must comply with the parties' various agreements. The evidentiary record in this matter does not contain sufficient evidence to provide a justification, in accordance with the parties' agreements, for the Postal Service's decision to cut the staffing level on the two DBCS machines in question on the date at issue. This Arbitrator therefore finds that, based on the clear and unambiguous terms of the parties' agreements, and the evidence contained in the evidentiary record herein, the grievance at issue must be sustained in its entirety.

## **AWARD**

The grievance is sustained. The Postal Service violated the collective bargaining agreement and the Joint Contract Interpretation Manual (JCIM) when it assigned only one clerk to each of two delivery bar code sorters. The Postal Service is ordered to cease and desist staffing the DBCS with only one clerk, except in the very limited

circumstances set forth in the JCIM, and the Postal Service is ordered to compensate the PTFs named by the Union 2.5 hours at their regular rate of pay because the date at issue fell into a holiday scheduling period.

**Arbitrator Joseph A. DeMarco, USPS Case No. K06C-4K-C 09281995, APWU Case No. SM9C7221**

## **DISCUSSION AND OPINION**

In cases such as the one before me, the Union bears the initial burden of proof, since the grievance is a matter of contract interpretation and they are the moving party. In meeting this objective, they are first required to demonstrate whether a standard staffing level – two clerks – for the DBCS machine has been instituted. If they are successful, the burden then shifts to the Service to justify their departure from what is the normal staffing requirements of two mail processors.

By virtue of the parties' agreement in their JCIM, I find that the Union has met its initial burden of proof that the normal staffing level for the DBCS machine is two clerks. Given this fact, the Service must demonstrate that working one clerk on June 27 and 28, 2009, was warranted and defensible in light of the circumstances and in compliance with the provisions set forth in the JCIM. Management, in my opinion, has not met this burden for the following reasons.

A second factor supporting my conclusion that this grievance has merit concerns the absence of any persuasive proof submitted by the Employer. In this regard, as part of the Service's argument, they alluded to the fact, although not convincingly, that the mail volume may have been lighter, and two clerks were in all likelihood not needed. Management, however, presented no statistical evidence or any type of data to support this claim. There was not one scintilla of proof to justify their decision to employ one clerk. Overall, lacking any supervisor's testimony assigned to the DBCS at the time in the Southern Maryland facility, and no statistical analysis whatsoever, the Service was unable to defend their decision to utilize one clerk in compliance with those limited circumstances outlined in the JCIM. I note that Mr. Plitt testified that the volume of mail was within the parameters of a normal Saturday and Sunday when two employees are utilized on the machine. Management, however, failed to dispute this observation by Plitt.

## **AWARD**

After careful examination and evaluation of the evidence submitted and the arguments made, I have concluded that the Service violated the collective bargaining agreement as referenced in the Joint Contract Interpretation Manual when it assigned one clerk to work the DBCS on June 27 and 28, 2009. The Union demonstrated that the normal staffing for the DBCS machine is two mail processing clerks as provided by the JCIM. The Service was unable to assemble even a minimum level of proof in order to establish why one clerk met the JCIM requirements on the dates in question.

For the reasons stated, the grievance is sustained. The Postal Service shall cease and desist from staffing the DBCS machine with one clerk except in those conditions set forth in the Joint Contract Interpretation Manual.

In deciding an appropriate monetary remedy, I have considered the Arbitration awards provided by the Union where overtime compensation was granted in similar circumstances. I have also taken into account the Service's argument that since no Article 8 violation occurred, a monetary award would be improper. That line of reasoning, however, misses the point in that overtime should have been called, since evidently there was no other way to comply with the two person staffing. I do not believe, however, that 8 hours is the appropriate remedy as stated in the Union's remedy request. Given that Mr. Plitt worked 4 ½ hours unassisted on June 27 and 4 ½ hours on June 28, 2009, a total of 4 ½ hours of overtime per each day is awarded to the appropriate for each date. This compensation is to be awarded in increments the Union decides is appropriate.

**Arbitrator Zachary C. Morris, USPS Case No. G10C-1G-C 14169396, APWU Case No. 1714008**

## **OPINION**

While this is a contract case and the burden is ultimately on the Union to show a violation, they have been able to meet their initial burden of showing that the machines were staffed with less than two people. The burden now shifts to the Postal Service to show that there was a legitimate reason (such as low mail volume) for doing so.

Additionally, it seems if management were truly concerned about call outs and mail volume fluctuations, they would actually schedule more people for each machine.

Management points out that several of the employees show that they were only running 50-60,000 pieces of mail per shift. This, according to management, is a low number of pieces to be run. As someone who has no postal background, I cannot know

from experience whether this is true or not. But Loss, on page 54 of Joint 2, claimed that the average mail volume for him is between 45,000 and 65,000 pieces of mail. So while I cannot know whether this is low mail volume, if Loss' statement is to be believed, then the 50-60,000 pieces management claims is low cannot be seen as abnormally so.

Furthermore, a brief glance at McTeague's Power Point, tends to show that his plan was meant to be used, not as a backup plan when mail is low on a particular day, but on a more consistent basis. It states, "9 machines *can be run daily* with 1 person. 5 machines *will be run* with 2 people at all times. The remaining machines *will use* the 1.5 rotation as follows." (Emphasis added) This language indicates to the Arbitrator that this plan was meant to be more permanent than used only during periods of low mail volume. The fact that McTeague felt nine machines could be run with only one person on a daily basis seems to show that he felt this way regardless of fluctuations in the mail volume. Further, there is nothing in the Power Point that indicates this plan is to be used only during periods of lower mail volume. This, in combination with employee statements claiming that this was done repeatedly, is enough to convince this Arbitrator that this 1.5 rotation was used on a regular and continuous basis. At any rate, the Postal Service has been unable meet their burden to show that it was not.

There is little that need be said about the safety ramifications of this plan. It flies directly in the face of OSHA's guidelines and former Plant Manager Eric Chavez's instructions to manger: "Per instructions in current JSAs, employees (whether working alone or with a partner) are to exchange these job duties every 30 minutes."

McTeague, himself, admitted that his plan would not call for a rotation until the first person goes on break – roughly two hours into their shift. While the managers at the Orlando P&DC might not understand why it would be unsafe to sweep two machines or rotate less often, and I cannot say that I do either (as, again, I am unfamiliar with the physical wear and tear these duties can place upon the body), I must assume that OSHA's study of the subject was quite thorough and they did not recommend a 30 minute rotation for no reason at all.

Ultimately, I must find that management did violate the Step 4 and JCIM by consistently allowing mail processing clerks to work either alone or under the 1.5 rotation regardless of mail volume. Accordingly, a remedy is due the Union.

The Service must cease and desist from using this 1.5 rotation. In addition to the fact that it seems to be used on a regular basis, it flies in the face of safety guidelines issued by the former Plant Manger and OSHA.

## **AWARD**

For the reasons stated above, the grievance is sustained. The Service is ordered to Cease and Desist from using the 1.5 rotation and to comply with the relevant Step 4 agreement.

## IN SUMMATION

The foundation of the strategies developed in this book is that three grievances be filed per USPS DBCS staffing violation. Each grievance must be fully investigated and evidenced. No shortcuts or inadvertent savings/discounts to USPS for its violations. Maximize the grievances. Don't minimize. Interview!! Specifically detail the **remedies requested** with specific names and EIN's and the exact dollar amounts to be paid.

Do not hold grievances in abeyance pending a lead case. This will discount the USPS' violations. Each grievance is different. Each run is different. Each tour and workday are different. Show the history of when the exact same volume was run with two operators. Utilize interviews and statements to show what the past history was. Interview supervisors and managers to determine what is "low volume". Often times they will have conflicting answers. Include a steward's statement to show the amount of grievances being filed on this continual issue and the resolution history. Document the safety and health concerns.

Brothers and Sister, we believe that if you follow the strategies in this Handbook, success will be achieved in the grievance process and in arbitration. And the USPS may just rethink its strategic epidemic of purposeful and widespread DBCS contractual violations.