

Regional Arbitration Panel

In the Matter of Arbitration)
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 between)
)
) Case No.
 United States Postal Service) Q06C-1C-C 10036441
)
 and)
)
 American Postal Workers Union)

Before: Shyam Das


Appearances:

For the Postal Service: Andrew L. Freeman, Esq.
For the APWU: Darryl J. Anderson, Esq.
Place of Hearing: Philadelphia, PA
Dates of Hearing: March 18, 2010
March 19, 2010
Date of Award: November 19, 2010
Relevant Contract Provisions: Articles 3, 15 and 19
Contract Year: 2006-2010
Type of Grievance: Contract Interpretation



Award Summary

The grievance is denied on the basis set forth in the above Findings.



Shyam Das, Arbitrator



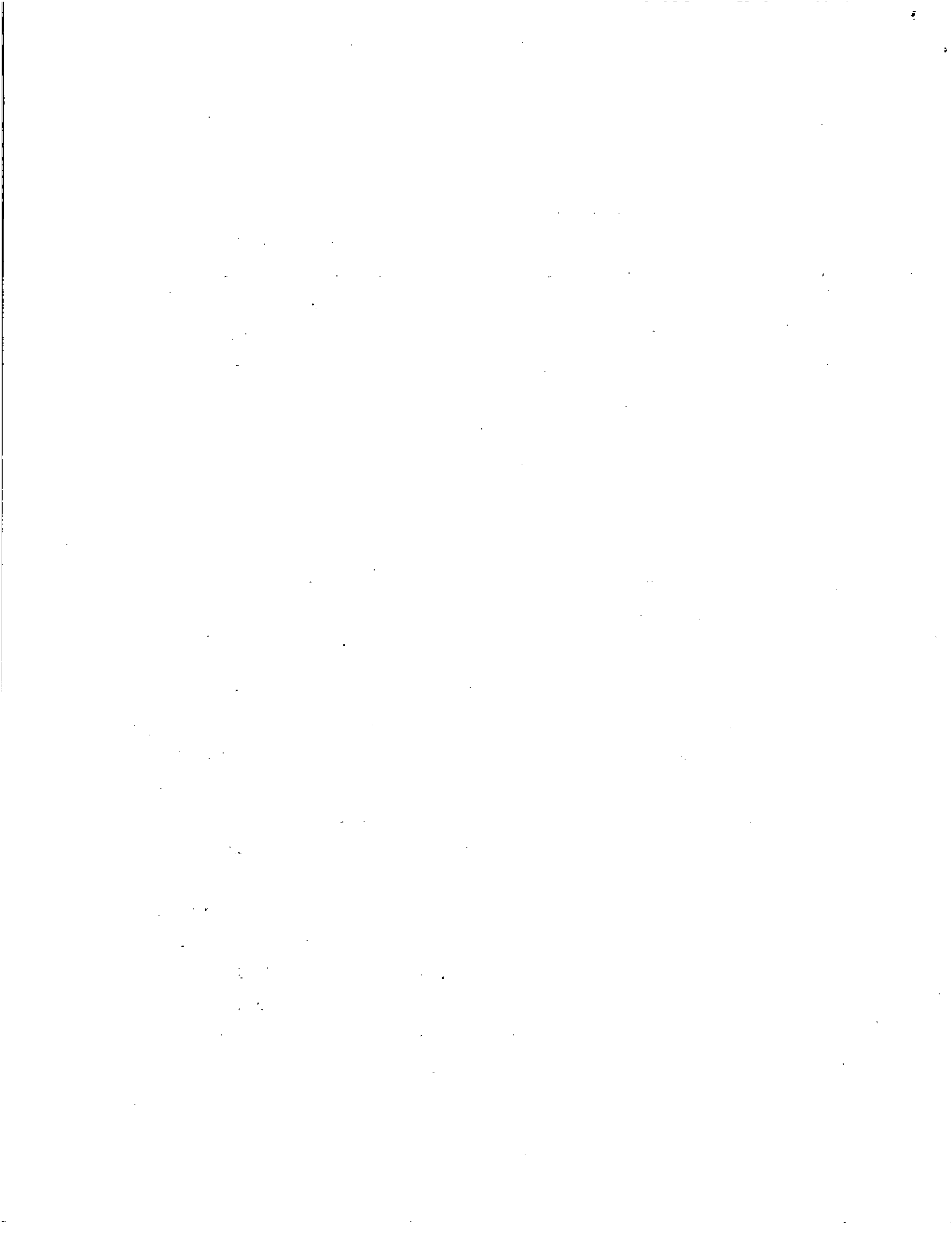
BACKGROUND

Q06C-1C-C 10036441

This grievance protests that the Postal Service failed to perform an Area Mail Processing (AMP) study as required by the Handbook PO-408 (Area Mail Processing Guidelines) prior to closing the Philadelphia Logistics & Distribution Center (PL&DC) in March 2010 and consolidating its operations in other postal facilities. The Union contends this was a violation of Article 19 of the National Agreement, which provides in relevant part:

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....

The PL&DC was a leased facility located in Swedesboro, New Jersey. It was an aggregation point for originating and destinating priority mail -- packages (mostly) and flats. The PL&DC served the Greater Philadelphia Metro region -- eastern Pennsylvania (including Harrisburg), southern New Jersey and Delaware. Priority mail from outside the region was trucked to the PL&DC or flown to the Philadelphia Airport from where it was trucked to the PL&DC. This incoming priority mail was sorted to Post Office five zip code level and dispatched to the South Jersey Processing and Distribution Center (P&DC) for dock transfer out to Post Offices. Priority mail originating in the region that was destined for locations outside the region was transported to the PL&DC by truck from plants (P&DCs) in the



region At the PL&DC this outgoing priority mail was sorted to three zip code level, and placed in trucks for delivery to the destination or to the airport.

Starting in 2008, the Postal Service Eastern Area formed a group to study mail processing and distribution in the Greater Philadelphia Metro region to increase efficiency and reduce costs. One of the goals was to reduce use of leased space and maximize use of postal-owned property. Due to significant mail volume declines, it was determined that there was sufficient capacity to move operations from the PL&DC and the Philadelphia Air Mail Center -- both leased facilities -- and to relocate these operations in other, postal-owned plants, including the Philadelphia Network Distribution Center (NDC), the Harrisburg P&DC and the South Jersey P&DC.¹ In November 2008, a Decision Analysis Report was prepared to obtain approval for a one-year lease extension on the PL&DC facility, which was needed to make the transition. This lease extension ran to the end of March 2010.

¹ The Postal Service notes that the Air Mail Center was closed in January 2009, and that the Union did not file a grievance protesting the lack of an AMP study. The Air Mail Center, in addition to its dock transfer operations, was a regional consolidation point for 3-day and 2-day letters and for express mail (excluding Harrisburg). The Union pointed out that after receiving an Article 32 contracting out notice regarding some of the work at the Air Mail Center, it filed a grievance regarding that work. The other work was brought back to the Philadelphia P&DC. The Union noted that the jobs at the Air Mail Center were part of the Philadelphia installation.

On September 10, 2009, Eastern Area Labor Relations informed APWU Eastern Regional Coordinator Mike Gallagher by letter that the Postal Service was implementing the withholding provisions in Article 12.5 due to the need to excess employees from the PL&DC. The letter stated:

Due to the result of the building lease expiring on March 31, 2010, it is necessary that all remaining clerks, mail handlers, and maintenance craft employees remaining in the Philadelphia L&DC installation will be involuntarily reassigned outside of this installation....

On September 10, PL&DC management conducted a "standup" meeting at the facility and posted a "directline" notice on all employee bulletin boards that stated in part:

L&DC to close in March 2010

The Philadelphia L&DC will be closing at the end of March, 2010. This decision is not a reflection of the service L&DC employees have provided over the years. Rather, it is one of several prudent actions the Postal Service has taken to improve operating efficiency, reduce costs and maintain high levels of service.

The L&DC Priority Mail operations will be shifted to the LeGree Daniels [Harrisburg] P&DC, the South Jersey P&DC and the Philadelphia NDC. This move leverages owned postal space, eliminates leased costs, and reduces workhours and transportation costs.

PL&DC Steward Frank Bollinger testified that after the closing of the PL&DC was announced on September 10, 2009, he began to do some research. Prior to that he had never heard of an AMP study and had never checked the Postal Service website for AMP studies. Based on his research, he sent PL&DC Plant Manager Tom Kelly an information request on October 30 for a copy of the AMP study regarding the planned closure of the PL&DC. On November 6, Bollinger received a reply from Kelly, dated November 5, advising him that no AMP study was conducted.

Bollinger testified that after receiving Kelly's response, and realizing that the lack of an AMP study could be a contractual violation, he contacted his immediate supervisor, Sylvia Gaston, and asked if he could get an extension of the time in which to file a grievance. When she asked what the grievance was about, he said the AMP study. When she asked why he was not discussing this with the Plant Manager, he said the policy was for stewards to file class action grievances with their immediate supervisors. Gaston and Bollinger then signed an undated document headed "Extension", which stated: "It is mutually agreed that the time limits for grievance LDC195A2009 will be extended until 12/2/2009." The present grievance was filed by Bollinger on December 1, 2009.

Supervisor Gaston testified that she does not recall signing the extension document or Bollinger asking her to do so. She does recall Bollinger bringing her a class action grievance regarding an AMP on or about December 1, 2009. At that time, she did not know what an AMP was. After consulting her

superiors, she gave a Step 1 answer stating the grievance was untimely.

Jamie Gallagher, Program Manager - Network Mail Flow at postal headquarters, testified that she was the primary lead in updating and rewriting the PO-408 in 2008, and is a subject matter expert in AMPs. She stated that an AMP study is not applicable to a move from an L&DC to a P&DC or NDC as occurred here. No AMP study was required because the PL&DC only performed operations pertaining to a single class of mail -- priority mail.

Section 1-1.1 of the PO-408 defines AMP as follows:

Area mail processing (AMP) is the consolidation of all originating and/or destinating distribution operations from one or more Post Offices/facilities into other automated processing facilities for the purpose of improving operational efficiency and/or service.

Gallagher pointed out that this definition refers to "all" classes/shapes of mail. She said an AMP is an in-depth study that typically focuses on a service area (one or more three digit zip codes) defined or serviced by a Sectional Center Facility (SCF). An AMP study, she said, builds a case for consolidation of "all" classes of mail and considers impacts to customers in a service area. AMPs are only conducted with respect to facilities covering a service area, typically a P&DC, a P&DF (Processing & Distribution Facility), or a Post Office,

not other postal facilities such as an annex, L&DC or surface transfer center.

Gallagher stressed that the PL&DC did not process letter mail, express mail, standard mail, periodicals, etc., but was focused on one class of mail -- priority mail. The PL&DC was an aggregation facility for priority mail from several locations. Gallagher also asserted that the closing of the PL&DC was covered by the exclusion in Section 2-2 of the PO-408 (Exclusions). That provision states, in relevant part:

Not all transfers of mail require an AMP feasibility study. Mail processing shifts in volumes, workhours, or operations from one facility to another that do not fall under the AMP process include the following:

1. Aggregation of automation candidate mail (letters, flats, or parcels) for processing at a facility using automated equipment.

Gallagher explained that "automation candidate mail" is defined by a certain size parameter that is processed on particular automated equipment, such as an automated package processing system (APPS).

EMPLOYER POSITION

The Postal Service contends that this grievance should be dismissed because it was untimely filed and because it is not arbitrable. Even if this grievance is found to be timely and

arbitrable, the Postal Service maintains, the Union failed to demonstrate that Handbook PO-408 was applicable to the closure of the PL&DC.

The Postal Service argues that the 14-day period for filing a grievance, set forth in Article 15.2.Step 1(a), was triggered on September 10, 2009 when the Postal Service notified the Union and employees of the PL&DC that the facility would be closing by the end of March 2010. The Union reasonably should have been expected to learn that an AMP study had not been performed when it was informed about the closure of this facility, as the Postal Service posts on its website a listing of all AMP studies which have been initiated. By the time the Union sought an extension of the time in which to file the grievance, the 14-day period for filing a grievance already had expired.

The Postal Service stresses that the extension document signed by Supervisor Gaston does not contain an explicit waiver of the Postal Service's timeliness defense, nor was such a waiver discussed by the parties at the time the extension was obtained. The Postal Service claims it is well established that, under these circumstances, the extension of time cannot give new life to a stale grievance unless the parties knowingly have agreed to a waiver of the timeliness defense. In this case, Gaston was unaware at the time she signed the extension that the matter already was untimely.

The Postal Service further contends that the grievance is not arbitrable because the sections of the PO-408 which the Union seeks to enforce do not "directly relate to wages, hours or working conditions" within the meaning of Article 19. The Postal Service cites several national arbitration awards -- the most significant being the 1990 decision of Arbitrator Mittenthal in Case No. H4C-NA-C 81 (Mittenthal Award) -- for the proposition that the subject matter of the rule or regulation, not its effect, must directly relate to wages, hours or working conditions. The Postal Service also cites other national arbitration awards for the proposition that when a handbook provides a guide for management, as opposed to establishing rules governing employees, those provisions are not covered by Article 19 even when the handbook is a guide to dealing with employee behavior. See: Case No. H8C-NA-C 61 (Gamsler, 1982), and Case No. Q94T-4Q-C 98099959 (Das, 2009).

In this case, the Postal Service asserts, the subject matter of the PO-408 is where and how to deploy mail processing operations -- a traditional management function reserved to management judgment under Article 3. This subject matter does not directly relate to wages, hours or working conditions. Moreover, the PO-408 is a guide from headquarters to field management establishing policy for an internal management decision-making process, rather than a handbook establishing rules directed at employees.

The Postal Service disputes the Union's claim that the Postal Service acknowledged the applicability of Article 19 to

the PO-408 when, in November 2007, it transmitted a draft copy of a new version of that Handbook to the Union "in accordance with Article 19." The Postal Service asserts that, assuming for the sake of argument the letter could be understood as a statement that Article 19 applies to the PO-408, the letter is simply wrong. More to the point, the Postal Service insists the letter should not at all be interpreted to constitute a concession on this issue. It is a common practice for the Postal Service to send the Union notice "in accordance with Article 19," even when all or part of the changes may not qualify under Article 19, to protect itself against a future claim that proper notice was not given. The Postal Service notes that in a recent 2009 regional arbitration decision involving the applicability of Article 19 to the PO-408, Arbitrator Sulzner rejected this same argument by the Union and held that PO-408 does not directly relate to wages, hours or working conditions. See Case No. B06C-4B-C 09112269.

Finally, the Postal Service argues that, even if this grievance were found to be arbitrable, it lacks merit. An AMP study is not required under the PO-408 where processing of only one type of mail -- here priority mail -- is being considered for relocation. As Postal Service witness Gallagher testified, AMP studies have never been performed where the facility does not conduct mail processing functions for originating and destinating operations on the full panoply of mail types. This is in accordance with Sections 1-1.1 and 2-1 of the PO-408.



UNION POSITION

The Union insists that this grievance was timely filed. It asserts that the Union representatives responsible for filing grievances at the PL&DC -- Steward Bollinger and PL&DC APWU Director Armantani -- only learned that the Postal Service had failed to conduct required the AMP study on November 6, 2009 when Bollinger received Plant Manager Kelly's response to his October 30 letter asking for a copy of the AMP study. It was only on or about October 30 that these Union representatives first learned about AMP studies and that the Postal Service should have performed such a study before reaching its decision to close the PL&DC.² Within 14 days of November 6, Bollinger obtained agreement from Supervisor Gaston to extend the time limit for filing this grievance -- which he informed Gaston was a class action grievance regarding the AMP study -- and the grievance then was filed within the agreed to extension period.

The Union contends that the PO-408 is an Article 19 Handbook, and it required the Postal Service to conduct an AMP study to justify the consolidation at issue. The Union stresses that it is hard to imagine anything that more directly relates to wages, hours and working conditions than the question of whether an employee's job will continue to exist. This case illustrates that the PO-408 concerns whether certain jobs made

² The Union also points out that when the Postal Service informed the Union of the impending closing of the PL&DC on September 10, it misleadingly indicated the closing was: "Due to the building lease expiring on March 31, 2010."



the subject of an AMP study will be eliminated, with very serious consequences for employees holding those jobs. Furthermore, even a cursory examination of the PO-408 indicates that it is not a mere guideline to local management. The PO-408 provides important rights to postal employees, who along with their Unions are repeatedly described as "stakeholders" in the AMP process. The Union points to sections of the PO-408 that provide the Union a right to early notice, information and an opportunity to persuade the Postal Service not to go forward with a consolidation.

The Union also asserts that the Postal Service acknowledged the applicability of Article 19 to the PO-408 when, on November 23, 2007, it transmitted a draft copy of what was to become the March 2008 PO-408 to the Union "in accordance with Article 19."

In response to the Postal Service's reliance on the dictum in the 1990 Mittenenthal Award that "it is the subject matter of the regulation, not its effect, which determines whether Article 19 can properly be invoked," the Union emphasizes the contrast between the subject matter in that case -- Postal Service regulations dealing with voter registration activities on postal property -- and the PO-408, which deals with the determination of whether particular jobs will be eliminated, transferred or maintained. This determination goes to the heart of the employee's employment status and, thus, clearly directly relates to wages, hours and working conditions. Handbooks that determine the process by which it is determined

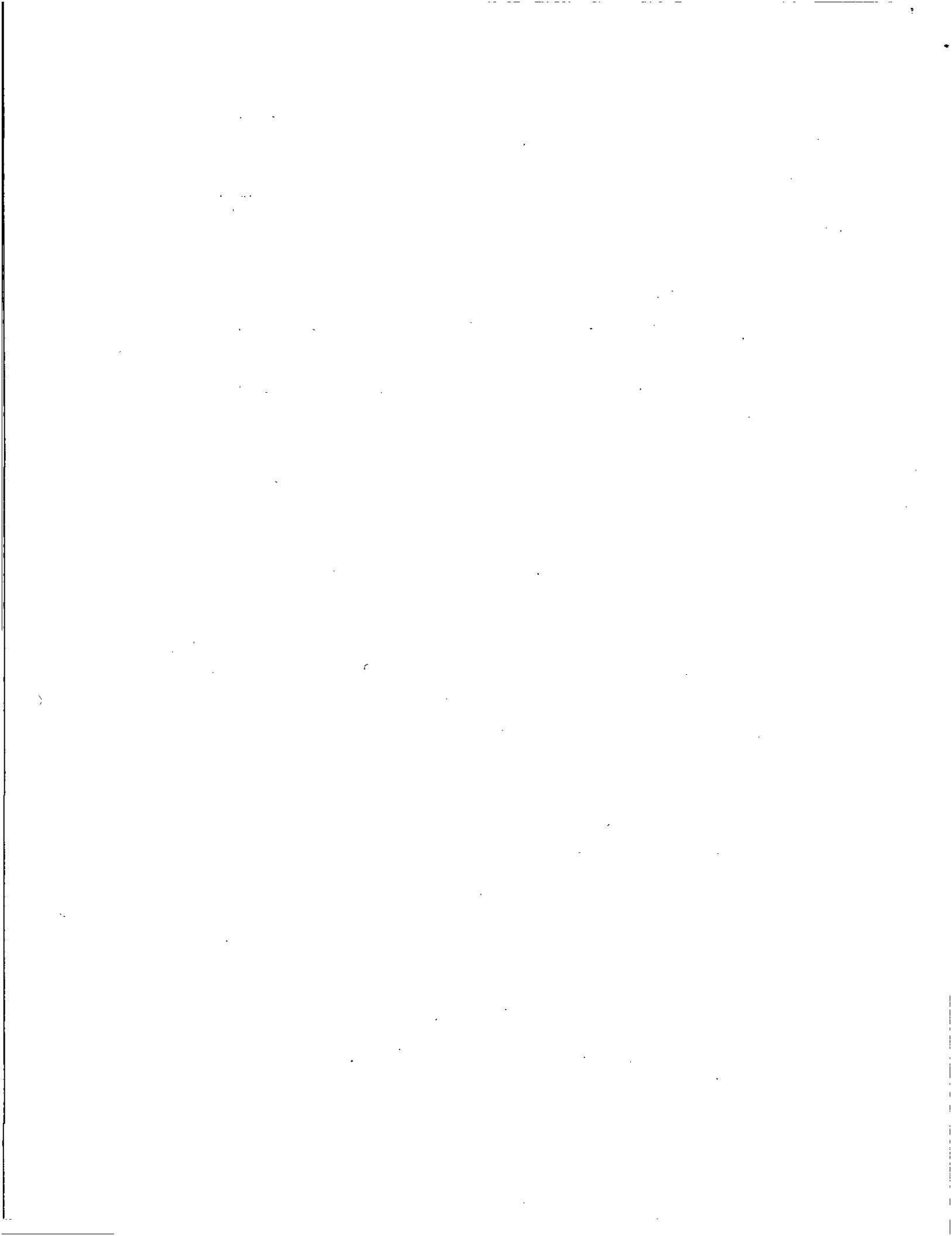
whether people keep their jobs are directly related to those jobs.

In addition, the Union asserts that the PO-408 is subject to Article 19 because it makes provision for the Union and employees potentially affected by a consolidation to be given notice that the AMP process has been begun and to be given input into that process which must be considered by the Postal Service.

The Union insists that the consolidation of all the originating and destinating mail processing operations from the PL&DC to other plants squarely fits the definition of Area Mail Processing in Section 1-1.1 of the PO-408. The Union rejects the contention of Postal Service witness Gallagher that the use of the word "all" in Section 1-1.1 means that the AMP procedures apply only to operations that do all types (shapes) of originating or destinating mail processing operations. As set forth in its post-hearing brief, the Union argues:

There are a number of problems with this contention. One is that it is not the most natural reading of the term "all" in the context of the definition. It clearly seems to mean that if all the destinating or originating operations are being moved from a Post Office or facility then an AMP study must be done.

A second problem with Ms. Gallagher's reading of the term "all" is that the definition contemplates the movement of either all originating or all destinating

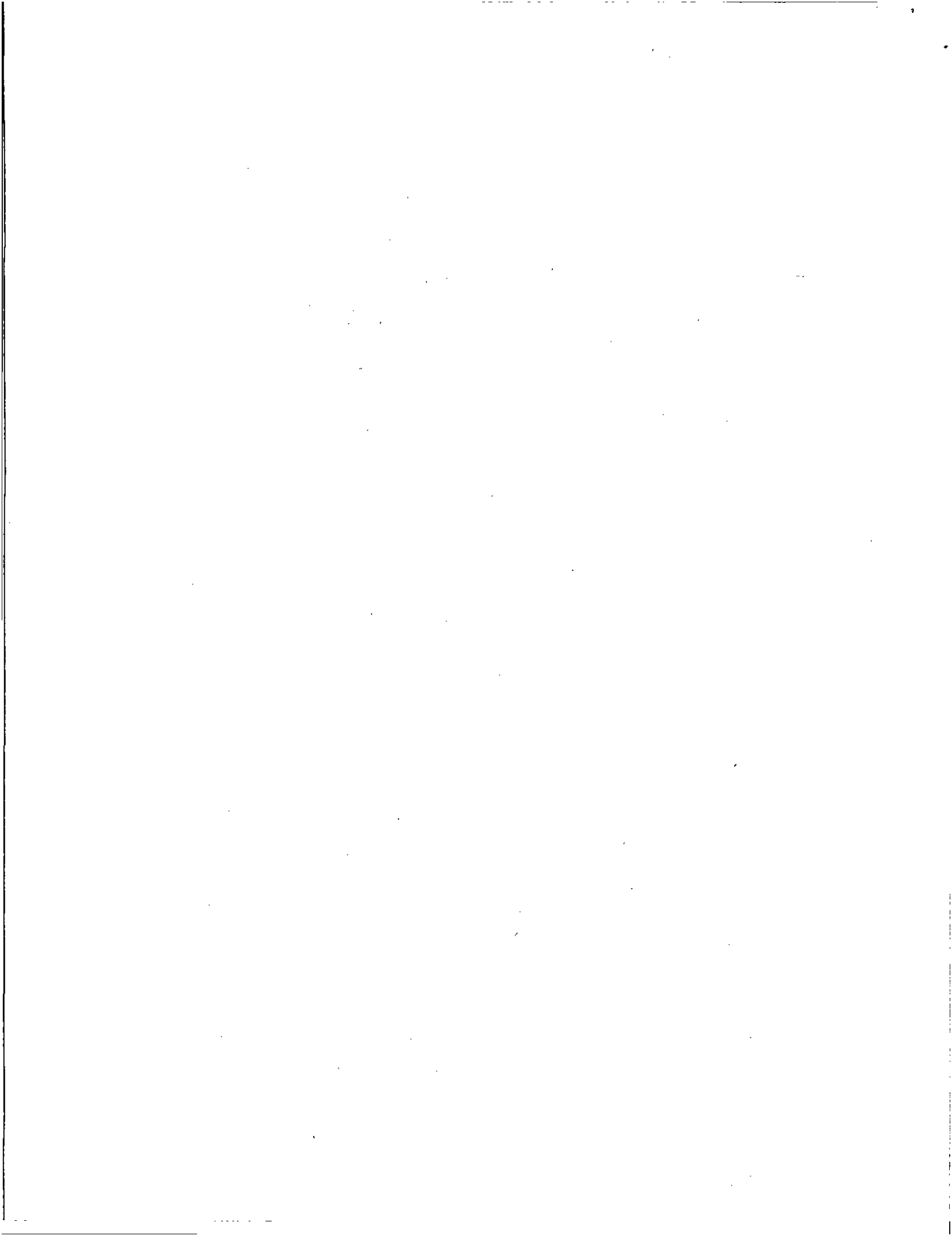


operations. As she would read the term "all." It might apply to the first half of a two-part move, for example the movement of all originating mail, but it would not then apply to the movement of all destinating mail at a later time because the facility would no longer be processing all types of mail. If this is not her reading, but she is emphasizing that, in her opinion, "all" means "all shapes" of mail, and then she is putting a broad gloss on the language that significantly changes its meaning.

A third problem with Ms. Gallagher's reading of the term "all" is that she wishes to make it apply only one way. Thus, she argues that the L&DC does not process all types and shapes of mail, but she does not think that the fact that Priority mail is processed by the L&DC but not by the P&DC means that the P&DC does not process "all types" of mail....

Another problem with Ms. Gallagher's reading is that it is inconsistent with the reading given this language by the Postal Service itself in the Network Plan it submitted to Congress. There, the Postal Service explained to Congress that "[a]n Area Mail Processing consolidation is one that results in all of the outgoing and/or incoming mail processing operations of a postal plant being absorbed by one or more nearby facilities."... Nothing in this explanation places any of Ms. Gallagher's all shapes and sizes qualifications on the language of the definition.

The Union also disputes Gallagher's testimony that the definition of AMP applies only to Sectional Center Facilities, and not to a facility such as an L&DC. The AMP definition in

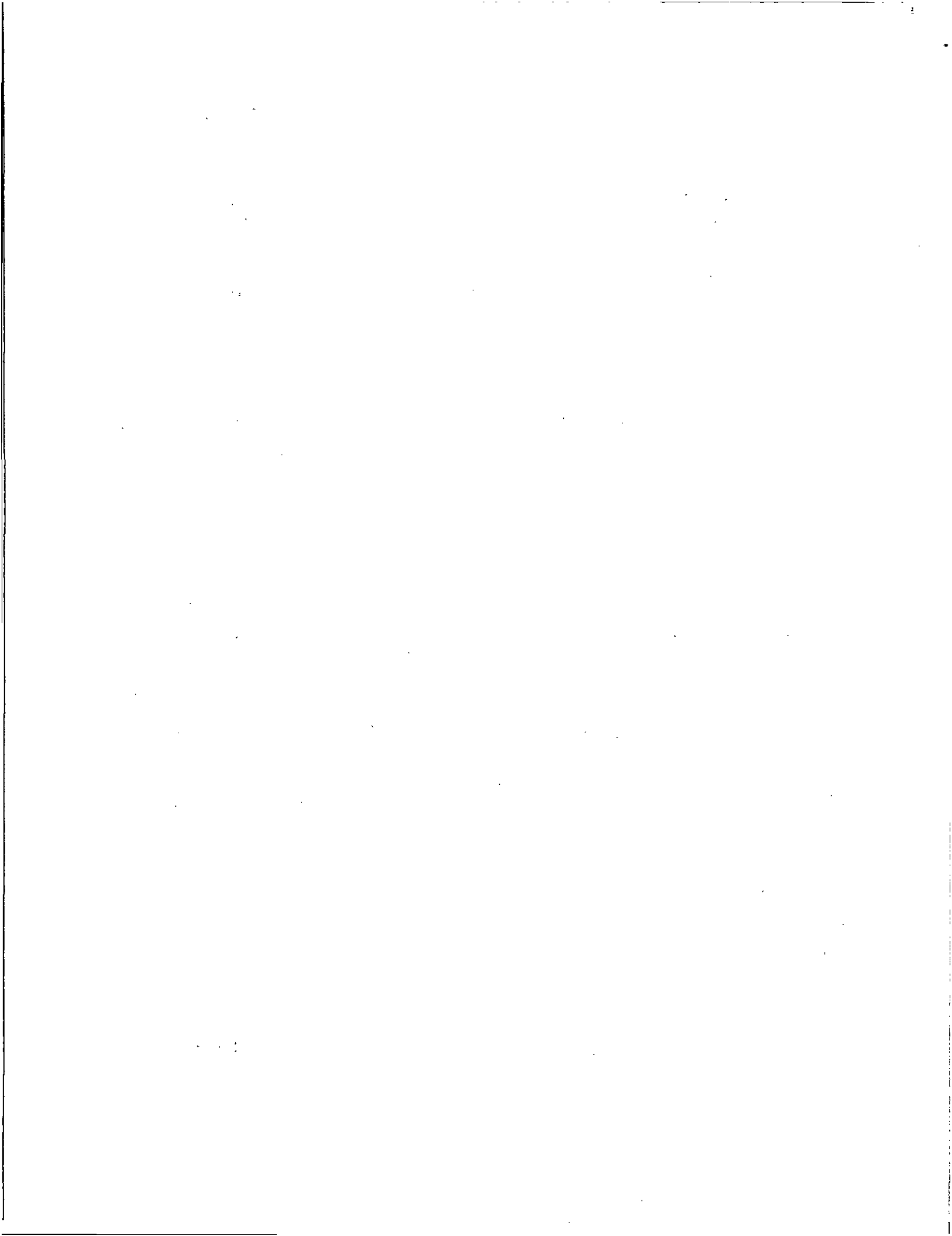


Section 1-1.1 of the PO-408 uses the term "facilities", and is not confined to SCFs.

The Union further rejects the Postal Service's position that the exclusion in Section 2-2 of the PO-408 of "aggregation of automation candidate mail" applies to the present case. This exclusion applies to the movement from manual or mechanized processing to automated processing. In that situation, the Union notes, it makes sense that an AMP study is not required. But in this case the sorting machines at the PL&DC were automated and comparable in their technology to those in the Philadelphia NDC where the originating mail now has been consolidated. The Union points to Section 1-3 of the PO-408 which observes that "AMP takes advantage of state of the art technologies available at the gaining facility so originating and/or destinating mail can be processed more efficiently." This is a very different concept, the Union argues, from rounding up mail that is not automated and aggregating it in an automated facility.

The Union also stresses that Gallagher's testimony regarding the facilities that are subject to AMP studies was not based on a study of actual AMPs that have been conducted, and that there is no evidence that mail processing operations from other L&DCs have been consolidated into other surrounding plants without an AMP study being performed.

The Union requests that the arbitrator rule that a monetary remedy is appropriate in this case and remand the issue



of monetary and non-monetary remedies to the parties, retaining jurisdiction in the event the parties fail to reach agreement.

FINDINGS

Assuming, solely for the sake of argument, that the Union could straddle the procedural and substantive arbitrability hurdles thrown up by the Postal Service in this case, the grievance still would have to be denied because the Union has not established that the Handbook PO-408 required an AMP study to be performed prior to the closing of the PL&DC.

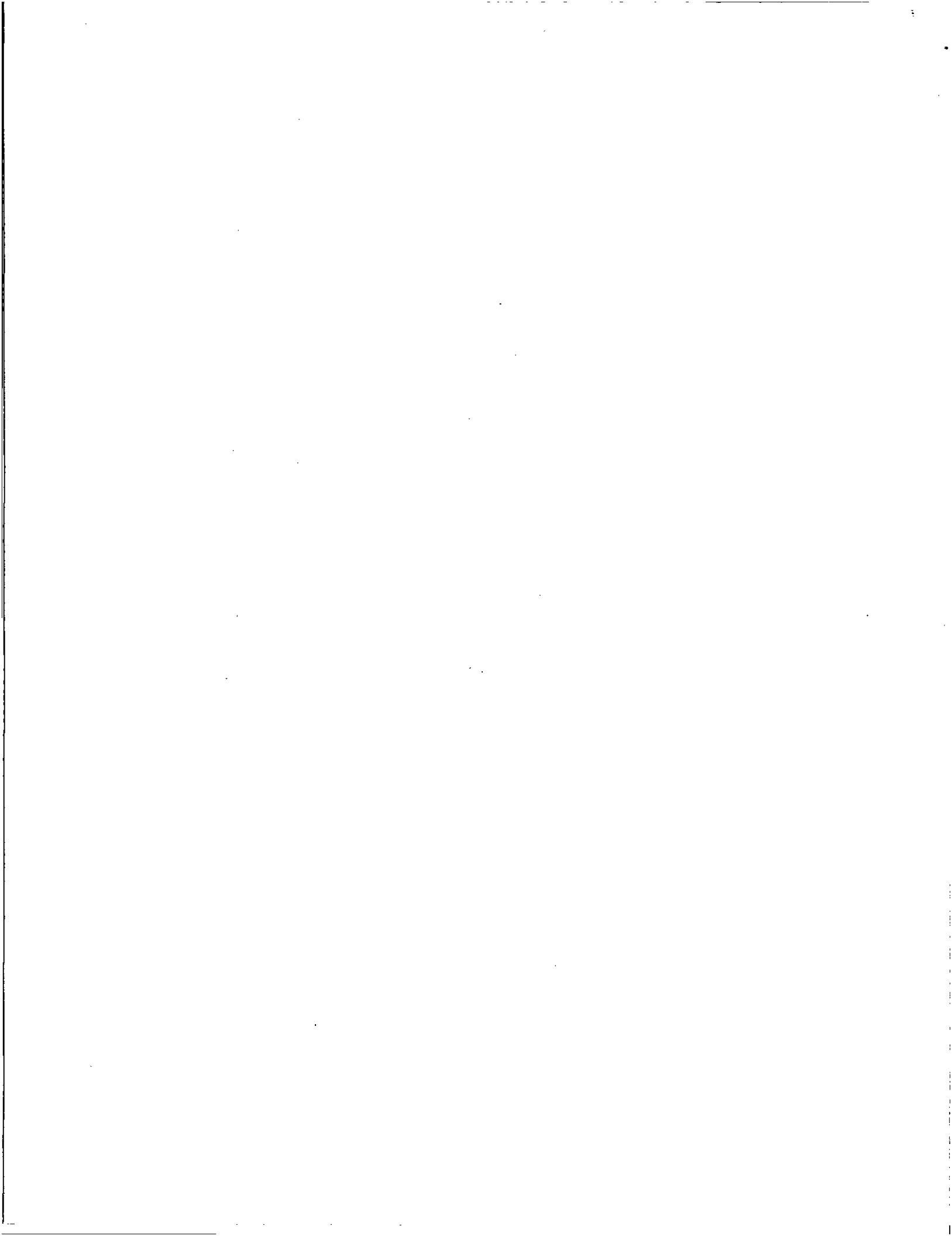
Program Manager Gallagher persuasively testified, based on her subject matter expertise, that AMP studies called for in the PO-408 relate to consolidation of distribution operations conducted at a Post Office or other Sectional Center Facility. For example, Appendix A-2 (Summary Narrative) provides:

A-2.2 Completing the AMP Worksheet

Header Section

The following information is populated from the information recorded on the AMP Data Entry Page: name of losing facility and type, current SCF ZIP Codes, type of distribution to consolidate, name of gaining facility and type, and current SCF ZIP Codes.

Appendix A-15 (Distribution Changes) includes the following:



A-15.2 Completing the AMP Worksheet

* * *

Section 1. Indicate each DMM [Domestic Mail Manual] labeling list that would be affected if the AMP proposal was approved....

Section 2. For a destinating AMP, indicate any changes that would be made to DMM L005, 3-Digit ZIP Code Prefix Groups-SCF Sortation.

Section 6 (Implementation) of the PO-408 provides:

6-6 Responsibilities

The organizational level that becomes responsible for implementation is dependent upon the type of consolidation taking place, in accordance with Exhibit 6-6.

Exhibit 6-6

Implementation Responsibilities

<u>Losing Facility</u>	<u>Gaining Facility</u>	<u>Responsible for Implementation</u>
Post Office	Post Office, P&DF, or P&DC	District of the gaining facility
P&DF or P&DC	P&DC	District of the gaining facility with area oversight
P&DF or P&DC closure or operations' transfer impacting 400+ employees	P&DC	Area with HQ's oversight

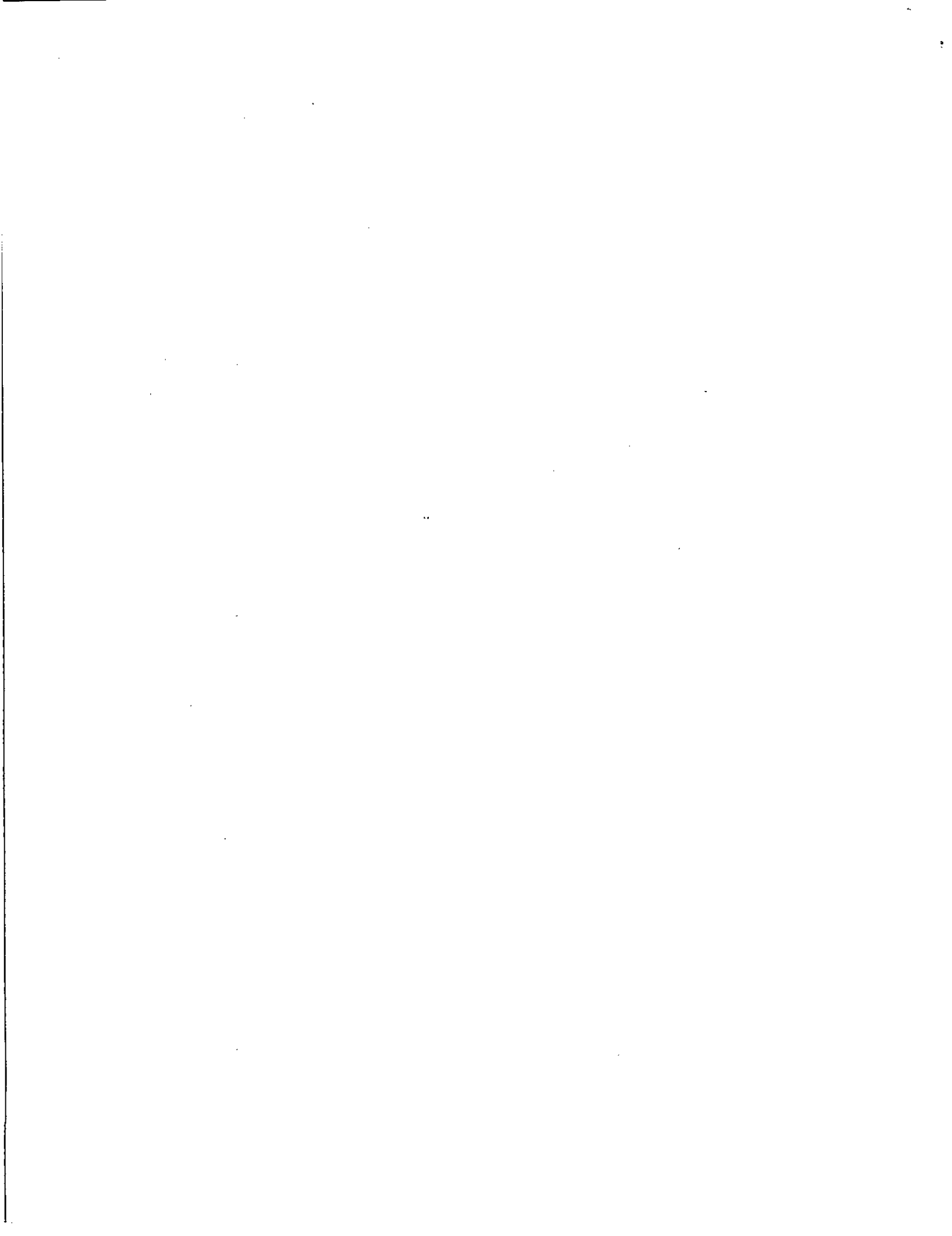


Notably, the losing and gaining facilities identified in these provisions of the PO-408 include SCF facilities -- Post Offices, P&DFs and P&DCs -- not facilities such as L&DCs or annexes. There is no evidence of an AMP study having been performed in connection with the consolidation of operations performed at an L&DC or other facility that serves as a regional aggregation point for processing a single class of mail, as in the case of the PL&DC. No AMP study was performed when the Philadelphia Air Mail Center was closed in January 2009. In addition to its dock transfer operations, this facility -- an annex of the Philadelphia P&DC -- served as a regional consolidation point for 3-day and 2-day letters and express mail (except Harrisburg). For purposes of application of the PO-408, the Air Mail Center seems to be comparable to the PL&DC, regardless of whether the jobs there were part of the Philadelphia installation.

Section 1-1.1 of the PO-408 defines Area Mail Processing as:

Area mail processing (AMP) is the consolidation of all originating and/or destinating distribution operations from one or more Post Offices/facilities into other automated processing facilities for the purpose of improving operational efficiency and/or service.

In context of the overall PO-408, and other relevant evidence presented in this case, I conclude that this definition of AMP applies to "the consolidation of all originating and/or



destinating distribution operations" from "Post Offices/facilities" that process mail operations for a particular service area, not a regional consolidation facility such as the PL&DC that processes a single class of mail.³

Accordingly, the grievance is denied.

AWARD

The grievance is denied on the basis set forth in the above Findings.



Shyam Das, Arbitrator

³ The Philadelphia P&DC, for example, would be covered by Section 1-1.1. In general, this SCF processes all classes of mail for its service area (three digit zip codes 190-192). That is true even if certain mail, such as priority mail sent to/from locations outside Greater Philadelphia Metro region from/to that service area was transported to a regional consolidation point, such as the PL&DC, for processing.

