American Postal Workers Union

Operational Justification for Mechanical Staffing

4-7-2010

There have been many inquiries from the field as to how we file on maintenance reversions and withholdings of maintenance positions under Article 38.4.A.2 &3 of the Collective Bargaining Agreement since the Arbitrator Das's ruling on MMO-28-97.

This guide was compiled to help the locals address this issue and protect those positions that have been authorized, posted and filled under the parameters of Article 38.

We must remember and as the attached arbitration awards show, once the Service establishes a duty assignment (s) we have a substantial right to keep that duty assignment if there is no operational changes in the facility. There has to be an identifiable local operational factor that has changed in order for the Service to prevail.

First we must remember if the reversion/withholding are not done in accordance with Article 38.4.A.2 &3 (Past the 40 day period etc.)That is a separate issue. What we are arguing is the **rationale** used to revert/withhold the position.

The Bargaining Agreement under 38.4.A.3 requires the Service to post a notice stating the reason for the reversion:

If the vacant assignment is reverted, a notice shall be posted within 10 days advising of the action taken and the **reasons therefore.**

This is a requirement of the Service to tell us why they are reverting the position in question.

An example would be if the office in question has 10 DBCS's in operation on 2 tours seven days a week. Now the Service removes 5 of the DBCS's from the office, this would be an identifiable operational factor. If the Service was to use low mail volumes as a reason to revert a position(s) without showing how that has affected the runtime of the machines or reduced the running of all 10 DBCS's on 2 tours 7 days a week, then that would fall short of an identifiable operational factor.

Likewise we also must show that a violation occurred and prove that thru the use of Information requests to the Service. It is not what we say it is what we can prove.

In the last example it would be incumbent upon the Union to show through at least the clerk attendance rosters on both tours, statements from employees and machine run-time reports, etc. for a period of time prior to the reversion and current that all 10 DBCS's are running on 2 tours 7 days a week still.

After receipt of all information you must decide whether or not the reasons for the reversion/withholding are operationally justified with identifiable proof.

This issue goes directly to Local fact circumstances like numbers and types of machines etc. and is a case by case basis, there is no grievance template or boilerplate language that can fit all the different scenarios that may come into play, just like the reasons used by the Service to revert/withhold these positions.

Remedy:

As in most cases the remedy would be to return the craft to the "status quo ante", and to post and fill the position(s) in accordance with article 38 and the JCIM. Pay all out of schedule and guarantee time to the senior bidder as well as difference in pay. The back pay shall be from 14 days prior to the Step 1 grievance.

At this point it is important to include the PAR and PER for the position in question. If you know who the harmed party is then list them by name and employee ID number in the remedy.

Award on Article 19 appeal of MMO-028-97 (Work hour estimator program)

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

To: Local and State Presidents
National Business Agents
Regional Coordinators
National Advocates
Resident Officers

From: Greg Bell, Director GB
Industrial Relations

Date: January 14, 2010

Re: Award on Article 19 Appeal of Maintenance Management Order (MMO) 028-97

Enclosed you will find a copy of a recent national award by Arbitrator Das regarding APWU's Article 19 appeal of MMO-028-97. Das ruled that "[t]he union's appeal of MMO-028-97 on the grounds that it is not fair, reasonable, and equitable for purposes of Article 19 is denied." *(USPS #Q94T-4Q-C 97040815; 12/14/2009)*

It should be noted, however, that Arbitrator Das emphasized that "to the extent custodial positions covered by the MS-47 are a component of a facility's 'authorized complement,' the requirements of MS-47 must be followed." Citing Arbitrator Gamser's 1981 award and his own 2006 award regarding the 2001 revision to the MS-47, Das stressed that "the evolution of the MS-47 Handbook differs from the MMOs at issue here and reflects considerations peculiar to custodial work." He indicated that "[o]ther work ... such as preventive maintenance, is not subject to similar requirements, and management properly has more discretion in actual staffing for such work."

This case arose after management replaced MMO-21-91 with MMO-028-97. The Postal Service's draft notification to the APWU of MMO-028-97, entitled "Maintenance Workhour Estimating Guide for All Mechanized Offices," indicated that it would supersede MMO-21-91 which had been issued in 1991. MMO-21-91 was entitled "Maintenance Staffing Guide for All Mechanized Offices." With the issuance of MMO-028-97, there were many language changes including deletion of references to "staffing" and "number of positions" by substituting references to "estimated workhours" or "Man Years" or other variations. In addition, the introduction to MMO-028-97 deleted the sentence that previously appeared in MMO-21-91 which stated "[f]or purposes of this bulletin, the words 'guidelines' and 'criteria' are used interchangeably." Another change included the addition of language stating "[c]ompletion of this package which is based only on approved maintenance criteria will result in an estimate of workhours which will result in a theoretical staffing by position and number of craft personnel. This theoretical result must be transformed into a practical staffing ...."

APWU witnesses testified that once a recommended complement was approved under the prior MMO (MMO-21-91) it became the authorized complement for the facility which made the MMO a staffing document. In addition, the witnesses indicated that the union prevailed at Step 3 or

regional arbitration on our contentions that MMO-21-91 established mandatory staffing levels. Also, two former national maintenance officers testified they were present at a meeting, preceding the settlement agreement after which time MMO-21-91 was issued, and were informed by management that the union didn't need a provision similar to the one set out in Section 116 of the MS-47 Handbook stating that once a staffing level was determined that staffing level must be maintained. These witnesses indicated that management's national Labor Relations representative said such a provision was unnecessary because the union already had the right to enforce or challenge staffing levels. Management witnesses countered that the MMOs never required the Postal Service to staff a facility to fill all authorized positions, and the management official who was in the meeting with two former national maintenance officers disputed making comments alleged by them and said a specific reference to the mandatory nature of staffing levels would have had to be incorporated into the MMO in order for it to have such an effect.

The union argued that the Postal Service's promulgation of MMO-028-97 violated Article 19 of the National Agreement because it wasn't fair, reasonable, and equitable. We contended that during a preceding MMO (MMO-30-87), and while MMO-21-91 was in effect, the staffing guide resulted in authorized staffing packages that were binding on the Postal Service. The union also indicated that such a finding was supported by a number of well-reasoned regional arbitration awards. Furthermore, we maintained that when the Postal Service issued MMO-028-97, it made changes substantially changing what was previously a maintenance staffing guide resulting in enforceable staffing packages to a "workhour estimating guide" which doesn't create enforceable staffing packages. We asserted therefore that MMO-028-97 should be rescinded, and MMO-21-91 should be retroactively reinstated in its place, and the bargaining unit should be made whole for any harm due to promulgation of MMO-028-97.

The Postal Service countered that the grievance was not arbitrable because the union previously had failed to raise the argument at the national level that staffing at a specific level was required by MMO-21-91. It asserted specifically that the APWU waived its arguments regarding MMO-028-97 by not taking issue with how MMO-21-91 was being applied. Management maintained that since such an interpretive dispute wasn't filed, the union should be barred from raising this argument in its current challenge to MMO-028-97 and the appeal should be dismissed. The Postal Service further argued that the union failed to establish that MMO-21-91 provided for a required staffing level that should be carried forward to MMO-028-97. It also asserted that even though there was some language in MMO-028-97 that differed from the prior MMO, there was no change in methodology or significant changes that rendered the MMO unfair, unreasonable and inequitable for purposes of Article 19.

Arbitrator Das ruled first of all that the APWU's appeal was arbitrable. He found that even though the Postal Service took the position that staffing packages under MMO-21-91 constituted guidelines and weren't mandatory in several regional arbitration cases, "the Union was no more obliged than the Postal Service to raise this issue in a national interpretive grievance." "Nor did its failure to do so constitute a waiver of its position," according to Das, "particularly in light of the favorable regional arbitration awards it had submitted in this record."

Turning to the merits, Arbitrator Das indicated that it was necessary to determine initially whether MMO-21-91 required the Postal Service to staff facilities at levels set out in approved maintenance staffing packages. He reasoned that "[w]hile the issue in this case, per se, is not

whether MMO-21-91 provided for mandatory staffing, the crux of the Union's position is that the changes in MMO-028-97 are not fair, reasonable, and equitable because that document changes what formerly had been mandatory staffing to a mere workhour estimation."

The arbitrator found, however, that MMO-21-91 and its predecessor MMO-30-87 didn't contain language similar to Section 116 of the MS-47 and merely stated that "the 'Recommended Complement' ... will become the authorized complement for this facility." He found that even if union witnesses' testimony were credited it wasn't "sufficient ... to establish that there was a binding agreement between the parties in 1991 that MMO-21-91 provided for mandatory staffing analogous to Section 116 of MS-47." Das concluded that "[t]he requirement in MMO-21-91 that the attached guide be used to estimate maintenance staffing and the provision for an 'authorized complement' do not equate to a requirement that this estimated staffing is mandatory regardless of other circumstances." He further indicated that he disagreed with regional awards submitted by the union concluding that MMO-21-91 "requires the Postal Service to staff a facility at the level of its 'authorized complement,'" similar to what the MS-47 provides for custodial staffing levels.

Das reasoned that despite the deletion of references to staffing and positions in MMO-028-97, the methodology and end results of using MMO-028-97 and MMO-21-91 are the same. He noted that "the reality is that MMO-028-97 remains a staffing document" and "[t]he end result is a determination as to the 'authorized complement for a particular facility.'" In addition, he found that even with the elimination of the sentence stating that the words "guidelines" and "criteria" are used interchangeably in MMO-028-97, this deletion didn't render MMO-028-97 unfair, unreasonable, and inequitable. He also determined that with regard to MMO-028-97's requirement that there be approval at the Area level before implementation of an approved staffing package, "such approval in fact also was required under MMO-21-91" and is in accordance with ASM Section 531.711. On this basis, Das found that there was no change here that could be considered unfair, unreasonable and inequitable. He indicated finally that the instruction in MMO-028-97, that an estimate will result in "theoretical staffing" ... [which] ... must be transformed into practical staffing by considering ..." several factors, differs "somewhat" from an equivalent provision in MMO-21-91. However, Arbitrator Das concluded that "both provisions are addressed to individual deviations based on local circumstances and each cites the same factors to be considered." He thus reasoned that this change also was not shown to be unfair, unreasonable, and inequitable.

Enclosure

GB/MW:jm
OPEIU#2
AFL-CIO

National Arbitration Panel

In the Matter of Arbitration	)	
	)	
	)	
between	)	
	)	
	)	Case No.
United States Postal Service	)	Q94T-4Q-C 97040815
	)	
and	)	
	)	
American Postal Workers Union	)	

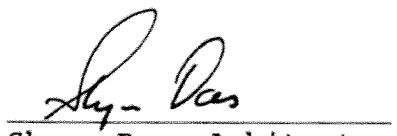
Before: Shyam Das

Appearances:

For the Postal Service:	Patrick Devine, Esq.
For the APWU:	Lee W. Jackson, Esq.
Place of Hearing:	Washington, D.C.
Dates of Hearing:	July 30, 2008 July 31, 2008 November 20, 2008 March 19, 2009
Date of Award:	December 14, 2009
Relevant Contract Provision:	Article 19
Contract Year:	1994-1998
Type of Grievance:	Contract Interpretation

Award Summary

The Union's appeal of MMO-028-97 on the grounds that it is not fair, reasonable, and equitable for purposes of Article 19 is denied.



Shyam Das, Arbitrator

At issue in this case is an appeal by the APWU regarding MMO-028-97.[1] A draft of this Maintenance Management Order was provided to the Union on December 12, 1996. The cover letter from the Postal Service stated:

> As a matter of general interest enclosed is a draft Maintenance Management Order (MMO) 021-91, entitled "Maintenance Workhour Estimating Guide for All Mechanized Offices" It will supersede the previous version (dated July 10, 1991) and MMO 029-91 (dated August 13, 1991)
>
> It provides the guidelines to be used to estimate workhours in each functional area The guidelines contained are derived from existing approved handbooks, MMOs, other source documents, and established historical data bases A computerized (disk copy) version of the workhour estimating guide is enclosed and will be used by the field to generate all workhours packages

The Union filed this appeal on January 16, 1997. The MMO in issue, subsequently designated MMO-028-97, was promulgated on June 2, 1997, in both a paper and a computerized format.

Some history is in order. On March 18, 1977, the Postal Service issued MMO-19-77. The subject of MMO-19-77 was "Methodology for Estimating Maintenance Requirements." The preface to MMO-19-77, which itself replaced an earlier MMO, stated:

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[1] The parties have stipulated that the reference in certain documents to Case No. Q94C-4Q-C 97040815 is a reference to the present case.

> The purpose of this Maintenance Bulletin is to provide a method to estimate man-hour requirements for maintenance. It includes accurate figures for estimating maintenance manhour requirements; however, it is not to be considered as authorized criteria for maintenance staffing. Authorized criteria that has been formally approved and distributed is contained in other maintenance bulletins and MS Handbooks.
>
> (Emphasis in original.)

On February 17, 1987, the Postal Service provided the Union with a draft of MMO-30-87. The Postal Service's cover letter stated:

> As a matter of information, enclosed is a proposed draft of Maintenance Bulletin, Maintenance Staffing Guide for All Mechanized Offices. It is a consolidation of all prior criteria for mechanization, building equipment, building services, control and supervision. The bulletin is current as of November 6, 1986, and will supersede MMO 19-77, dated March 18, 1977.

On May 7, 1987, the Union appealed this draft MMO to arbitration under the provisions of Article 19. A subsequent appeal also was filed on August 3, 1987. While these appeals were pending, the Postal Service promulgated MMO-30-87 on October 5, 1987.

On August 5, 1991, the parties entered into a settlement agreement in the form of a letter from Anthony Vegliante of the Labor Relations Department to Thomas Freeman, Director of the APWU's Maintenance Division. This agreement provided for the withdrawal of the two appeals relating to MMO-30-87, and stated:

On July 30, 1991, Thomas J. Valenti, of my staff and James C. Wilson and Joan S. Palmer of the Office of Maintenance Management met with you in prearbitration discussion of case number H4C-NA-C 99, also referred to as case number H4C-NA-C 112. The issue in this case pertains to Maintenance Bulletin, MMO 30-87, dated October 5, 1987, entitled "Maintenance Staffing Guide for All Mechanized Offices." During the discussion, it was mutually agreed that the following represents a full settlement of this case:

1. Case Number H7T-NA-C 107 will be withdrawn from the pending national arbitration listing.

2. MMO 30-87 will be renumbered and distributed to the field as MMO 21-91.

3. References to Labor Distribution Codes (LDC) will be deleted from the renumbered MMO 30-87.

4. Wherever possible, the replacement document will be updated to reflect current maintenance management orders, handbooks, and manuals.

5. Except for those agreed upon changes in items 3 and 4 of this agreement, the renumbered MMO will remain unchanged.

6. This is a complete, final resolution to those issues filed relative to MMO-30-87 and the renumbered document.

MMO-21-91 was issued on July 10, 1991. On August 19, 1991 the Postal Service, with the agreement of the Union, issued

MMO-29-91, pursuant to which certain pages of MMO-21-91 were replaced or discarded.[2]

The subject of MMO-21-91 is "Maintenance Staffing Guide for All Mechanized Offices." The preface includes the following:

> This Maintenance Management Order (MMO) supersedes MMO-19-77, dated March 18, 1977. Some items and figures from MMO-19-77 are used, but are clarified and updated. This MMO also provides a Maintenance Staffing Guide (see attachment) to be used to estimate workhours and to determine the number of positions in each functional area. Guidelines contained herein are current as of May 3, 1991 and are derived from existing handbooks, MMOs, other source documents, and established historical data bases.
>
> All mechanized offices must estimate maintenance staffing by using the attached guide....

The Introduction to the Maintenance Staffing Guide included in MMO-21-91 states:

> This document is a seven-section package that contains or identifies the forms and instructions necessary to determine the workhour requirements for maintenance support at a mechanized mail facility. Sections 2-6 develop the workhours necessary to perform a particular aspect of the maintenance function. Section 7 assists in assigning positions to an appropriate tour based upon maintenance requirements.

[2] All further references to MMO-21-91 include MMO-29-91.

> Section 1 contains the Workhour Summary Data from Sections 2-6 and the Position Summary forms.
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> The Maintenance Staffing Guide is assembled in sections to allow for its completion and submission by parts as a complete package. Any section (2-6), when accompanied by Sections 1 and 7, may be submitted for review and approval as a stand-alone package. The determination of the need for complete or partial submission is based upon changes from previously identified and approved inventory or criteria. Such changes must significantly affect the total workhours/positions for a particular section before a revision is required to the package. For purposes of this bulletin, the words "guidelines" and "criteria" are used interchangeably.

MMO-21-91 provides work sheets which ultimately are used to determine staffing hours for various functional areas at a particular facility: postal operations equipment, field maintenance, building equipment and custodial. The total staffing hours for each area are divided by 1760 to determine the total number of "positions" for that area. These total numbers then are combined, together with a designated number of maintenance control or support positions, to determine the "TOTAL MAINTENANCE CRAFT POSITIONS" for that facility.

As indicated in the Postal Service's December 12, 1996 cover letter, quoted earlier, MMO-028-97, the subject of the present case, supersedes MMO-21-91 and MMO-29-91. Whereas the subject of MMO-21-91 was "Maintenance Staffing Guide," the subject of the protested MMO-028-97 is "Workhour Estimating

Guide." The crux of the Union's objection to MMO-028-97 is that the Postal Service has changed what the Union insists was an enforceable staffing guide into a mere workhour estimating guide. Most of the specific language changes the Union protests involve deletion of references to "staffing" and "number of positions" and substitution of references to "estimated workhours" or "Man Years," or variations thereof. For example, the preface to MMO-028-97 states: "This MMO provides guidelines (see attachment) to be used to estimate workhours in each functional area." The preface also states: "All mechanized offices must estimate maintenance workhours by using the attached guide."

The Union also objects to the following changes included in MMO-028-97:[3]

- Deletion from the Introduction to the Guide of the sentence: "For purposes of this bulletin, the words 'guidelines' and 'criteria' are used interchangeably." The Union asserts that guidelines which equate to criteria are mandatory and enforceable.

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[3] During the testimony of Gary Kloepfer, Assistant Director of the Union's Maintenance Division, the Union appeared to object to any language changes that did not "reflect current maintenance management orders, handbooks, and manuals" on the basis that any other changes, even if fair, reasonable, and equitable for purposes of Article 19, violated paragraph 5 of the 1991 settlement agreement. Noting subsequent testimony of Union witness Jim Lingberg, the brief does not argue that paragraph 5 bars the Postal Service from making changes, provided they comply with Article 19. The Union's post-hearing brief does not espouse that position. Accordingly, I address only those changes which the Union claims are not fair, reasonable, and equitable.

- Addition of a second level of required approval -- at the Area level -- before any implementation of an approved staffing package can take place.

- Changing the provision that eliminates from initial consideration "Building equipment work of an occasional nature that can be more economically contracted out," to read "Building equipment that is currently under a service contract and building equipment that can be more economically contracted out." Removal of the words "work of an occasional nature", the Union asserts, encourages additional subcontracting.

- Addition of language stating: "Completion of this package which is based only on approved maintenance criteria will result in an estimate of workhours which will result in a theoretical staffing by position and number of craft personnel. This theoretical result must be transformed into a practical staffing...." The Union maintains this undermines its ability to enforce staffing called for by application of the guidelines set forth in the MMO. It also questions the meaning of "practical".

Union witness Kloepfer testified that from 1991 to 2001 he served as National Maintenance Business Agent in the central region. Part of his responsibilities was to assist local unions in the creation and enforcement of staffing packages. He pointed out that under MMO-21-91, once a recommended complement was approved, it became the authorized complement for that facility; that was what made the MMO a staffing document. He also stated that when the Union filed grievances over management not filling all authorized positions,

the Postal Service would claim the MMO did not require staffing to that level. But in cases he was involved in, he said, the Union prevailed either at Step 3 or in regional arbitration. The Union has submitted a number of regional arbitration awards in support of its contention that MMO-21-91 established mandatory staffing levels.

Postal Service witness Robert Thoensen, who retired in May 2008, testified that from 1995 until 2003, while serving as a maintenance official in the Southeast Area office, he reviewed a total of some 150-200 staffing packages, both under MMO-21-91 and later MMO-028-97. He pointed out that both documents utilize criteria contained in various other MMOs that specify maximum workhours for particular maintenance tasks. By way of example, he cited MMO-075-00 (PM Guidelines for the ICS system), which states: "The workhours represented in this MMO reflect the maximum workhours required to maintain the equipment. Given local conditions, management may modify task frequencies." Thoensen testified that the procedure followed in implementing MMO-028-97 was essentially the same as for MMO-21-91. The automated package in MMO-028-97 calculates the total number of man years for each maintenance area, while MMO-21-91 calculated the total number of positions, but functionally the result is the same.

Thoensen explained that after he had reviewed a recommended staffing package at the Area level, it was submitted to the Area Manager of Operations Support for approval. Once approved, under the terms of both MMO-21-91 and MMO-028-97, the "recommended" number of positions became "authorized." But, he

stressed, this never required the Postal Service to staff a facility so as to fill all authorized positions. That was just a maximum number. Budgetary and other considerations could affect actual staffing.

At the time the 1991 settlement agreement leading to MMO-21-91 was entered into, Randy Sutton was the Assistant Director and Jim Lingberg was the National Representative At Large for the Maintenance Division of the APWU. They each testified that they were present at a meeting preceding the settlement agreement at which Lingberg proposed to Tom Valenti, the Postal Service's Labor Relations representative, that they include in MMO-21-91 language similar to that in Section 116 of the MS-47 handbook relating to custodial maintenance, which provides:

> Once a custodial staffing level is determined using the procedures in this handbook that staffing level must be maintained. If conditions arise that warrant a change in the staffing, the entire staffing procedure must be redone....

Sutton and Lingberg, both of whom now are retired, testified that Valenti responded that they did not need that sort of provision because the Union already had the right to enforce or challenge staffing levels under Article 19.

Tom Valenti, who presently is employed by the Federal Aviation Administration, responded to the testimony of Sutton and Lingberg as follows:

> Well, it's nice to think that people think I have that much power of persuasion that would stop Union members, right, from locking things up in a memo. But I don't believe that that was the case.
>
> If there was any reference to any other document or what have you, both parties, not necessarily in this document here, but in other documents, would either have referenced what they wanted in there, especially if there was such a strong assertion by the Union, or they would have referenced another document.
>
> * * *
>
> If there was any reference like that, we would have put it into the document itself.

UNION POSITION

The Union rejects the Postal Service's arguments that the Union's failure to grieve MMO-21-91 bars the Union from arbitrating the present grievance. It stresses that MMO-028-97 was a drastic change from the terms of MMO-21-91, and this change had a profound and negative impact on the wages, hours and working conditions of the APWU and its bargaining unit members. Moreover, any claim that the Union waived its right to file this Article 19 grievance would require a clear showing of its specific intent to do so, and there is no evidence of that.

On the merits, the Union contends that the Postal Service's promulgation of MMO-028-97 violated Article 19 of the

National Agreement because it was not fair, reasonable, and equitable.

The Union points out that MMO-21-91 was promulgated as the result of negotiation and compromise between the Union and the Postal Service to resolve a grievance filed by the Union over MMO-30-87. Those negotiations resulted in the settlement agreement which provided for the promulgation of MMO-21-91. Citing the decision in Case No. Q98C-4Q-C 02013900 (Das 2006), the Union argues that the very fact that MMO-21-91 was promulgated as the result of a settlement agreement is an important factor in determining whether changes thereto were fair, reasonable, and equitable for purposes of Article 19.

The Union insists that, contrary to the Postal Service's unsupported claims, the record in this case clearly shows that authorized staffing packages created under MMO-21-91 were binding on the Postal Service. During the negotiation of the 1991 settlement agreement, Tom Valenti, representing the Postal Service, conceded that staffing packages approved pursuant to MMO-21-91 were enforceable by the Union under Article 19. This conclusion is supported by an examination of the changes in applicable MMOs from MMO-19-77 to MMO-21-91.

The Union points out that MMO-19-77 clearly states that it was not to be considered as a staffing document, but only a document which produced an estimation of maintenance manhour requirements. When the Postal Service promulgated MMO-30-87, entitled "Maintenance Staffing Guide for All Mechanized Offices," however, it is clear the Postal Service changed the

focus of the MMO and made it, for the first time, a staffing guide which resulted in authorized staffing packages binding upon the Postal Service. The relevant language in MMO-30-87 was carried forward in MMO-21-91, adopted pursuant to the 1991 settlement agreement. The cover memorandum states that the MMO provides a maintenance staffing guide to be used both to estimate workhours and "to determine the number of positions in each functional area." It further states that: "All mechanized offices must estimate maintenance staffing by using the attached guide." The guide states that, once approved, the "recommended complement" calculated using the guide becomes the "authorized complement" for that facility.

The Union stresses that a number of arbitrators in well-considered regional arbitration decisions have agreed with the Union's contention that MMO-21-91 created authorized staffing packages which were binding on the Postal Service.

The Union maintains that when the Postal Service promulgated MMO-028-97, it obviously did so with the specific intent of drastically changing from what had been a maintenance staffing guide which resulted in enforceable authorized staffing packages to what is merely a "workhour estimating guide" that results in no enforceable authorized staffing package at all. The Postal Service's intent is apparent from the fact that in MMO-028-97 the Postal Service was careful to eradicate each of the elements cited in the lead regional arbitration decision

holding that MMO-21-91 resulted in a binding approved staffing package.[4]

The Union emphasizes that the Postal Service has offered no explanation whatsoever for any of the drastic changes it made in implementing MMO-028-97, including adding an additional approval requirement for a staffing package already approved by senior maintenance officials. The requirement that the "recommended complement" be approved by the Area office, which was added for the first time in MMO-028-97, had a negative effect on the Union and its bargaining unit members. This is clear from a subsequent regional arbitration decision which held that a staffing package was not "authorized" because it had not been approved by the Area office. As stated in Case No. HOC-NA-C 19007 (Das 2002), when the Postal Service seeks to change long-standing provisions that on their face afford considerable protection to the bargaining unit, it needs at least to provide a convincing explanation of why it determined such a change to be necessary if it is to satisfy Article 19's requirement that the change be fair, reasonable, and equitable. The Postal Service utterly failed to do that in this case.

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[4] The Union adds that the arbitrator does not have to agree that approved staffing packages under MMO-21-91 were, in fact, binding on the Postal Service. The Union points out that it is apparent from the number of regional arbitration awards in which the APWU prevailed in its claim that those staffing packages were binding, that the Union had an opportunity to enforce authorized staffing packages under MMO-21-91 by convincing an arbitrator that they were, in fact, binding. With the changes made by the Postal Service in MMO-028-97, the Union has been deprived of that opportunity. The Union maintains this is a clear detriment to the APWU and its bargaining unit.

For all the above reasons, the Union contends that the arbitrator should sustain the grievance and direct that MMO-028-97 be rescinded, and that MMO-21-91 be retroactively reinstated in its place, and that the bargaining unit be made whole for any harm from the promulgation of MMO-028-97.

EMPLOYER POSITION

Initially, the Postal Service raises an arbitrability issue. In essence, the Postal Service argues that because the Union did not raise the argument that staffing to a particular level was "required" under MMO-21-91 as an interpretive issue at the national level, it should be barred from doing so in challenging MMO-028-97. According to the Union's testimony, numerous staffing grievances were filed at the local level while MMO-21-91 was in effect. Yet, instead of raising these grievances to the national level for an interpretation of whether staffing was truly "required" under that MMO, the Union waited until the issuance of the successor MMO-028-97 to argue that staffing was required under the predecessor MMO-21-91. In support of its position, the Postal Service cites Case No. Q98C-4Q-C 01238942 (Das 2003). The Postal Service further argues that even if the arbitrator proceeds to the merits of this case, the Union's appeal should be summarily dismissed on the grounds that the Union waived its arguments regarding MMO-028-97 by not taking issue with MMO-21-91. In support of this position it cites Case No. Q98C-4Q-C 00183263/01002200 (Das 2005).

The Postal Service insists that the changes to the MMO at issue are not inconsistent with the National Agreement and -- to the extent they directly relate to wages, hours or working conditions -- are fair, reasonable, and equitable for purposes of Article 19. Under both MMO-028-97 and its predecessor MMO-21-91, an authorized number of positions is calculated on the basis of estimated workhours, and this authorized number constitutes the maximum number of maintenance employees authorized for that facility. The Postal Service stresses that the Union has never established that MMO-21-91 provides a "required" staffing level that must be carried over to MMO-028-97.[5] Article 3 provides that the Postal Service shall have the exclusive right "to determine the methods, means, and personnel by which...[its] operations are to be conducted." There is nothing in either MMO-028-97 or its predecessor which grants to the Union the ability to abridge that management right.

The Postal Service asserts that starting with MMO-19-77, which was not challenged by the Union when it was promulgated in 1977, the applicable MMO has provided a method for estimating maintenance requirements. The Union's failure to challenge that methodology prior to the filing of this appeal regarding issuance of MMO-028-97, if it does not bar the appeal, certainly negates the Union's claim that there were any changes that could be found not to be fair, reasonable, and equitable. The revisions that were made in MMO-028-97 resulted directly

[5] The Postal Service points out that in addition to the regional arbitration awards cited by the Union, there are decisions by other regional arbitrators that reject the Union's claim that MMO-21-91 provides for mandatory staffing.

from the Postal Service's exercise of its management rights under Article 3. For this reason, the revisions can only be viewed as both consistent with the National Agreement, and arbitral precedent, and fair, reasonable, and equitable, as they are consistent with the workhour estimate methodology outlined in maintenance handbooks since at least 1977. Notwithstanding the change in language, the methodology and end result under MMO-028-97 is the same as it was under MMO-21-91. The Union, the Postal Service insists, has failed to demonstrate any significant change that directly relates to wages, hours, or working conditions, and has not established any violation of the National Agreement.

FINDINGS

This Article 19 appeal by the APWU is arbitrable. It is clear that after MMO-21-91 went into effect the Union took the position in a number of grievances that the Postal Service was required to staff postal facilities at the levels specified in approved maintenance staffing packages. Moreover, the Union successfully asserted that position in a number of regional arbitration cases. While the Postal Service took the position that staffing packages under MMO-21-91 were merely guidelines and not mandatory, the Union was no more obliged than the Postal Service to raise this issue in a national interpretive grievance. Nor did its failure to do so constitute a waiver of its position, particularly in light of the favorable regional arbitration awards it has submitted in this record.

In order to rule on the merits of the Union's challenge to MMO-028-97, it is necessary for this arbitrator to determine whether MMO-21-91 required the Postal Service to staff facilities at the levels specified in approved maintenance staffing packages. While the issue in this case, per se, is not whether MMO-21-91 provided for mandatory staffing, the crux of the Union's position is that the changes in MMO-028-97 are not fair, reasonable, and equitable because that document changes what formerly had been mandatory staffing to a mere workhour estimation.[6]

Article 3.D of the National Agreement provides that the Postal Service has the exclusive right, subject to the provisions of the National Agreement and applicable law and regulations: "To determine the methods, means, and personnel by which...[its] operations are to be conducted." Accordingly, the burden is on the Union to establish that the National Agreement, including Article 19, requires a particular level of maintenance staffing.

The first of the cited regional arbitration decisions holding that MMO-21-91 establishes mandatory staffing packages -- Case No. I90T-11-C 93036556 (Benn 1995) -- analogizes MMO-21-91 to Section 116 of the MS-47 Handbook and cites Arbitrator Gamser's 1981 national arbitration decision in Case No. A8-NA-

[6] I am not persuaded by the Union's suggestion that regardless of whether I agree with the Union's position on this issue, I should still find that MMO-028-97 is not fair, reasonable, and equitable because the changes therein have deprived the Union of the opportunity to continue to convince regional arbitrators that staffing packages under MMO-21-91 are mandatory.

0375, which held that Article 19 required the Postal Service to abide by the 1974 MS-47 criteria for performance and frequency of custodial work. Likewise, the regional arbitration award which the Union cites as the lead decision on this issue -- Case No. C90T-1C-C 95006449 (Blackwell 1997) -- holds that authorizations made under MMO-21-91 are analogous to staffing levels under MS-47 and finds that MMO-21-91, like the 1983 MS-47, is based on a bilateral agreement. The Blackwell decision, which also relied on two local grievance settlements, concludes that:

> The quoted language of MMO 21-91 thus provides a method for the development of Maintenance staffing criteria that generate an authorized Maintenance complement for an installation, which, once the appropriate approval is given, is binding on the Postal Service. For a like ruling see Benn....

Subsequent regional awards in the Union's favor take a similar approach and typically cite the Blackwell and Benn decisions.

The Postal Service has cited several regional arbitration decisions to the contrary. In one such decision -- Case No. H90T-1H-C 95038008 (Holley 2003) -- the arbitrator concluded:

> The language of MMO-21-91 provides guidance for requesting staffing and criteria for authorization. This document does not require filling positions just because they have been authorized.

In another decision -- Case No. W0T 5F-C 11531 (McCaffree 1998) -- the arbitrator chose not to follow the Blackwell decision, noting:

> Whether guidelines are considered standards or not, the use of "estimate" leaves a degree of flexibility not available under the Gamser award or the MS-47.

It is important to point out that in his 1981 decision, Arbitrator Gamser was careful to stress that he was not imposing "a manning floor or any manning commitment upon the Service." His decision held that the Postal Service could not unilaterally determine to depart from the standards -- in particular minimum frequencies for custodial work -- set forth in the 1974 MS-47. The requirement that custodial staffing levels be maintained was established later in Section 116 of the 1983 MS-47 -- a negotiated provision that was adopted pursuant to a settlement agreement between the parties.

MMO-21-91 also was promulgated pursuant to a settlement agreement. Notably, however, that 1991 agreement adopted MMO-30-87 (renumbered as MMO-21-91), which the Union had appealed after it was unilaterally established by the Postal Service in 1987. The only changes agreed to in the 1991 settlement were the deletion of Labor Distribution Codes and updating of MMO-30-87 to reflect interim changes in related MMOs, handbooks and manuals. The key operative provisions of MMO-30-87 did not originate and were not changed in negotiation.

MMO-30-87, unlike its predecessor (MMO-19-77) which was specifically limited to estimated maintenance manhours, was designated as a staffing guide. In both its original MMO-30-87 format and as renumbered MMO-21-91, it states that: "All mechanized offices must estimate maintenance staffing by using the attached guide." It also provides that:

> When approved by the officials indicated below, the "Recommended Complement"...will become the authorized complement for this facility. When the survey package is received at the Management Sectional Center (MSC), appropriate action for implementation may be taken.

These are the key operative provisions. There is no equivalent, however, to Section 116 of MS-47. Nor is the testimony of Union witnesses Lingberg and Sutton -- based on their memory of what was said at a meeting almost 20 years earlier -- sufficient, even if credited, to establish that there was a binding agreement between the parties in 1991 that MMO-21-91 provided for mandatory staffing analogous to Section 116 of MS-47.

The requirement in MMO-21-91 that the attached guide be used to estimate maintenance staffing and the provision for an "authorized complement" do not equate to a requirement that this estimated staffing is mandatory regardless of other circumstances. Based on the fuller record and presentations by the parties in this national arbitration, I respectfully disagree with those regional awards that conclude that, analogous to Section 116 of MS-47, MMO-21-91 requires the Postal

Service to staff a facility at the level of its "authorized complement."

In replacing MMO-21-91 with MMO-028-97, the Postal Service deleted a number of references to "staffing" and "positions" and substituted references to "estimated workhours" or "Man Years."[7] Where MMO-21-91 provides that covered facilities "must estimate maintenance staffing," MMO-028-97 provides that facilities "must estimate maintenance workhours." In each MMO, however, the attached guide states that the guide "contains or identifies the forms and instructions necessary to determine workhour requirements for maintenance support at a mechanized mail facility." Moreover, the reality is that MMO-028-97 remains a staffing document. The end result is a determination as to the "authorized complement for a particular facility." This is exactly the same as the end result under MMO-21-91. Moreover, the methodology used in the Maintenance Workhour Estimating Guide in MMO-028-97 to determine the "recommended complement" -- including the key "GRAND TOTAL

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[7] In support of its claim that the Postal Service acted to deprive the Union of its ability to enforce staffing packages, the Union asserts that the Postal Service was careful to eradicate each of the elements cited in the Blackwell regional arbitration award. But the Blackwell decision was issued in January 1997, a month after the Postal Service provided the Union with a draft of what became MMO-028-97. Indeed, the only regional arbitration award included in this record that predated that December 1996 draft was the 1995 Benn decision. The only portion of MMO-21-91 actually cited in the Benn decision is the provision -- still contained in MMO-028-97 -- that when approved the "recommended complement" will become the "authorized complement."

MAINTENANCE CRAFT POSITIONS" (Section 1-B) -- is the same as the methodology used in MMO-21-91.

Of course, to the extent custodial positions covered by MS-47 are a component of a facility's "authorized complement," the requirements of MS-47 must be followed. Other work, however, such as preventive maintenance, is not subject to similar requirements, and management properly has more discretion in actual staffing for such work. As reflected in the 1981 Gamser national arbitration award and this arbitrator's 2006 national arbitration award regarding the 2001 revision to MS-47 -- Case No. Q98C-4Q-C 02013900 -- the evolution of the MS-47 Handbook differs from the MMOs in issue here and reflects considerations peculiar to custodial work.

Turning to the other objections raised by the Union, it has not been established that deletion in the Introduction to the Guide of the sentence stating the words "guidelines" and "criteria" are used interchangeably was not fair, reasonable, and equitable. The Postal Service has not explained its rationale for this change, but even assuming it was intended to remove any possible inference that staffing levels developed from the guidelines were mandatory, that does not render it not fair, reasonable, and equitable.

MMO-028-97 requires approval at the Area level before implementation of an approved staffing package can occur. The evidence in this record indicates that such approval in fact also was required under MMO-21-91. This is in accordance with the March 1, 1966 Administrative Support Manual which at 531.711

states: "Either Headquarters or the area officer authorizes maintenance positions and staffing allowances using current staffing guidelines." Moreover, the record indicates that the Area review is designed to ensure that the guidelines have been properly applied and is not intended to substitute Area judgment for local management judgment on matters properly to be determined by the latter.

While the reference to subcontracting of building equipment in MMO-028-97 deletes the words "work of an occasional nature," there is nothing in this record that indicates that decisions relating to subcontracting, which are subject to Article 32 of the National Agreement, actually are made on the basis of this MMO.

MMO-028-97 includes the following general instruction and guideline relating to applying deviations:

> Completion of this package which is based only on approved maintenance criteria will result in an estimate of workhours which will result in a theoretical staffing by position and number of craft personnel. This theoretical result must be transformed into a practical staffing by considering any adjustments or exceptions required because of the number, age, and general condition of the machines; the distance between machines; the intensity of usage by mail processing; the length of maintenance window; the effectiveness of the preventive maintenance program; the experience level of mechanics and technicians; and the historical experience of the site.

This provision differs somewhat from the equivalent provision in MMO-21-91, but both provisions are addressed to individual deviations based on local circumstances and each cites the same factors to be considered. It has not been shown that this change is not fair, reasonable, and equitable.

For the reasons set forth above, the Union's appeal of MMO-028-97 on the grounds that it is not fair, reasonable, and equitable for purposes of Article 19 is denied.

AWARD

The Union's appeal of MMO-028-97 on the grounds that it is not fair, reasonable, and equitable for purposes of Article 19 is denied.

Shyam Das, Arbitrator

Regional Awards addressing the need for Operational Justification for reversions and changes in positions.

Arbitrator Krider I90T-1I-C 94043671

Page 7:

The Postal Service can revert a vacant position under Article 38, section 4 but it cannot do so in an arbitrary or capricious way.

Page 8:

Management has cited a sufficient operational justification for the change in staffing.

It is not acting in an arbitrary or capricious way but instead is making a change in staffing based on identifiable local operational factors that have changed since the 1988 staffing survey.

Regular Regional Arbitration Panel

In the Matter of the Arbitration	Grievant: Class Action
between	Post Office: St. Louis BMC
United States Postal Service	Case No: I90T-1I-C 94043671
and	
American Postal Workers Union	

Before: Charles E. Krider, Arbitrator

Appearances:

For the Postal Service: Paul Lyons
Labor Relations Specialist

For the Union: Gary Kloepfer
National Business Agent

Place of Hearing: Hazelwood, Missouri

Date of the Hearing: January 27, 1995

Date of Award: February 24, 1995

Relevant Contract Provisions:

Contract Year: 1990-94

Type of Grievance: Contract

Award Summary

The BMC reverted a General Mechanics position and added a new MPE-7 position while keeping the total number of mechanic and Bargaining unit positions the same as indicated by a 1988 Staffing Survey. Held: the Postal Service has the ability to make modest changes in staffing configurations when there is an operational justification for the changes. New and more complex equipment at the BMC provided such an operational justification. The grievance is denied.

DECISION OF THE ARBITRATOR

Background

This grievance concerns Management's decision to revert a Maintenance Mechanic, PS-05 position on tour 3 at the Bulk Mail Center in Hazelwood, Missouri. This position was replaced with a Maintenance Mechanic, MPE-7 position. The employee who had held the reverted position, James Johnson, had indicated that he would transfer to the Memphis BMC but he had not yet vacated his position when the reversion was announced. The job was vacated on March 19.

In a notice dated March 11, 1994 the Maintenance Manager, Adell Allen, announced the reversion decision in the following way:

> "The St. Louis Bulk Mail Center will revert the bid vacated by James H. Johnson as a result of his Reassignment/CAO which is effective March 19, 1994:
>
> Maintenance Mechanic, PS-05
> Tour III (N/S Friday-Saturday)
>
> As Management's compliance with Article 38, Section 4 of the National Agreement, the reason for this reversion is:
>
> In order to better meet the needs of the USPS and the increasing complexity of maintaining equipment, it is Management's intent to replace this position by creating a new Building Equipment Mechanic, PS-07 on Tour III.

A second notice dated March 25, 1994 was issued in order to correct an error in the March 11 notice. This notice stated:

> "The subject notice of reversion dated March 11, 1994 was issued in error and is canceled. The following is a corrected notice."

This notice that followed was identical to the March 11 notice except that the replacement position was identified as a Maintenance Mechanic, MPE-7 position rather than a Building Equipment Mechanic, PS-07.

Appropriate levels of staffing for the maintenance craft are set in a standardized manner in all facilities through a Staffing Survey. Such a survey consists of (1) an inventory of all equipment in a facility, (2) the application of handbook guidelines, particularly the MSGC, to determine the amount of maintenance required and the appropriate staff to be recommended. This was last done at the BMC in 1988 when the bargaining unit staffing was determined to be 101. The relevant staffing for positions involved in this grievance were determined to be:

General Mechanics	- 12
MPE 6	- 17
MPE 7	- 16
Total	45.

However, when the total complement was set at 91 bargaining unit positions by Management a grievance was filed by the Union. In an award dated January 11, 1991 arbitrator James P. Martin held that Management violated the National Agreement when it staffed with 91 employees instead of 101. He directed that "Management must staff at the level developed by the MSGC."

Following that award the parties agreed on the increase in staffing for each maintenance position and a timetable for filling the openings. By March 17, 1992 the staffing for the positions at issue was:

General Mechanics	- 9
MPE 6	- 19
MPE 7	- 17
Total	45.

Following the national consolidation agreement in November, 1993 the MPE 6 were upgraded to MPE 7. Therefore, at the time of the reversion there were 36 MPE-7 and 9 General Mechanics.

The parties have stipulated that the decision in this case will be applied to local grievance #940049 which is now at Step 3. They also agree that the grievance is properly before the arbitrator.

Issue

The issue to be decided is:

"Did the Postal Service violate the National Agreement and its associated handbooks and manuals when it reverted a Level 5 Maintenance Mechanic position at the St Louis Bulk Mail Center in March, 1994. If so what is the appropriate remedy."

Contract 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:

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

Article 38 Maintenance Craft
Section 4 Posting

A. In the Maintenance Craft all vacant duty assignments shall be filled as follows:

...

2. All vacant duty assignments shall be posted by notice of intent within 30 days from when the vacancy occurs. If a duty assignment has not been posted within 30 days, the installation head or designee shall advise the Union in writing as to the reasons the duty assignment is being withheld.

3. If the vacant assignment is reverted, a notice shall be posted within 10 days advising of the action taken and the reasons therefor.

Position of the Union

The Union's position is that the Postal Service has (1) violated the strict contractual restrictions on reversions that are contained in Article 38, Section 4.A.2 and 3, (2) failed to establish an operational justification for the position reversion, and (3) improperly eliminated promotional opportunities to an initial maintenance mechanic position.

Under Article 38, Section 4.A. 2 and 3 the Postal Service has a 40 day window period for the notice and reversion or withholding

of vacant positions. The March 11 notice was not in conformance with the 40 day window because it was issued while the position to be reverted was still occupied. The position must be vacant when the notice is given. The 40 day notice period does not begin until the position is vacant.

The notice of March 25 was the same as the March 11 notice except that the title of the new position was corrected. It is clear that the reversion still occurred on March 11.

The Postal Service has also failed to operationally justify its decision to revert the Maintenance Mechanic position. There is no convincing evidence of a change in circumstances which would justify the reversion of the maintenance mechanic position. The new equipment cited by Management is not a justification. In particular, there is no indication that there would be a reduction of level 5 work hours as found in the most recent staffing survey.

Finally, the Union argues that the reversion would limit the promotional opportunities in the maintenance craft. Employees who may be able to advance by obtaining experience in a level 5 position will be much less likely to qualify for a level 7 position. The result is that there will be fewer promotions from within and more off the street hiring. Such a result is not consistent with the Postal Service's acknowledged responsibility to assist employees to advance.

Since the reversion was improper the Postal Service must post and fill the Maintenance Mechanic position.

Position of the Postal Service

The Postal Service contends that there was no violation of Article 38, Section 4. Adequate notification of the reversion was given by the March 11 notice. At that time the position was still occupied by James Johnson but it was known that he would transfer to Memphis. There is nothing that prevents Management from giving advance notification. But the March 25 notice resolved any possible question of a procedural error. That notice canceled the March 11 notice and then gave notice of the reversion at a time when the position was vacant. This was obviously within the 40 day

window period.

The operational justification for the reversion is clear: the BMC has installed increasingly complex equipment that requires more skilled employees to maintain. The BMC is reverting a semi skilled position and is adding a skilled position. The staffing survey did not set the exact number of employees in every position; Management has discretion to make modest adjustments when a change in circumstances warrants. The change it has made will increase the efficiency of the Postal Service. Moreover, there has been no reduction in overall staffing since there will still be 45 employees in the Maintenance Mechanic, Level 5 and MPE-7 positions.

Finally, the Postal Service denies that the reversion will deny employees promotional opportunities. Employees will still be able to prepare themselves for advancement and there will still be 8 Maintenance Mechanic positions. There is no requirement that Management maintain an unneeded position in order to provide promotional opportunities.

Discussion and Analysis

The issue to be decided is whether the Postal Service violated the National Agreement, particularly Article 38.4.A. 2 and 3, or any of the manuals that are used in settling staffing levels. The answer depends on (1) whether the Postal Service failed to give proper notice of the reversion, (2) whether there was sufficient operational justification for dropping a Maintenance Mechanic, Level 5 position and adding an MPE -7 position, and (3) whether the Level 5 position must be maintained in order to maintain promotional opportunities for maintenance employees.

Notice of Reversion. Under Article 38.4.A.2. the Postal Service is required to post a notice for a vacant duty assignment within 30 days of the vacancy. If no such posting is made then the

Union must be advised in writing "as to the reasons the duty assignment is being withheld." A further requirement is added in Article 38.4.A.3. for positions that are to be reverted:

> "If the vacant assignment is reverted, a notice shall be posted within 10 days advising of the action taken and the reasons therefor."

The Postal Service has complied with this notification requirement.

The Postal Service first gave notice of its intent to revert the position of James H. Johnson on March 11, 1994, eight days before the position was actually vacated. The Union's position is that such notice must be given after the position is vacated. I do not agree. There is nothing in Article 38.4.A.3 that imposes such a requirement. Rather, the requirement is for the posting of a notice no more that 10 days after the decision to revert the position. The Postal Service may, of course, wait a full 30 days before deciding to revert a position; in such a case there would be a 40 day window for posting a notice on the reversion.

But there is nothing in the National Agreement that prevents the Postal Service from giving advance notice of a reversion once it knows that a position is scheduled to be vacated. Article 38.4.A.2 and 3 sets a maximum time for notification but does not require any delay in posting a reversion notice until a position is vacated. In this instance the Postal Service knew on March 11 when the reversion notice was posted that Mr. Johnson would vacate his position on March 19. Since the decision to revert this position had been made the Postal Service could fulfil its obligation to post a notice immediately rather than after a delay.

But even if there were a requirement that a reversion notice be delayed until the position is vacated the Postal Service still would have met this requirement with the notice of March 25. This canceled the March 11 Notice and then provided a corrected Notice. There is no doubt that this Notice of the reversion provided a timely notification to the affected employees and to the Union.

I find that the Notice of the reversion dated March 11, as corrected by March 25 Notice, fulfilled Management notification

requirement under Article 38.4.A.2 and 3. The Union (and employees) had timely notification of Management's decision to revert the position that was vacated.

Operational Justification. The Postal Service can revert a vacant position under Article 38, Section 4 but it cannot do so in an arbitrary or capricious way. The Union does not deny that Management can revert a position and change staffing but insists that such changes must be based on facts. There must be a showing of an operational justification for a reversion and the Union argues that no such showing has been made in this instance.

In an award dated January 11, 1991 Arbitrator James P. Martin held that the St. Louis BMC had violated the National Agreement by not staffing the BMC in accordance with the 1988 Staffing Survey. The Staffing Survey had set the number of bargaining unit positions at 101 but this had been reduced by Management to 91. The reduction was based upon budgetary rather than operational considerations, which Arbitrator Martin held to be arbitrary and capricious. His holding was:

> "Management must staff at the level developed by the MSGC. There was no showing of featherbedding, and no other basis for ignoring the staffing levels was set out in any document placed into evidence. The staffing should be brought to the MSGC level within 30 days, inasmuch as it has been several years well below that level."

Following this award the BMC Management and the Union entered into an agreement on how that award was to implemented. They agreed to a staffing configuration of 36 MPE-7 and 9 General Mechanics. This was 3 fewer General Mechanics and 3 more MPE-7s that the Staffing Survey had identified. The reversion under consideration in this grievance would change the staffing to 37 MPE-7 and 8 General Mechanics.

The narrow question, then, to be decided is whether Management had a sufficient operational justification to revert 1 General Mechanic position in order to add 1 MPE-7 position. I find that it did.

First, the BMC may make some changes in staffing requirements

without conducting a new Staffing Survey. A Staffing Survey does not lock Management into an unchanging staffing configuration if the needs of a facility change in an identifiable way. The change sought by Management in this instance will not reduce the total number of MPE-7 and General Mechanics, which will remain at 45. One semi skilled Mechanic position will be replaced by a higher skilled Mechanic. Such a modest change is not necessarily inconsistent with the 1988 Staffing Survey or the award of Arbitrator Martin.

Second, Management has cited a sufficient operational justification for the change in staffing. The justification offered by Management for the staffing change is that the BMC has installed more complex equipment that requires more skilled Mechanics for maintenance work. The equipment cited by Management includes the Small Parcel Bundle Sorter and, in general, more programmable controllers.

The position of the Postal Service that more complex equipment requires more skilled employees for maintenance is reasonable. It is not acting in an arbitrary or capricious way but instead is making a change in staffing based on identifiable local operational factors that have changed since the 1988 Staffing Survey. There is no indication hat Management's discretion to adjust staffing in response to changing conditions has been abused. It is also clear that Management is not relying on budget consideration that were previously condemned by Arbitrator Martin but on operational consideration at the BMC.

Promotional Opportunities. The Union's final contention is that the Postal Service has an obligation to provide maintenance employees with opportunities for advancement. If the Level 5 position is eliminated and replaced with a Level 7 position the effect will be to reduce the upward mobility of lower skilled maintenance employees. More skilled employees will be hired off of the street rather than by promotion from within the BMC.

This argument must fail. There is no contractual obligation on the part of the Postal Service to retain unneeded positions in

order to provide employees with promotional opportunities and greater access to higher level positions. Rather, the Postal Service has the right to determine the number of positions in each job category based upon the amount of work to be done. The entire purpose of the Staffing Survey is to match the amount or work required with the appropriate number of employees. Promotional opportunities is not one of the factor that must be considered when deciding whether a position is to be reverted.

The Union, of course, is right when it argues that the Postal Service has an obligation to assist employees who wish to upgrade. This obligation, however, need not be fulfilled in the way sought by the Union in this grievance.

The holding in this grievance, then, is that the Postal Service did not violate the National Agreement or its associated handbooks and manuals when it reverted a Level 5 Maintenance Mechanic position at the St Louis Bulk Mail Center in March, 1994.

Award

The grievance is denied.

Charles E. Krider
Arbitrator

February 24, 1995

Arbitrator Bosland E00T-4E-C 06021465

Page 6:

The Union did not challenge the adequacy of the reversion notice during the grievance process. Rather, the Union grieved the rationale (the "reasons therefore") for the reversion based on management's correct determination that it could contract out the cleaning functions of the BMC position but without any regard to the residual maintenance functions of the position.

Page 7:

It is well established that the Postal Service can revert a vacant position under Article 38, section4 but it cannot do so in an arbitrary or capricious way.

Here, the arbitrator finds that the decision to revert the BMC position was not justified as it was taken for a non-operational reason.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	GRIEVANT: Class Action
Between	USPS CASE No.: E00T-4E-C 06021465
UNITED STATES POSTAL SERVICE	APWU Case No.: 0502
and	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	

BEFORE: Carl C. Bosland **ARBITRATOR**

APPEARANCES:

For the U.S. Postal Service:	Nels W. Truelson, Labor Relations Specialist, USPS Western Area
For the Union:	Donald L. Foley, National Business Agent, APWU Maintenance Division
Place of Hearing:	Warrensburg, MO Post Office
Date of Hearing:	December 19, 2008
Date of Award	*January 8, 2009*
Relevant Contract Provisions:	Articles 3, 15, 19, 38, ASM 535.261
Contract Year:	2000-2006
Type of Grievance:	Contract

AWARD SUMMARY: The grievance is sustained. The Agency violated the National Agreement by reverting the Building Maintenance Custodial position at issue for non-operational reasons. The Agency is directed to rescind the reversion at issue, and to post the position in accordance with the National Agreement.

Date: January 8, 2009

Carl C. Bosland
Arbitrator

I. STATEMENT OF THE CASE

The instant grievance challenges the propriety of the Agency's decision to revert a Building Maintenance Custodial (BMC) position at the Warrensburg, Missouri Post Office.

The Arbitrator conducted the hearing of this matter on December 19, 2008, at the Warrensburg, Missouri Post Office. Both Management and the Union were given full opportunity to present evidence, examine and cross-examine witnesses, make arguments, and submit supporting arbitral decisional caselaw. The record closed at the conclusion of the hearing. In reaching the findings and award set forth herein, the Arbitrator has given full and careful consideration to the complete factual record, all arguments, any cited contractual provisions, and all case citations.

II. APPEARANCES AND CASE LAW

For the Union

Homer Wesley Stephens	Steward of Record/Local President

For Management

Robert Tapley	Manager, Field Maintenance Operations (Ret.)
Richard A. Hudson	Postmaster, Warrensburg, Missouri

The Union supported its position with seven arbitration decisions. The Agency supported its position with ten arbitration decisions.

III. ISSUE

The parties stipulated to the following statement of the issue:

> Did the Service violate the terms and conditions of the parties' collective bargaining agreement by reverting the vacant Building Maintenance Custodial position in Warrensburg, Missouri? And if so, what shall the remedy be?

IV. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The central facts are not in dispute. On October 26, 2005, the Agency notified the Union of its intention to revert the vacant Level 4 BMC position incident to the retirement of the incumbent FTR James Harmes. The Warrensburg Post Office is a level 21 Post Office of modest size, with approximately 8,858 square feet of interior space and 31,122 square feet of exterior space.

The BMC position performs all custodial and maintenance functions at a small facility such as the Warrensburg Post Office. The BMC Position Description identified the following duties and responsibilities:

1. Performs all custodial and maintenance functions at a small facility. Maintains custody of necessary equipment, tools, and supplies.

2. Performs a variety of routine maintenance service on building equipment, mail processing equipment, customer service equipment, and deliver service equipment. Performs designated letter box and Neighborhood Collection Delivery Box Unit maintenance and repair work performed at a small post office.

3. Makes minor carpentry, electrical, plumbing, and mechanical repairs such as: replacing fuses, fluorescent tubes and light bulbs, replacing faucet washers, opening clogged drains, cleaning and oiling hampers and replacing canvas, repairing postal furniture such as distribution cases, and preparing surplus equipment for shipment.

4. May assist higher level technician, directly or remotely, in executing simple tasks, including direct replacement of equipment elements per detailed instruction.

5. Operates simple heating, ventilation, and air conditioning systems and performs designated maintenance and repair operations of a routine nature.

6. Performs custodial duties such as but not limited to, cleaning and scrubbing floors, dusting furniture and fixtures, cleaning walls and windows, cleaning hardware and toilet fixtures, caring for lawns and shrubs, cleaning sidewalks and driveways.

7. In addition, may serve as a working leader to one or more Custodians and/or Cleaners engaged in general laboring and cleaning duties.

Prior to his retirement, Mr. Harmes performed the full range of BMC duties at the Warrensburg Post Office.

Pursuant to Article 38.4.A.3, the Agency timely posted a reversion notice advising of the action and the reasons therefore. The notice states:

> It has been determined that the custodial position voluntarily vacated by James Harms will be reverted.
>
> It is the intention of management to utilize a contract cleaner for the cleaning of the Warrensburg facility.

The Agency predicated its decision to revert based on the results of an ASM 565.261 contract cleaning services audit. Applying the requisite square footage formula the audit revealed that a contract for cleaning service was permissible. The Agency provided the Union with a copy of the October 14, 2005 cleaning services audit. The Agency subsequently engaged the services of a contract cleaner for the Warrensburg Post Office. Residual maintenance duties have been performed by Warrensburg clerks and carriers, as well as a Maintenance Technician from outside of the facility.

The parties stipulated that the notice of reversion satisfied all Article 38 and ASM 535.261 procedural requirements.

The Union timely grieved the reversion, and pursued the grievance through the contractual grievance-arbitration procedure to arbitration.

V. CONTENTIONS

A. Position of the Union

The grievance should be sustained. In violation of Article 38.4.A.2, the Agency failed to articulate legitimate reasons justifying the reversion of the BMC position at issue. The Agency based its reversion decision solely on satisfaction of the criteria for contracting out the custodial duties of the position without any consideration for the residual maintenance duties. It is undisputed that the Warrensburg BMC was responsible for the performance of both custodial and maintenance duties. The maintenance work previously performed by the BMC remained, and is being performed by other employees from outside the Maintenance Craft. The Agency failed to address the residual BMC maintenance work in its reversion notice. Nor did it address the issue

in response to the Union's grievance. While the Agency may be entitled to subcontract cleaning services under the provisions of ASM 535.261, this opportunity cannot in-and-of-itself be relied upon as the sole grounds for reversion of the BMC position because the job entitles more than just cleaning services. By its plain terms, ASM 535.261 is limited to the contracting of cleaning services only. It does not address non-custodial maintenance duties. Because ASM 535.261 is so limited it cannot serve as a legitimate justification for the reversion of the BMC position at issue. Absent a reasonable operational justification, the reversion of the Warrensburg BMC position must be judged to have been made arbitrarily or capriciously.

As a remedy, the Union demands that the BMC position at issue be reestablished and filled in accordance with the National Agreement.

B. Position of the Agency

The Union failed to establish that the Agency violated the National Agreement as alleged. Pursuant to the agreement of the parties at the national level, satisfaction of the objective criteria for contracting out cleaning services set forth in ASM 535.261 demonstrates that the Agency had a legitimate business reason to revert a BMC position in a small post office such as Warrensburg. The interior and exterior square footage of the impacted postal facility forms the objective criteria of ASM 535.261. The square footage criterion takes into account all custodial and maintenance duties performed at a small postal facility, not just cleaning duties. Logically, in a small office with one custodian, a decision to contract out cleaning services compels reversion of the entire position, including residual maintenance duties. By contracting out the cleaning services the residual maintenance work would not justify the continuation of a full-time position, further supporting management's decision to revert.

Here, the Union concedes that the Agency properly applied the criteria of ASM 535.261 to the Warrensburg Post Office. The BMC position was voluntarily vacated due to the retirement of the incumbent. The Union admits that the Agency accurately calculated the interior and exterior square footage of the Warrensburg Post Office. The Union does not contest that, applying the formula of ASM 535.261, the Warrensburg Post Office satisfied the criteria for contract cleaning services. The Agency elected to

contract out those services. There was, therefore, no longer any BMC work at the facility. Because there was no longer any BMC work, the Agency, in the exercise of its Article 3 rights, was justified in reverting the Warrensburg BMC position. Such justification was not arbitrary and capricious.

For all of the above reasons, the grievance should be denied.

VI. FINDINGS AND DECISION

The gravamen of this case is whether the Agency may properly revert a BMC position with maintenance and cleaning duties based on its correct determination that it was entitled to contract out the cleaning service duties of the position notwithstanding the existence of residual maintenance functions. Article 38.4 A.3 of the National Agreement permits reversion of a vacant Maintenance Craft assignment provided that the Agency timely posts a notice of the reversion that states "the reasons therefore." ASM 535.261 authorizes the Agency to contract out clearing services based solely on the results of a facility square footage formula. Where the criteria for contracting out is met and the Agency elects to contract out cleaning services, it must provide the Local with a copy of the square footage computations.

Here, the record evidence establishes that the Agency met the criteria to contract out cleaning services at the Warrensburg Post Office. The BMC position was vacated with the voluntary retirement of the incumbent. The Agency conducted the requisite square footage calculation and properly determined that cleaning services could be contracted out. The Agency provided the Local with a copy of the square footage calculations supporting its determination. The Agency also timely posted a notice of its reversion decision setting forth Management's intent to utilize a contract cleaner "for the cleaning of the Warrensburg facility." The Union did not challenge the adequacy of the reversion notice during the grievance process. Rather, the Union grieved the rationale (the "reasons therefore") for the reversion based on management's correct determination that it could contract out the cleaning functions of the BMC position but without any regard to the residual maintenance functions of the position.

It is well established that the Postal Service can revert a vacant position under Article 38, Section 4 but it cannot do so in an arbitrary or capricious way. *USPS and APWU (Longboat Key, FL)*, No. H98T-4H-C 01136437 (Miles, June 30, 2006); *USPS and APWU (St. Louis BMC)*, No. I90T-1I-C 94043671 (Krider, Feb. 24, 1995). Management must have sufficient operational justification to revert a position. *USPS and APWU (Kansas City, MO P&DC)*, No. I94T-4E-C 98028355 (Massey, Feb. 13, 2005); *USPS and APWU (St. Louis BMC)*, No. I90T-1I-C 94043671 (Krider, Feb. 24, 1995). Reversions based on non-operational reasons are not justified. See *USPS and APWU (St. Louis BMC)*, No. C7T-4Q-C 16630 (Martin, March 7, 1991)(budgetary rather than operational reasons insufficient to justify reversion).

Here, the arbitrator finds that decision to revert the BMC position was not justified as it was taken for a non-operational reason. Critically (and surprisingly), Warrensburg Postmaster Hudson testified that he reverted the BMC position based on his belief that reversion was mandated because his office satisfied the ASM 565.261 criteria for contracting out cleaning services. The postmaster's belief on this issue is unquestionably erroneous. The Subcontracting Cleaning Services MOU and ASM 535.261 clearly provide that the decision to revert is permissive, not mandatory, where, as here, the square footage criteria has been met. Notwithstanding the fact that the ASM 565.261 square footage criteria had been met, the postmaster could have elected to forgo using a contract cleaning service in favor of the employment of a career employee. Because he erroneously believed that he had no choice, the decision to revert was not, in fact, operationally justified. Stated differently, the decision to revert was arbitrary or capricious as it was based on the deciding official's erroneous understanding of the scope of his responsibilities rather than any actual operational consideration.

Having found in favor of the Union based on the testimony of what actually motivated the decision to revert, the arbitrator finds it unnecessary to reach the well-reasoned and articulated theoretical arguments advanced by both advocates regarding the interplay of the reversion requirements of Article 38 with the contracting out of cleaning services MOU involving vacated custodial positions with both maintenance and cleaning duties.

AWARD

The grievance is sustained. Management violated the National Agreement by reverting the BMC position at issue for non-operational reasons. Management is directed to rescind the reversion and to repost the BMC position at the Warrensburg Post Office in accordance with the National Agreement.

Arbitrator Strongin K00T-1K-C 04141974

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As the numerous case citations submitted by the Union demonstrate, there is ample arbitral support for the proposition that although the Service certainly maintains the right to revert or abolish unneeded positions, it does not have the unfettered right to revert a position upon the retirement of an employee and then to distribute what amounts to the full-time former duties of the retired employee to other employees.

Page 4:

Third, as already noted, it is undisputed that Smith was working full-time at the time of his retirement, which lends credence to the Service's contention during the earlier steps of the grievance procedure that the job was reverted not because it was unneeded as a practical matter or for operational purposes, but because it was no longer authorized in the staffing package.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	**GRIEVANT:** Class
between	**POST OFFICE:** Baltimore P&DC
UNITED STATES POSTAL SERVICE	
and	**USPS Case No.:** K00T-1K-C 04141974
AMERICAN POSTAL WORKERS UNION, AFL-CIO	**APWU Case No.:** BES0804

BEFORE: Andrew M. Strongin, Arbitrator

APPEARANCES:

For the U.S. Postal Service: James A. Carr, Labor Relations Specialist

For the Union: Douglas E. Sapp, Arbitration Advocate

Place of Hearing: 900 E. Fayette St., Baltimore, MD 21233

Date of Hearing: September 5, 2008

Date Record Closed: October 27, 2008

Date of Award: November 26, 2008

Relevant Contract Provision: Article 38

Contract Year: 2006

Type of Grievance: Contract: Reversion

Award Summary:

The grievance is sustained. The Service violated Article 38.4.A.3 by reverting a position upon the retirement of the incumbent, under circumstances where the record shows that the former duties continued to comprise a full-time position.

Andrew M. Strongin, Arbitrator

This grievance protests the Service's action in reverting the Carpenter PS-06 position, No. 4147656, which became vacant when the former incumbent, Ronnie W. Smith, retired effective December 30, 2003. The Union contends that the reversion violates Article 38.4.A.3 of the Agreement and asks that the position be posted and filled from the then-applicable Promotion Eligibility Register ("PER"), with the successful employee made whole for any losses.

The facts of this case are not in any dispute and may be summarized briefly. On June 13, 2001, the Service notified the Union that, pursuant to a staffing analysis, certain jobs including two carpenter positions were no longer authorized for the facility and would be abolished once vacated. Smith, who held one of those two carpenter positions, retired on December 30, 2003, at which time the Service reverted his position rather than to post it as vacant, citing the Maintenance Staffing Complement for the facility as a basis for its conclusion that the position could not be posted because it was not authorized. The parties stipulate that Smith was working full time until the date of his retirement and that Level 8 Building Equipment Mechanics and other maintenance personnel now are performing Smith's former duties. The Union contends that insofar as the work remains, the position should not have been reverted, whereas the Service contends that existing personnel are meeting the Service's operational needs without any demonstration of excessive overtime or subcontracting.

As the numerous case citations submitted by the Union demonstrate, there is ample arbitral support for the proposition that although the Service certainly maintains the right to revert or abolish unneeded positions, it does not have the unfettered right to revert a position upon the retirement of an employee and then to distribute what amounts to the full-time former duties of the retired employee to other employees, be they full time, part time, or subcontractors. *See,*

e.g., Case No. C7C-4Q-C 31257, Award at 25 (Goldstein, Arb. 1994) ("I find the preponderance of the evidence supports the Union argument that this job has merely been parceled among others, but the eight hour assignment still exists."); Case No. C4C-4H-C 4484, Award at 13 (Dobranski, Arb. 1988) ("The Union established through a preponderance of the evidence that the duties and responsibilities of the position which were filled for eight hours a day by the employee in that position before it reverted continued to be filled by different employees after the position was reverted.").

Here, the Union's consistent position, bolstered by evidence of his time records for the final two months of his employment and the Service's stipulation at hearing, is that Smith was working full time as a Carpenter PS-06 at the time of his retirement, and that following his retirement the Service reverted the job and distributed Smith's former full-time duties to other employees within the Maintenance Craft. It bears noting that there is neither evidence nor suggestion that Smith was anything other than a diligent employee who faithfully applied himself to his work, such that his full-time hours reflect full-time work.

Absent any claim that Smith's duties were less than full-time, the Service is left to contend only that it presaged the reversion of Smith's job with its 2001 announcement that, pursuant to a staffing analysis, the Carpenter positions were no longer authorized at the facility and would be abolished through attrition. There are several difficulties with the Service's position on this record. First, there is no evidence in this record as to the basis for the conclusion of the 2001 staffing analysis that the Carpenter positions should be abolished, under circumstances where the position remains a valid position under the National Agreement. True, the Union appears not to have grieved the 2001 staffing analysis, but that does not excuse the Service from justifying here its decision to abolish a job whose

incumbent, at the time of his retirement, was performing his duties on a full-time basis.

Second, regardless of the manner through which the Service reached its conclusion in the 2001 staffing analysis to abolish the Carpenter positions through attrition, the position was not vacated and then reverted until years later on December 30, 2003. Simply stated, there is no evidence that the reasons underlying the 2001 staffing analysis continued to adhere at the time of the reversion.

Third, as already noted, it is undisputed that Smith was working full-time at the time of his retirement, which lends credence to the Service's contention during the earlier steps of the grievance procedure that the job was reverted not because it was unneeded as a practical matter or for operational purposes, but because it was no longer authorized in the staffing package. *See*, letter from Maintenance Manager Wayne Griffith dated January 6, 2004 ("The reason for the reversion is that we are not authorized carpenters in the staffing package, under the guidelines of the work hour estimator."); Step 2 Decision dated September 30, 2004 ("Management's decision was based on the authorized staffing."); Step 3 Decision dated February 16, 2005 ("Based on the staffing complement the facility was not authorized the carpenter position."). Clearly, the Service's decision to revert Smith's Carpenter position principally if not purely was a financial one, apparently reached without regard to the full-time work performed by Smith up until the date of his retirement, and thereafter by other Maintenance Craft employees. The Service certainly has the right to maintain the efficiency of its operations, and the Arbitrator does not doubt that its reversion of Smith's position in this case was intended to promote efficiency, but the Service's discretion in the area of Management's Rights is limited by numerous provisions of the Agreement,

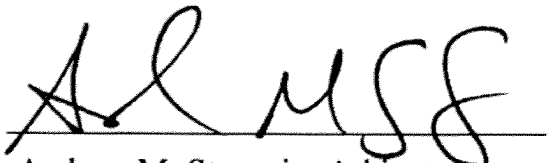
including Article 38.4.A.3, which arbitrators consistently have ruled does not permit the Service to gain efficiencies at the expense of filling needed positions.

It may be that the Service believes that Smith was performing duties better or more efficiently performed by employees in different recognized positions, but the Agreement does not permit the Service to pursue such a reclassification of duties by reverting Smith's full-time position and distributing his remaining full-time duties to other employees at the cost of a bargaining unit position.

Consistent with the foregoing, the Arbitrator is persuaded that the Service violated Article 38.4.A.3 when it reverted Smith's former position upon his retirement notwithstanding that his former duties continued to comprise a full-time position and were simply redistributed to other employees. As a remedy, the Service is directed to rescind the reversion and to post and fill the position from the then-applicable Promotion Eligibility Register, retroactive to the date of the wrongful reversion, with the successful employee made whole for his losses. The Arbitrator shall retain jurisdiction over the implementation of this remedy.

DECISION

The grievance is sustained. The reversion of Position No. 4147656 shall be rescinded. The position shall be posted and filled from the then-applicable Promotion Eligibility Register, retroactive to the date of the wrongful reversion, with the successful employee made whole for his losses. The Arbitrator shall retain jurisdiction over the implementation of the remedy.



Andrew M. Strongin, Arbitrator

Takoma Park, Maryland

Arbitrator Maclean E06T-1E-C 08376250

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Arbitrators have long held that a reversion cannot be arbitrary or capricious. Certainly, a decision to withhold could not be held to a lesser standard than a reversion, or as the Service apparently argues no standard at all.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	) Grievant: Class
between	) Post Office: Boise, ID
United States Postal Service	) Case No: E06T-1E-C08376250
and	)
American Postal Workers Union	

Before: Harry N. MacLean, Arbitrator

Appearances

For the Union: Jimmie Waldon, National Business Agent

For the Postal Service: Nancy Oman, Labor Relations Specialist

Place of Hearing: Boise, Idaho

Date of Hearing: August 12, 2009

Date of Award: October 4, 2009

Relevant Contractual Provisions: Article 37.4.A.2

AWARD SUMMARY

The grievance is sustained. The Service is directed to post ET the vacancy it had previously withheld and make the affected employees whole.

I. INTRODUCTION

This case was heard at the GMF in Boise, Idaho, on August 12, 2009. Both parties were given the opportunity to present oral and documentary evidence, and all witnesses testified under oath as

administered by the Arbitrator. Briefs were mailed on September 4, 2009.

The issues before the Arbitrator are: Was the grievance timely filed? Did the Postal Service violated Article 37.4.A.2 of the National Agreement when it notified the Union that it was withholding a vacant electronic technician vacancy? If so, what is the appropriate remedy?

II. FACTS

On June 11, 2008, electronic technician (ET) Keith Fedders vacated his position on tour 2. On July 2, 2008, the Service notified the Union that it intended to withhold the position until other employees completed the promotion eligibility requirements and were placed on the promotion eligibility register (PER).

On June 23, 2008, the parties signed an agreement extending the time limits to file a Step 1 appeals on four grievances, including the one at hand, to August 8, 2008. On August 5, 2008, maintenance craft director George Jonas sent a memo to the plant manager asking him to assign representatives to these four grievances. On August 8, 2008, the plant manger wrote a memo to Linda Cross, manager, maintenance support operations, directing her to meet with Jonas on these four grievances, specifically referencing the "filling of a vacant ET position." Cross and Jonas met on September 15 on all of these grievances. Action on the ET grievance was delayed in order for Jonas to obtain additional information. The parties met again on September 29, at which time Cross verbally denied the grievance. To this date,

14 months later, the ET position has not been posted or filled. No one has been placed on the promotion eligibility register.

At the time the vacancy arose, there were three ETs on the Preferred Assignment (PAR) list: Robert Langus, Brian Riggs and Don Merchant. Had the position been posted, Langus would have moved into the vacated position and Riggs would have moved into Langus' position. Merchant transferred out.

Linda Cross, manager of maintenance support operations, testified that she notified the Union that she was not going to post the position because they already had a vacancy on tour 3, which meant that there would not be enough ETs on tour 3 to keep the machinery running. There was no one on the PER, although several clerks were trying to update their qualifications in order to get placed on the register, which at the time she expected to happen within the next thirty days. Cross admitted that she has not proceeded down the "pecking order" to fill the vacancy.

III. ANALYSIS AND CONCLUSION

A. Arbitrability. The Service challenges the arbitrability of the grievance, stressing the fact that the Step 1 meeting was not held within the prescribed time limits. The extension signed by the parties on June 23, 2008, stated that the parties agreed to "extend the time limits on step 1 appeals through August 8 2008." Although Jonas filed a Step 1 grievance worksheet with the Service on August 5, Article 15.2 calls for a "discussion" of the grievance. The JCIM further supports the position that the first step must be verbal when it states that "Given the verbal nature of Step 1 discussion. . " The Service

argues that the submission of a Step 1 grievance outline cannot satisfy the requirement of Article 15.2 that there be a verbal discussion, and that therefore the grievance is untimely and must be dismissed. The Union argues that the filing of the outline satisfied the requirements for a Step 1 meeting. The Union also argues that the Service did not raise the timeliness issues on several other grievances that were filed at the same time.

The Service's position has substantial merit. Article 15.2 clearly contemplates that the first step of the grievance procedure be a verbal discussion between the employee and the employee's immediate supervisor. Under the usual circumstances, the failure of the employee or the Union to have a verbal discussion with the immediate supervisor within the 14-day time period, or in this case by August 8, would result in the grievance being held untimely. However, Article 15.2 Step 1(a) also provides that when a class action grievance is involved "Management will designate the appropriate employer representative responsible for handling such complaint." The record in this case indicates that on August 5 Jonas not only filed the grievance outline on August 5, within the extended time limits, but that on that same day he sent a memo to the plant manager asking that a management representative be assigned to this grievance. At this point, there were three days remaining in the extended time limit, and Jonas testified that he was available to meet with a management representative that day or in the following two days if one had been appointed. In fact, on August 8 the plant manager assigned Cross to "meet with George Jonas on a class action Step 1 grievance." The record does not indicate when Jonas was

notified of the appointment of Cross as management's designee. It seems clear to the Arbitrator that when the Union has asked for notification of the appointment of a management representative within the 14-day period, that the 14-day period cannot be considered to begin running until the Union is notified of the appointment of the representative. Any other conclusion would mean that the Service could defeat the timeliness of class action grievance by simply failing to appoint a representative or not appointing one until the last day of the 14-day time period.

Here, the Union sought appointment of a representative within the extended time period, and the representative was not appointed until August 8, the last day of the extension. Since it is not clear when the Union was notified of the appointment, the Arbitrator cannot conclude when the 14-day period began to run. Since the party challenging the arbitrability of the grievance bears the burden of proof, the challenge in this instance must fail.

B. Merits.

Article 37.4.A.2 states that:

> All vacant duty assignments shall be posted by notice of intent within 30 days from when vacancy occurs. If a duty assignment has not been posted within 30 days, the installation head or designee shall advise the Union in writing as to the reasons the duty assignment is being withheld.

There is no question that the Service complied with the notice requirements: it notified the Union within the 30-day period of its intent to withhold the position. The dispute arises over the decision to withhold. Cross testified that she was already one ET short on tour

3 and filling the position on tour 2 would result in tour 3 not having sufficient technical support to keep the machines running. In her notice of withholding, Cross gave as her reason:

> We do not currently have anyone on our ET register. We have several people currently in the process of updating for the ET register. They are pretty close to the completion of this process. We are going to allow them some more time to complete this process before we consider trying to fill these positions from the outside. (Emphasis added).

As grounds for its grievance, the Union points to the pecking order set out in the JCIM for filling maintenance positions This section is entitled: "ORDER FOR FILLING VACANT MAINTENANCE POSITIONS." It then states, "The following is the order for filling vacant maintenance positions." The order is (1) Ranking member on the PAR, (2) Unassigned regulars (3) Higher level qualified maintenance employees, (4) Ranking employee on the PER, (5) Maintenance employees requesting transfer, (6) Current career employees for return to maintenance craft, (7) Former postal career employees, (8) Entrance register eligibles in score order. There is no doubt that the Service did not post or fill the position according to this pecking order. The position is still vacant.

The Arbitrator does not find the Union's argument that the "pecking order" alone serves as a requirement that the Service fill a vacant or withheld position to be persuasive. On its face, the pecking order merely sets out the order in which the Service must fill the decision once it has decided to post it. It cannot easily be read as a requirement to actually post the position. If that had been the intent

of the parties, it could have been so stated either in the contract of the JCIM.

However, this finding does not resolve the issue. The Service apparently reads Article 37.4.A.2 to meant that it can permanently withhold a position from posting as long as it initially gives the Union notice and a reason in writing. In this instance, the position has been withheld for 14 months. If the Service were able to indefinitely withhold a position, that would in effect render the reversion provisions of Article 37.3.A.2. a nullity. Arbitrators have long held that a reversion cannot be arbitrary, capricious or discriminatory. Case No. C7C-4L-C 7959 (Goldstein, 1990). Case No. E98M-1E-C99276584 (Escamilla, 2002). Certainly, a decision to withhold could not be held to a lesser standard than a reversion, or as the Service apparently argues, to no standard at all. In fact, in a case supplied by the Service with its brief, Case No. J94T-1J-C99086645, Arbitrator Stallworth held that a decision to withhold could be sustained if the decision was temporary and if the position was ultimately filled within a "reasonable period of time." He also found that the Service must have "legitimate managerial reasons" for the withholding.

The withholding in this instance certainly fails to meet the first requirement: that it be for a reasonable period of time. Without a convincing explanation, fourteen months is not a reasonable period of time to withhold a position. The Service initially said that it was waiting for employees to update before it went "outside." Apparently, the employees did not update since no one made it on the PER. At that point, the "legitimate managerial reason" initially relied on by the Service evaporated. The Service should have then, by its own

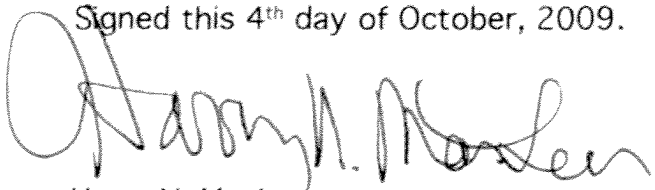
statement, gone "outside." Instead, it has left the position vacant for 14 months. Clearly, that is not a reasonable period of time, particularly when there is no stated legitimate managerial reason for not posting the position.

Accordingly, the Arbitrator will sustain the grievance and direct the Service to post the withheld ET position. The appropriate remedy is to award the affected employees out-of-schedule premium pay for the time period they should have been but were not in the new positions. Step 4 H4T-5F-c 2941 (1986); Case No. 194T-11-C 98035271 (Roumell, 1995). That time period begins to run 60 days after the notice of the decision not to post, since that would have been a reasonable time to resolve the situation.

IV. AWARD

The grievance is sustained. The Service is directed to post the ET position for bid. Further, the Service is directed to pay out-of-schedule premium pay to the two affected employees for a time period beginning 60 days after the notice of withholding until the positions are filled. The Arbitrator retains jurisdiction of the case for the sole purpose of resolving any jurisdictional disputes, should they arise.

Signed this 4th day of October, 2009.



Harry N. MacLean

Arbitrator Miles C00T-4C-C 06016446

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Furthermore, the Postal Service's reason was only that an AMP study was being done. This does not in my opinion, constitute an operational justification for failing to fill the position.

Regular Arbitration Panel

IN THE MATTER OF THE ARBITRATION	)	
	)	**GRIEVANT:** Class Action
BETWEEN	)	
	)	**POST OFFICE:** Beckley, WV
UNITED STATES POSTAL SERVICE	)	
	)	**CASE NO.:** C00T-4C-C 06016446
AND	)	
	)	**UNION NO.:** 2005088
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	
	)	

BEFORE: CHRISTOPHER E. MILES, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:	Robert Young, Labor Relations Specialist
For the Union:	William J. LaSalle, Jr., National Business Agent
Place of Hearing:	Beckley, West Virginia
Date of Hearing:	July 17, 2007
Date Record Closed:	July 20, 2007
Date of Award:	September 19, 2007
Relevant Contract Provisions:	Article 38
Contract Year:	2003-2006
Type of Grievance:	Contract

AWARD SUMMARY

The grievance filed herein is sustained to the extent that it is found that the Postal Service violated the provisions of Article 38, Section 4.A.2 of the Agreement by failing to fill the vacant ET #4 position at the Beckley Post Office. As the remedy, the Postal Service is directed to fill the position in question, which it has already agreed to do.

In addition, the case is remanded to the parties to determine if work opportunities were lost by the three ETs. The potential period of remedy for consideration would be from 14 days prior to the filing of this grievance (November 29, 2005) until the ET #4 position is filled. In this regard, the parties shall reduce the number of hours that the ET #4 position remained vacant by the number of overtime hours worked by the three ETs during the identified period of time. The parties shall meet within 90 days of the date of this Award for this purpose and advise the Arbitrator of their findings. The undersigned will retain jurisdiction of this case to resolve any issues concerning the appropriateness of the monetary remedy in conjunction with the implementation of this Award.

Christopher E. Miles, Esquire
Labor Arbitrator

I. BACKGROUND

The grievance considered herein was filed by the Beckley Area Local of the American Postal Workers Union (hereinafter referred to as the "union") on behalf of the Maintenance Craft employees of the United States Postal Service (hereinafter referred to as the "Postal Service") in Beckley, West Virginia. The Step 2 Grievance Appeal Form, dated November 30, 2005, sets forth the following "Detailed Statement of Facts/Contentions":

> Union contends, the grievant first became aware of the facts giving rise to this grievance on November 28, 2005. Union contends, the United States Postal Service (USPS) violated the Collective Bargaining Agreement (CBA) between the American Postal Workers Union (APWU) and the USPS. Union contends, the issue in this case is:
>
> On Nov. 16, 2005 the Union submitted a request for information to Postmaster Rick M. Campbell for any documents submitted to the Complement Committee at District Headquarters in Charleston, WV regarding the request to fill a vacant E.T. position at the Beckley Main Post Office in Beckley, WV. The request also asked for a statement in writing as to why this position is not being filled. On November 18, 2005 a request was submitted for any document giving the authorized complement for the Electronic Technicians. Neither request has been honored. The vacant E.T. position was lifted from withholding under Art. 12 on Dec. 2, 2004.

As the corrective action, the Union requested that the Postal Service:

> Provide the Union with the information requested. Fill the vacant position of Electronic Technician. Pay the three Electronic Technicians an hour for hour remedy at straight time rate for each hour the position has remained vacant since January 1, 2005.

Thereafter, the Union appealed the grievant to Step 3 for the following reasons:

> The Postmaster and Step #2 designee, Rick M. Campbell, was untimely in scheduling a step #2 meeting within 7 days of receiving the step #2 appeal form on November 30, 2005. This is a violation of Art. 15, Sec. 2.c of the National Agreement.
>
> The Union contends that management is in violation of Art. 38, Sec. 4.A.2 of the National Agreement by not undertaking to fill a vacant Electronic Technician position at the Beckley, WV Main Post Office or give the Beckley Area Local a reason, in writing, that the position is not being filled.

The parties discussed the grievance at Step 3 and by letter dated February 27, 2006, Gregory V. Williams, Labor Relations Specialist, issued the response of the Postal Service, as follows:

It is the Union's responsibility to establish that a contractual violation exists. The union has not met its burden of proof. Staffing determinations are a right afforded exclusively to management in accordance with Article 3 of the National Agreement. There is no contractual language that implies or requires management to adhere to staffing as cited by the union. Management has the exclusive right to direct employees in the performance of official duties, to hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to maintain the efficiency of the operations entrusted to it; and to determine the methods, means, and personnel by which such operations are to be conducted. There has been no showing that management failed to provide adequate maintenance, or preventive maintenance. The union's allegations are not supported by any substantive evidence, contractually or otherwise, and lack any merit. The remedy requested by the union is inappropriate. Accordingly this grievance is hereby denied.

Having been unable to resolve the grievance, the Union appealed the case to arbitration in accordance with the procedure set forth in the parties' collective bargaining agreement.[1] The undersigned was appointed to hear and decide the issue and a hearing was conducted in Beckley, West Virginia on July 17, 2007. At that time, the parties were afforded full opportunity to present testimony and evidence and to make arguments in support of their respective positions. There was no testimony given and after identifying numerous exhibits which were made part of the record, the parties summarized their positions in oral arguments. The record in this case was closed on July 20, 2007.

II. RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 38
MAINTENANCE CRAFT

...

Section 4. Posting

A. In the Maintenance Craft all vacant duty assignments shall be filled as follows:

...

2. All vacant duty assignments shall be posted by notice of intent within 30 days from when vacancy occurs. If a duty assignment has not been posted within 30 days, the installation head or designee shall advise the Union in writing as to the reasons the duty assignment is being withheld.

[1] Collective Bargaining Agreement Between American Postal Workers Union, AFL-CIO and U.S. Postal Service, November 21, 2003 – November 20, 2006 (hereinafter referred to as the "Agreement").

III. CONTENTIONS OF THE PARTIES

A. Union

The Union contends that the Postal Service violated the provisions of Article 38, Section 4.A.2 of the Agreement by not filling the ET #4 position at the Post Office in Beckley, West Virginia. According to the Union, there was a notice that there would be excessing from the Clarksburg Postal facility and the surrounding facilities would have to withhold residual vacancies to accommodate the excessed employees from Clarksburg. At the time, there were four ET's in Beckley and there became a vacancy when the employee holding the ET #2 position retired in March 2004. A notice of intent to fill the vacant position was posted and after the bidding process, the result was a residual vacancy of the ET occupational group in Beckley. Due to the domino effect, the residual vacancy was the ET #4 position, and it was withheld pending the excessing in Clarksburg. In September 2004, the excessed employee from Clarksburg bid to a residual vacancy in the Clarksburg facility and, according to the Union, the residual vacancy at the Beckley Post Office should no longer have been withheld. However, the excessed employee still showed up on the November 2004 report. The ET #4 position remained vacant because there was speculation about the anticipated implementation of an AMP study. In September 2005, the Union, the Union began to question why the ET #4 position as not being filled. In November 2005, official inquiries were made by the Union President as to why the position was not being filled and there was some communication indicating tat the position was not filled pending the anticipated AMP study. In February 2006, the Clarksburg office and others were completely withdrawing from the withholding provisions under Article 12.

The Union maintains that the Postal Service had to notify the Union if it intended to revert the ET #4 position but it did not do so. The Union further asserts that the Postal Service cannot now say that the position is being held because of an impending staffing study that will revert the position.

As the remedy in this case, the Union requests an hour for hour payment to the three ET's for the time the ET #4 position remained vacant.

B. Postal Service

The Postal Service contends that the only issue remaining in this case is the remedy. It asserts that the ET #4 position is going to be filled; however, during the period of time relevant to the grievance, there were no employees interested in bidding on the position, there were no eligible individuals on the in-service registers, and there were no employees who were on the e-

reassign. It maintains that the ET #4 position should have been abolished rather than withheld. On February 6, 2004, ET William Whitley was granted disability retirement. At that time, local Management posted a notice of intent. Since maintenance bidding is done all at once; i.e., a domino effect occurred and an individual took the ET #2 position that Mr. Whitley vacated which resulted in the ET #4 position becoming a residual vacancy. The Postal Service mistakenly withheld the position under Article 12 on March 31, 2004 but it should not have been because there was no identified impact at the ET-11 level. On October 2, 2004, the ET in Clarksburg, Mr. Gary Payne, was informed that he was being excessed to the Beckley office; however, due to attrition a vacancy was captured within the Clarksburg installation and Mr. Payne was not excessed and the ET #4 position remained vacant. Yet, the grievant was not filed until November 2005.

Thereafter, according to the Postal Service, the ET #4 position was not filled because AMP was to be implemented and the Union was fully aware of that. The Union requested a written explanation of why the ET #4 position was not being filled, and on November 29, 2005, local management responded that they were still waiting for AMP to be implemented. The ETs at the time did not want the ET #4 position and no one was on the promotion eligibility list or on the e-reassign who was eligible for the job. In this regard, the Postal Service points out that the three ETs at the Beckley Post Office were not harmed because they did not want the job and there is no way to know who would have been awarded the job.

The Postal Service maintains that based upon these circumstances, a monetary remedy is not appropriate. It requests that the grievance be denied in its entirety.

IV. DISCUSSION AND FINDINGS

The issue to be resolved in this case is whether the Postal Service violated the provisions of Article 38, Section 4. A.2, of the Agreement by not filling the vacant ET #4 position at the Post Office in Beckley, West Virginia. According to the record developed in this case, the problem which lead to the filing of the grievance began as far back as February 6, 2004 when ET Whitley vacated his position because he was granted a disability retirement. The vacant position was posted and the open bidding resulted in the position being filled but the ET #4 position was left unfilled. The ET #4 position was withheld due to the notification of excessing in the Clarksburg installation, albeit, as conceded by the Postal Service, the withholding of the ET position was improper since the excessed positions were not at the same skill level. Subsequently, the withholding was lifted and the ET #4 position was still not filled; however, because of the possible implementation of Area Mail Processing (AMP) consolidation, local

Management continued to hold the position rather than post it for bid. In this regard, the Postal Service questions why it should have filled the position if it would eventually be excessed with the implementation of AMP. According to the Postal Service, it is only recently that the AMP implementation was stopped and local Management decided it would fill the ET #4 position and it has agreed to do so. Therefore, the only issue remaining to be resolved is whether a monetary award is the appropriate remedy. The Union has requested an hour for hour payment to the three ETs at the Beckley Post Office for the time the ET #4 position has remained vacant. However, on the other hand, the Postal Service maintains that the Union has not established any harm to the ETs resulting from the failure to fill the ET #4 position. In addition, the Postal Service argues that if overtime was needed the remaining ETs would have worked the overtime.

As agreed by both parties, the original withholding of the ET #4 position in Beckley, West Virginia was improper. However, that was not grieved by the Union. As of March 16, 2005, withholding had ended for the position in question. The ET #4 position was no longer subject to withholding and it should have been posted for bid or reverted, according to Article 12. Article 38, Section 4.A.2 provides that all vacant duty assignments shall be posted by notice of intent within 30 days from when the vacancy occurred. "If a duty assignment has not been posted within 30 days, the installation head or designee shall advise the Union in writing as to the reasons the duty assignment is being withheld." This language is mandatory and after the withholding of the ET #4 position due to excessing was lifted neither was done. The vacancy was not posted and the Union was not advised in writing as to the reasons the position was being withheld.

Moreover, the reason for withholding the ET #4 position was changed midstream with no notice to the Union. The Postal Service claims that on November 29, 2006 the explanation for withholding the vacancy was provided to the Union. However, this explanation was provided in response to an information request from the Union which asked for an answer, in writing, as to why this position is not being filled. The explanation merely states "there is nothing in writing as to why the position is not filled. This job was withheld due to the AMP. There has still not been a decision concerning the AMP." An exhibit was introduced at the hearing which shows that there was a list of approximately 140 potential Area Mail Processing consolidation opportunities. However, the list was not generated for consideration until September of 2005. As noted above, the withholding for the position in question ended in March, almost six months before Beckley was considered for potential AMP consolidation opportunities.

It is recognized that there have been Step 4 settlements by the parties[2] which have resulted in the following language:

> 1. Normally, a duty assignment, once it has been posted for bid, will be filled consistent with 524.1 of the P-1 Handbook.
>
> 2. There may be, on occasion, exceptions wherein the Postal Service may leave vacant a duty assignment after it has been posted and no bids were received or there were no successful bidders. However, these exceptions must be operationally justified, and will be limited to changes such as those occurring through mechanization and technological changes, transportation changes, etc.

In this case, the possibility that Beckley may be included in an AMP consolidation did not occur until five to six months after the position should have been posted or reverted. Furthermore, the Postal Service's reason was only that an AMP study was being done. This does not, in my opinion, constitute an operational justification for failing to fill the position. Consequently, the Postal Service is found to be in violation of Article 38, Section 4.A.2 of the Agreement by failing to fill the vacant ET #4 position at the Beckley Post Office. As the remedy, the Postal Service is directed to fill the position in question, which it has already agreed to do. The Union has also requested an hour for hour payment to the three ETs for the time the ET #4 position remained vacant. The Postal Service claims that the three ETs were not harmed because they did not want the job and there is no way to know who would have been awarded the job. It is my opinion that the remedy requested by the Union may not be appropriate under these particular circumstances. Prior Arbitration decisions between the parties have pointed out that the purpose of a remedy is to restore the status quo ante and to compensate adversely affected employees for actual losses associated with the violation of the Agreement. Therefore, I am remanding the case to the parties to determine if work opportunities were lost by the three ETs. The potential period of remedy for consideration would be from 14 days prior to the filing of this grievance (November 29, 2005) until the ET #4 position is filled. In this regard, the parties shall reduce the number of hours that the ET #4 position remained vacant by the number of overtime hours worked by the three ETs during the identified period of time. The parties shall meet within 90 days of the date of this Award for this purpose and advise the Arbitrator of their findings. The undersigned will retain jurisdiction of this case to resolve any issues concerning the appropriateness of the monetary remedy in conjunction with the implementation of this Award.

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[2] Case No. H1C-NA-C 81, October 2, 1984 and Case No. H1C-4H-C 33466, March 22, 1985.

AWARD

The grievance filed herein is sustained to the extent that it is found that the Postal Service violated the provisions of Article 38, Section 4.A.2 of the Agreement by failing to fill the vacant ET #4 position at the Beckley Post Office. As the remedy, the Postal Service is directed to fill the position in question, which it has already agreed to do.

In addition, the case is remanded to the parties to determine if work opportunities were lost by the three ETs. The potential period of remedy for consideration would be from 14 days prior to the filing of this grievance (November 29, 2005) until the ET #4 position is filled. In this regard, the parties shall reduce the number of hours that the ET #4 position remained vacant by the number of overtime hours worked by the three ETs during the identified period of time. The parties shall meet within 90 days of the date of this Award for this purpose and advise the Arbitrator of their findings. The undersigned will retain jurisdiction of this case to resolve any issues concerning the appropriateness of the monetary remedy in conjunction with the implementation of this Award.

Christopher E. Miles, Esquire
Labor Arbitrator

September 19, 2007

Arbitrator Miles C90T-1C-C 95056373

Page 13:

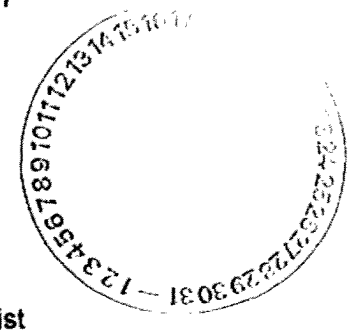
However the grievance filed in this matter also protests the failure to fill residual vacancies at the Youngstown plant.

Page 14:

In this case, other than budget which was alluded to in the Feb. 17, 1994 letter concerning the Maintenance staffing package, no operational justification was advanced for failure to fill the residual vacancies in question.

Regular Arbitration Panel

IN THE MATTER OF THE ARBITRATION	)	**GRIEVANT**: Class Action
BETWEEN	)	**POST OFFICE**: Youngstown, Ohio
UNITED STATES POSTAL SERVICE	)	**CASE NO.**: C90T-1C-C 95056373
AND	)	**UNION NO.**: M3C407
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	



BEFORE: CHRISTOPHER E. MILES, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:	Christopher L. Beebe, Labor Relations Specialist
For the Union:	Donald L. Foley, National Business Agent
Place of Hearing:	Youngstown, Ohio
Date of Hearing:	January 28 2005
Date Record Closed:	February 28, 2005
Date of Award:	May 9, 2005
Relevant Contract Provisions:	Article 19
Contract Year:	1994-1998
Type of Grievance:	Contract

AWARD SUMMARY

The class action grievance filed in this matter is denied in part and sustained in part. With respect to the claim set forth in the grievance that the Postal Service failed to fill the "authorized" Maintenance Craft positions at the Main Post Office in Youngstown, Ohio to the maximum staffing level arrived at by application of the MMO-21-91, the grievance is denied. It is found that the authorized staffing complement is not a mandatory number, but a maximum number, and, in this regard, Article 3 of the Agreement reserves in Management the right to staff the facility.

The grievance also protests the failure of the Postal Service to fill three vacant MPE positions. In this regard, it is found that the Postal Service violated the Agreement when it failed to fill the three vacant MPE positions. As for the remedy, the Postal Service is directed to fill the three positions in question and the case is remanded to the parties to determine if work opportunities were lost and by whom; i.e., to determine who may have been adversely affected by the failure to fill the three residual MPE vacancies. The parties shall meet within 90 days of the date of this Award and inform the Arbitrator of their findings. The Arbitrator will retain jurisdiction of this case to determine the appropriateness of any monetary remedy in conjunction with the implementation of this Award.

Christopher E. Miles, Esquire
Labor Arbitrator

I. BACKGROUND

The grievance considered herein was filed by the Youngstown Area Local of the American Postal Workers Union (hereinafter referred to as the "Union") on behalf of the Maintenance Craft employees of the United States Postal Service (hereinafter referred to as the "Postal Service") at the Main Post Office located in Youngstown, Ohio. The Step 2 Grievance Appeal Form dated January 6, 1995, sets forth the "Detailed Statement of Facts/Contentions," as follows:

> The employer is not staffing in accordance with approved staffing requirements. Staffing requires an additional eight (8) employees (including three [3] residual MPE-07 vacancies).

As the Corrective Action, the Union requested that:

> The employer shall staff in accordance with the approved staffing package. Positions shall be filled within a reasonable amount of time. The ODL shall be compensated at the appropriate rate for all vacant hours. The grievant shall be made whole in all aspects.

The parties met and discussed the grievance at Step 2 in accordance with the procedure contained in their collective bargaining Agreement.[1] By letter dated May 18, 1995, R.C. Harris, Step 2 Designee, responded for the Postal Service by stating that:

> We conducted our first Step 2 meeting, on this grievance, January 25, 1995. After several extensions, I denied the grievance March 14, 1995. You contend that management is not staffing in accordance with approved staffing requirements. Although our staffing requirements have been identified as being 63 employees, as per an Allegheny Area letter of February 17, 1994 (and amended to 62 employees in an Area letter, of December 22, 1994), we are prevented from staffing at this level due to an Area-driven adjusted complement ceiling (currently 58). The MMO-21-91, which is the criteria to arrive at the work hour requirements, recognizes the results as only a "Recommended Complement", and nowhere states that the bottom line position count is mandatory.

The Union filed the following Corrections and Additions to the Step 2 Decision:

> 1. The "Recommended Complement" in itself is not in dispute.
>
> 2. When approved by the officials, the "Recommended Complement" as indicated in Section 1-A of MMO-21-91, (Craft Position Recommendations), will become the authorized complement for this facility.

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[1] Collective Bargaining Agreement between American Postal Workers Union, AFL-CIO and United States Postal Service, effective November 21, 1994 through November 20, 1998 (hereinafter referred to as the "Agreement").

3. This installation is shy eight APPROVED craft positions.
   A. Three additional positions in LDC-36, ETs, MPEs, or LBMs.
   B. Three MPE-07 residual vacancies have not been filled.
   C. One additional position in LDC-37; BEM or Area Maintenance.
   D. One additional position in LDC-38; Maintenance Control (or Tool/Parts)

4. The Allegheny Area letter of December 22, 1994 was requested during the Step 2 meeting. The employer failed to produce this document.

5. The Area-driven complement ceiling level (employee compliment cap) was requested on numerous occasions, but the employer continuously failed to produce this document.

6. The employer has capriciously delayed the time limits of the grievance procedure.

7. Staffing was approved on February 17, 1994. All affected employees shall be compensated retroactively, including interest.

Thereafter, the Union appealed the case to Step 3 and the parties discussed the grievance at Step 3. By letter dated August 25, 1995, Mr. Thomas J. Scola, Labor Relations Specialist, denied the grievance, as follows:

> The grievance alleges that Management violated the National Agreement when management did not staff in accordance with the approved staffing requirements. It is Management's position that MMO-21-91 is a Management Publication that outlines the methodology to be used in determining work hour requirements for a facility and is used as a guide in establishing the recommended complement. There is nothing in that MMO that states that management must hire up to that recommended complement or otherwise limits management's rights under Article 3 of the National Agreement. Accordingly, the grievance is denied.

Having been unable to resolve the grievance, the Union appealed the case to arbitration and the undersigned was appointed to hear and decide the issue. A hearing was conducted in Youngstown, Ohio, on January 28, 2005 at which time the parties were afforded full opportunity to present testimony and evidence, to cross-examine the witnesses, all of whom were sworn, and to make arguments in support of their respective positions. Upon receipt and exchange of the parties' post hearing briefs on February 28, 2005, the record in this case was closed.

II. SUMMARY OF THE TESTIMONY AND EVIDENCE

Ms. Denise Collingwood testified that she has been employed by the Postal Service for 20 years, having started as an LSM Clerk, moved to Maintenance in 1990 as a Maintenance Control Technician, and has been on detail to a higher level for the last four years. She was the

Maintenance Craft Director from 1992 through 1999. She confirmed that she is the Steward of Record on the case and she explained the reason for filing the grievance. Ms. Collingwood made reference to several requests for the Maintenance Staffing package that she submitted to Mr. Richard Harris and she acknowledged that she eventually received the requested information. She identified the document showing the Maintenance staffing at the Youngstown facility from January 29, 1994 through May 26, 1995 and pointed out that there were vacant MPE positions during this period of time.

Mr. Randall Tharp testified that he has been employed by the Postal Service for 17 years. He started as a Mail Processing Mechanic and has been in supervisory positions since the early 1990's. He stated that he has heard grievances at Step 1 and Step 2 and recalled that Rick Craft was the Maintenance Manager in 1999.

Mr. John Theurer testified that he has been employed by the Postal Service for 32 years. He started as a Mail Processing Maintenance Mechanic, he moved up through the ranks to Maintenance management in 1982, and currently holds a staff position at the Area level. Mr. Theurer made reference to the MMO-21-91, which he noted is obsolete, and he noted that there have been MMO's published prior to and since the MMO-21-91. He emphasized that the MMO is a Maintenance Staffing Guide with estimates and recommendations. In this regard, he asserted that he completed over a thousand staffing packages using the MMO-21-91. He explained that once a staffing package is completed for the facility, the local Management must make a request for approval through the higher levels. He indicated that the 1994 staffing package for the Youngstown facility would have been submitted to the Area level for approval. According to Mr. Theurer, he and Elvin Kelson were the only two individuals validating the Maintenance Staffing packages at the Area level at the time the Youngstown staffing package was submitted. He made reference to the letter from the Area Manager to John Upthegrove, Plant Manager at the Youngstown Post Office, and pointed out that the word "requirements" referred to the maximum number that were approved and that any additional employees would require a new justification. He stated that the figures submitted by the local Management are reviewed at the Area level and "validated" rather than just blindly approving them. Mr. Theurer claimed that the numbers in the majority of staffing packages are usually on the high side. He suggested that the actual needs of the facility are likely less than what is requested. In this regard, he also noted that all of the machines are not running all the time.

Mr. Theurer explained the positions occupied by the various labor distribution codes (LDC) and stated that the Maintenance codes fall between 35 and 39; i.e., LDC 35 is for

supervision in Maintenance, LDC 36 is MPE's and ET's, LDC 37 is BEM's and Maintenance Mechanics, LDC 38 is custodial, and LDC 39 is Maintenance Operations Support.

On cross-examination, Mr. Theurer stated that there has always been an approval process for the Maintenance Staffing packages. He acknowledged that the local Management completes the inventory of equipment and calculates the maintenance hours relative to the particular machine and at the Area level the numbers are reviewed for accuracy. He confirmed that all bargaining unit positions in the Maintenance Craft are full time, except for some part time custodial positions. In this regard, he stated that hours cannot be taken away from the full time employees; however, he emphasized that a particular employee may not always be working full time on the particular machine that has been assigned to him. Mr. Theurer stated that a *validated staffing package is only changed if there is sufficient change* in the workload.

According to Mr. Theurer, the bulk of the maintenance work is done on Tour 2 because that is the time when the machines are not running since Tour 3 is the operational tour when the mail is running and also Tour 1 to a lesser extent. However, he indicated that there is maintenance work done on all tours. Mr. Theurer concluded his testimony by stating that the numbers of Maintenance employees validated in a staffing package have always referred to the maximum number of employees permitted to be hired and has never been mandatory.

III. RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 19
HANDBOOKS AND MANUALS

IV. CONTENTIONS OF THE PARTIES

A. Union

The Union contends that the Postal Service violated the Agreement by failing to fill the Maintenance Craft positions at the Postal facility located in Youngstown, Ohio. The Union asserts that the Postal Service failed to properly staff the Maintenance Craft complement which was short by eight positions; i.e., three authorized, but unfilled additional positions in LDC 36, three vacant MPE-07 positions, one authorized but unfilled additional position in LDC 37 and one authorized but unfilled additional position in LDC 39. It emphasizes that the additional positions were authorized by the February 17, 1994 Staffing Package and the three vacant MPE-07 positions were already existing vacancies in the maintenance compliment.

The Union points out that the local Maintenance management processed a staffing package consistent with the MMO-21-91 and submitted it to the Allegheny Area office. However, even though the Allegheny Area office approved the staffing package and without citing any contractual authority for doing so, the Allegheny Area office explicitly refused permission to the Youngstown facility to fill positions up to the approved complement levels by citing a complement "ceiling." The Union submits that the Youngstown Plant Manager, by letter to Ms. Sheehan, plead for additional positions in order to meet its operational needs and in order to perform required maintenance work. Yet, the Youngstown facility was never permitted to fill the positions authorized for its maintenance complement which imposed on the understaffed workforce the burden of having to work without adequate manpower.

The Union points out that the fundamental basis for computing the staffing for Maintenance positions; i.e., sizes and characteristics of buildings and grounds, and inventories of plant and Postal equipment, changes slowly. This is unlike the staffing for Clerk and Mail Handler positions, which require a considerable flexibility due to the fluctuations in the mail volume. According to the Union, once a Maintenance staffing has been set, it remains essentially unchanged unless and until another staffing survey has been conducted on the basis of building or equipment changes. In addition, it maintains that once the staffing complement has been computed, it must be viewed as the level of staffing necessary for the maintenance requirements of the office to which it applies. In this case, the staffing computations submitted by local Management resulted in an approved complement of 24 postal equipment maintenance positions (LDC 38) which was an increase of three positions over the previous authorization. The staffing computations also resulted in an increase of one position for plant equipment maintenance (LDC 37) and one position for maintenance support (LDC 39). This brought the authorized staffing complement at the Youngstown facility to 36 positions in all areas of maintenance staffing other than custodial. Yet, the weekly work schedules provide evidence that the actual staffing at the Youngstown facility accounted for 31 positions.

According to the Union, the Postal Service took no steps to fill the five vacant positions. In addition, it asserts that the Postal Service failed to staff to the prior approved complement of 31 positions since there has persistently been three vacant MPE positions. It submits that the only excuses offered by the Postal Service for failing to fill the newly authorized, additional five positions were due to the Area level imposition of a ceiling. However, the Union argues that the terms of the ASM establish that the Postal Service requires compliance with the terms of its own published documents; i.e., the MMO-21-91 which is incorporated into the Agreement by Article

19. Also, the Union notes that the Postal Service made no attempt to mitigate its failure to fill the previously existing MPE positions.

The Union rejects the Postal Service argument that the published regulations are merely guidelines. It contends that the Postal Service cannot be permitted to publish and promulgate regulations affecting wages, hours and working conditions and then claim that such documents have no enforceable effect. Additionally, the Union submits that the Postal Service has abused its discretion to avoid the consequences of its nationally established staffing criteria by imposing artificial budgetary complement ceilings on the Maintenance complement.

In support of its arguments, the Union relies upon numerous prior Arbitration Awards. Based on the above, the Union requests that the Postal Service be directed to fill all unfilled positions established by the Maintenance staffing authorized by the standards of the MMO-21-91 and that the Maintenance bargaining unit members be compensated in an amount equivalent to the work hours associated with those positions.

B. Postal Service

The Postal Service contends that the Union has failed to prove there was a violation in this case. According to the Postal Service, Management is not obligated to staff up to the level determined through the MMO because the MMO is neither a handbook nor a manual or a regulation. The Postal Service rejects the Union's introduction of the ASM. Even though the ASM makes reference to MMO's, the Postal Service maintains that the MMO's are not contractually binding on the parties. It points out that Article 19 refers to "handbooks, manuals, and published regulations" but does not say that every document referred to in handbooks, manuals, and published regulations are contractually binding. The Postal Service asserts that the intention of the MMO is to guide maintenance managers in estimating staffing levels.

The Postal Service maintains that the wording of the MMO does not support the conclusion that it is a "regulation" under the intent of Article 19. It calls attention to the repetitive use of permissive and approximate words rather than mandatory or exact words. The MMO is referred to on the cover page and as well as within the first three pages as a "guide" to "estimate" staffing and the table of contents uses the words "guidelines" and "recommendations." The Postal Service argues that the word "authorized" in the MMO does not mean "required." It points to the provisions of Article 15 which gives the parties' representatives "authority" to settle grievances at each stage of the process. In this regard, it submits that each representative is authorized to the settle the grievance but is not required to do so. Furthermore, the Postal Service points out that on the Approvals page of the MMO it indicates

that "implementation may be taken" and it does not say "must" be taken. According to the Postal Service, these permissive words make it clear that staffing is allowed to the validated levels, but is not required. In support of this position, the Postal Service notes the testimony of Mr. Theurer that the validated levels represent maximum staffing levels and it relies upon several prior Arbitration Awards in which it was determined that the staffing levels as determined by the MMO are maximum levels.

Finally, the Postal Service asserts that there are stark contrasts between the issues of custodial staffing as mandated by the MS-47 and the mechanical/technical staffing as recommended by the MMO. The MS-47 is clearly a handbook while the MMO is not a handbook. The MS-47 provides a requirement while the MMO does not. According to the Postal Service, while the custodial staffing can be determined with a relative high degree of precision to allow enforcement of the staffing level, similar circumstances does not prevail in the mechanical maintenance crafts. The Postal Service emphasizes that when mail volume is high, machinery operation increases in both frequency and duration; however, when mail volumes are lower, machines are not run as often or as long. Therefore, in accordance with the provisions of Article 3, the decision to staff to the levels indicated by the MMO belongs to the Postal Service.

Based upon the foregoing reasons, the Postal Service requests that the grievance be denied. Yet, recognizing that the Arbitrator may rule in favor of the Union, the Postal Service asks that no monetary remedy be ordered. It points out that there has been no demonstration of harm in this case; i.e., no evidence that the necessary work was not accomplished and no evidence that the employees who accomplished the work were not appropriately paid. In this regard, it submits that an Award as requested by the Union is unwarranted and would represent an inappropriate windfall.

V. DISCUSSION AND FINDINGS

The local Management in charge of Maintenance at the Main Post Office in Youngstown, Ohio performed a staffing survey in accordance with MMO-21-91. The process began in late 1992 and after revisions were made to the package it was completed on April 23, 1993. The staffing package was submitted to the Allegheny Area Office and by letter dated February 17, 1994 the Youngstown Plant Manager was informed that:

> As a result of a review of your submitted Maintenance Staffing package, the following have been identified as your staffing requirements:

	PRESENT	CHANGE	NEW APPROVAL
LDC 35	6	0	6
LDC 36	21	+3	24
LDC 37	7	+1	8
LDC 38	21	0	21
LDC 39	3	+1	4
TOTALS	58	+5	63

The Plant Manager was further advised that:

> ... although validated, YOU MAY NOT staff to these levels at this time. Presently your maintenance complement must remain at the last adjusted ceiling number you were given as of February 8, 1994.
>
> If you have a critical need at this time you must submit a request with the proper justification. You will be notified as to when your ceiling may be adjusted to reflect the approved increases. Even then, there may not be sufficient work hours in your FY 94 budget to support the increases. No additional work hours, specific to those increases, will be approved by the Area Office. A local plan is required to phase in those changes and accommodate the work hour requirement.

The issue presented for resolution in this case is whether the Postal Service violated the provisions of the Agreement by failing to fill the "authorized" Maintenance Craft positions (excluding Custodial positions) approved by the Area Office, including three (3) residual MPE-07 vacancies.

According to the Union, the Postal Service violated the provisions of the Agreement by failing to fulfill its staffing obligations in accordance with the general terms of the Administrative Support Manual (ASM) and the staffing methodology articulated in MMO-21-91. In this regard, the Union asserts that the approved staffing complement was for 63 Maintenance Craft positions (not including Custodial Maintenance) and the Postal Service was short by eight positions. The Union emphasizes that because the MMO's pertain to wages, hours or working conditions, the ASM explicitly incorporates MMO's through the provisions of Article 19 of the Agreement. In addition, the Union stresses that the ASM requires compliance with the terms of the MMO's and it maintains that the regulations are not merely unenforceable guidelines as claimed by the Postal Service. The Union calls attention to the language set forth in Section 1-A of MMO-21-91, which states that, "when approved by the officials indicated below, the "Recommended Complement,". . ."will become the authorized complement for this facility." Therefore, according to the Union, the Postal Service becomes obligated to fill the positions

identified as necessary by the approval of the calculated figures. The Union also submits that the imposition of the staffing ceiling by the Area level was arbitrary and capricious. It points out that there is nothing in the provisions of MMO-21-91 that anticipates the imposition of budgetary constraints on legitimate maintenance staffing needs.

It is the Union's position that the Postal Service is obligated to fill the authorized positions established by the staffing package in question. In support of its argument, the Union relies upon the Award of Arbitrator James P. Martin,[2] who found that:

> . . . it is quite clear that Management is obligated to comply with the Staffing Requirements of, initially, MS47 and as an extension of that in Regional Arbitrations, MMO-21-91. The Staffing Package, by its own terms on the Approval Form, states that the recommended complement will become the authorized complement. Effective with the receipt of July 7th approval, local Management was obligated to post and fill the positions in the authorized complement. Regardless of whether the revised Staffing Package was valid, Management was under an obligation between shortly after July 7, 1994, and December 28, 1994, to fill the positions set out in the July 7th Staffing Package.

In another case, Arbitrator Fred Blackwell[3] indicated that:

> The authorizations made under Maintenance Management Order (MMO) 21-91 are likewise binding on the Postal Service and the Management suggestion that the MMO 21-91 is distinguishable from the MS-47 Handbook's, and that the MMO 21-91 is not binding on the Postal Service, is not persuasive and is therefore rejected. More specifically, although the Management may have some discretion in respect to MMO 21-91 staffing surveys, there is nothing evident in the confronting record to indicate that such discretion, in some way, relieved the Postal Service of its obligation to comply with the staff survey authorizations or otherwise negates the herein grievance in whole or in part.

Arbitrator Edwin H. Benn[4] also stated that:

> Echoing the language in the MMO-21-91, the Staffing Approval Sheet of the Maintenance Staffing Package states that "When approved by the officials indicated below, the 'Recommended Complement,' as indicated in Sections 1-A and 1-B, will become the authorized complement for this facility." The MSC Manager/Postmaster approved the Staffing Package on July 28, 1992. The General Manager/Postmaster of the Kansas City Division approved the Staffing Package on September 16, 1992. Based upon the above, when Management approved the staffing levels and then failed to staff the positions in accord with the Staffing Package, Management violated the Agreement.

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[2] USPS and APWU, Case No. I90T-1I-C 95061984, August 29, 2000.
[3] USPS and APWU, Case No. C90T-1C-C 95006449, January 11, 1997.
[4] USPS and APWU, Case No. I90T-1I-C 93036556, May 20, 1995.

The Postal Service submitted Awards which, contrary to the decisions cited by the Union, found that the MMO-21-91 did not provide for mandatory staffing standards. For example, Arbitrator Kenneth M. McCaffree[5] found that the MMO-21-91 guidelines were not mandatory as are the MS-47 guidelines for janitorial staffing. He explained by stating that:

> Per the Gamser award and under the MS-47 for janitorial staffing, units of work can be readily identified and the amount of labor required to maintain a minimum level of cleanliness determined by time and motion studies and related engineering techniques. Under these circumstances the staffing level can be determined with a relatively high degree of precision which allows for an enforcement of the staffing level once determined.
>
> However, similar circumstances do not prevail for the mechanical maintenance crafts since the unit of work depends, in part upon the uncertain and non specific repair needs of equipment, the time required to obtain needed replacement parts, other non specific time related tasks and factors cited above by the Employer that differentiate the two situations. Units of work are difficult to define and the amount of labor required uncertain for identified tasks as well among the mechanical crafts. These latter circumstances in contrast to the systematic staffing standards of the janitorial service make mandatory standards less enforceable among the mechanical maintenance craft other than for general guidelines and for general needs. . . .
>
> In summary, I concluded that the staffing level of mail processing equipment mechanics was not mandatory in terms of the MMO-21-91 guidelines. Further, I concluded that the Employer acted reasonably, and upon the record in the arbitration, in a timely manner, in attempting to fill the MPE 6 position in the Spring and Summer, 1992. The Employer did not violate the Agreement.

In determining that the provisions of the MMO's were not mandatory, Arbitrator Linda DiLeone Klein[6] pointed out that:

> The MMO 28-97 was issued on June 2, 1997 and it superseded two prior MMOs. The first paragraph of the document states that "this MMO provides guidelines to be used to estimate workhours in each functional area". The terminology "guidelines" appears in other portions of the MMO as well. The document also refers to "estimated maintenance workhours" and "the maintenance workhour estimating package". While it is true that "all mechanized offices must estimate maintenance workhours by using the attached guide", there is no provision which changes the "guidelines" to mandates/requirements.

[5] USPS and APWU, Case No. W0T-5F-C 11531, April 24, 1998.
[6] USPS and APWU, *Case No. C98T-1C-C 99120197, December 10, 2004.*

Arbitrator Klein made reference to a Step 4 settlement (Case Q98C-4Q-C 00027688) in which it was stated that "the work hours represented in the MMOs reflect the maximum number of hours necessary to maintain the equipment given varying local conditions and are used to approximate staffing". In this regard, she went on to point out that:

> These settlements support the position of Management that the MMO is a guideline or a tool utilized to staff the maintenance department based upon the equipment in a facility, the type of work to be performed, the frequency of performance and the man hours needed to maintain that facility, etc. The settlements support the conclusion that a variety of factors are considered when staffing the maintenance department. Additionally, there are variables which may impact Management's decision to utilize, or not to utilize, the "maximum number of hours" allotted for maintaining the equipment.

Arbitrator Klein also noted that Article 3 gives Management the right to staff the facility and indicated that "there is no rule requiring that a specific number of employees occupy a certain Maintenance position or that the number of employees proposed as a result of a survey must remain constant."

In yet another case relied upon by the Postal Service, Arbitrator D. Andrew Winston[7] found that the authorized complement represents a "ceiling" or the "maximum" permitted skill levels and staffing in light of certain estimates given all of the pertaining conditions. He ruled that:

> The Service is not contractually obligated to fully staff the maintenance crew at the Cheyenne P&DC according to the maximum expressed in the Maintenance Staffing Guide. Rather, pursuant to its exclusive right under Article 3, the Service is free to exercise its discretion in staffing the maintenance crew at the Cheyenne P&DC within the boundaries of the approved Maintenance Staffing Guide, meaning that the Service can staff below or up to the maximum authorized complement. In the absence of the requisite approval under the ASM, the Service cannot, however, exceed the authorized complement.
>
> It makes no difference whether or not the MMO-21-91 is part of the National Agreement. Assuming, *arguendo*, that the MMO-21-91 is an Article 19 handbook, an issue I am not empowered to decide, the Union's contention would fare no better. The MMO 21-91 is still but a guideline built upon estimates declaring a maximum authorization. It is neither a command nor a directive or a mandate. The Service still retains its exclusive right under Article 3 to staff the maintenance crew at the Cheyenne P&DC according to the needs of the Service within the confines of the MMO 21-91.

[7] USPS and APWU, Case No. E94T-1E-C 99032052, September 3, 2003.

Finally, Arbitrator Randall M. Kelly[8] stated that:

> The Union theory of this case is that management is required to perform preventative maintenance on equipment; that failure to do so violates the national management instructions contained in MMO 28-97 and because that failure is caused by understaffing, local management must add to its maintenance staffing. According to the Union, MMO 28-97 gives annual work hours by machine for preventive maintenance, which in turn defines the staffing package for the facility.
>
> The Service agrees that it should perform preventative maintenance on its equipment, but that it is not required to do any certain amount of preventative maintenance. Rather, whether it chooses to perform particular preventative maintenance or not is within its management discretion under Article 3 of the National Agreement. Indeed, the Service argued that this is a Union attempt to impinge on its basic management rights, rights guaranteed under the contract.
>
> Based on the fact that MMO 28-97 is a management guideline only and that is apparently not included within the terms of Article 19, I must agree with the Service that it is not required to follow the staffing and PM "guides" contained in MMO 28-97.

After review and consideration of the particular circumstances surrounding this matter, including the many arbitration decisions relied upon by the parties, it is my opinion that the process established by the MMO-21-91 to estimate staffing for Maintenance positions (other than custodians) does not result in a mandatory staffing requirement. Per the Step 4 Settlement dated March 23, 2000,[9] the work hours arrived at by application of the MMO's "reflect the maximum number of hours to maintain equipment given varying local conditions." In my opinion, consistent with that of Arbitrator Klein, no provision in the MMO-21-91 changes the guidelines used to estimate maintenance work hours to a mandate or requirement. Although the "Approvals" section for the MMO-21-91 states that "when approved by the officials indicated below, the 'Recommended Complement' ... will become the authorized complement for this facility"; the same provision goes on to state that "appropriate action for implementation may be taken" (underlining supplied). In a case cited by the Union, Arbitrator George T. Roumell, Jr.[10] makes reference to another decision by Arbitrator Klein (J90T-1J-C 95031982) wherein she states that:

> Pursuant to the MMO 21-91, "when the survey package is received ... appropriate action for implementation may be taken". This permissive language suggests that Management has the right to consider its operational needs when adding to the employee complement. It is also

[8] USPS and APWU, Case No. B98T-1B-C 01012635, August 11, 2002.
[9] For Case No. Q98-4Q-L 00027688, et al. signed by Messrs. Valenti and Donelson.
[10] USPS and APWU, Case Nos. I94T-1I-C 98035271 and I94T-1I-C 98035273, March 12, 2004.

> apparent from this language that there is no requirement to fill the newly authorized positions immediately. Furthermore, Article 38.4.A.1 refers to "when a ... newly established duty assignment is to be filled ..."; this suggests that Management makes the determine regarding "when" to implement the posting procedures.

Therefore, in accordance with the Step 4 Settlement referenced above, the 'authorized' complement for the facility represents the "maximum" complement for the facility and since Management 'may' take action to implement the staffing package discretion is reserved to determine whether to staff or not to staff up to the maximum. As a result, because the authorized staffing complement is not a mandatory number, but a maximum number, Article 3 of the Agreement reserves in Management the right to staff the facility. Part of that discretion may properly include budgetary considerations as in this case. In the decision just mentioned, Arbitrator Klein went on to state that:

> The additional six positions were newly authorized at the area level. They were not previously held assignments which had been vacated by other employees. The approval of a staffing package which adds to the complement does not by that fact alone create a vacant duty assignment.

Consequently, with regard to the claim that the Postal Service is not staffing to the maximum staffing level arrived at by application of the MMO-21-91, the grievance is denied.[11]

However, the grievance filed in this matter also protests the failure of the Postal Service to fill residual vacancies at the Youngstown plant. It was unrefuted that there are three vacant MPE positions. In this regard, Step 4 Settlements[12] have resulted in the following language:

1. Normally, a duty assignment, once it has been posted for bid, will be filled consistent with 524.1 of the P-11 Handbook.

2. There may be, on occasion, exceptions wherein the Postal Service may leave vacant a duty assignment after it has been posted and no bids were received or there were no successful bidders. However, these exceptions must be operationally justified, and will be limited to changes such as those occurring through mechanization and technological changes, transportation changes, etc.

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[11] All of this is in contradistinction to the Handbook MS-47, which states in Section 116 of Chapter 1 that "once a custodial level is determined using the procedures in this handbook that staffing must be maintained (underlining supplied for emphasis). Numerous arbitration decisions, including those cited by the Union in this case, have addressed custodial staffing issues and found that the staffing level for custodians arrived at by application of the MS-47 staffing procedure is mandatory.

[12] For Case No. H1C-NA-C 81, October 2, 1984 and Case No. H1C-4H-C 33466, March 22, 1985.

In this case, other than the budget which was alluded to in the February 17, 1994 letter concerning the Maintenance staffing package, no operational justification was advanced for failure to fill the residual vacancies in question. Therefore, it is found that the Postal Service violated the Agreement when it failed to fill the three vacant MPE positions. Consequently, with respect to these three vacancies, the grievance is sustained. As for the remedy, the Postal Service is directed to fill the three positions in question. In addition, it is noted that the Union had requested that the ODL "shall be compensated at the appropriate rate for all vacant hours." However, in my opinion, that may not be an appropriate remedy. As pointed out in prior decisions submitted by the parties, the purpose of a remedy is to restore the status quo ante and compensate affected employees for actual losses associated with the violation.[13]

It is emphasized that this violation occurred in 1994 and a review of the record does not reveal whom, if anyone, may have been adversely affected by the Postal Service's failure to fill the three residual MPE vacancies. Therefore, I am remanding the case to the parties to re-create the history surrounding the three MPE vacancies; i.e., when they were vacated, when they were posted, whether they were subsequently filled, whether they were subsequently properly reverted, etc., in order to determine if work opportunities were lost and by whom. Thus, the parties are directed to meet within 90 days of the date of this Award for this purpose and inform the undersigned with regard to the findings. The Arbitrator will retain jurisdiction of this case to determine the appropriateness of any monetary remedy in conjunction with the implementation of this Award.

AWARD

The class action grievance filed in this matter is denied in part and sustained in part. With respect to the claim set forth in the grievance that the Postal Service failed to fill the "authorized" Maintenance Craft positions at the Main Post Office in Youngstown, Ohio to the maximum staffing level arrived at by application of the MMO-21-91, the grievance is denied. It is found that the authorized staffing complement is not a mandatory number, but a maximum number, and, in this regard, Article 3 of the Agreement reserves in Management the right to staff the facility.

The grievance also protests the failure of the Postal Service to fill three vacant MPE positions. In this regard, it is found that the Postal Service violated the Agreement when it failed to fill the three vacant MPE positions. As for the remedy, the Postal Service is directed to fill the

[13] See, e.g., Case No. C94T-4C-C 98067366, Arbitrator Margo R. Newman, October 4, 2001, at page 26.

three positions in question and the case is remanded to the parties to determine if work opportunities were lost and by whom; i.e., to determine who may have been adversely affected by the failure to fill the three residual MPE vacancies. The parties shall meet within 90 days of the date of this Award and inform the Arbitrator of their findings. The Arbitrator will retain jurisdiction of this case to determine the appropriateness of any monetary remedy in conjunction with the implementation of this Award.

Christopher E. Miles, Esquire
Labor Arbitrator

May 9, 2005