



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 
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

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:

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.

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.

³ During the testimony of Gary Kloepper, 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 Kloepper 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.

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. WOT 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

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