

In the Matter of the Arbitration between	:	Arbitration Case No.
AMERICAN POSTAL WORKERS UNION, AFL-CIO	:	A8-NA-0375
	:	(Washington, D.C.)
and	:	
UNITED STATES POSTAL SERVICE	:	<u>OPINION AND AWARD</u>

Appearances:

For the Employer - Howard J. Kaufman, Esq.

For the APWU - O'Donnell & Schwartz
 by: Asher W. Schwartz, Esq.
 Darryl J. Anderson, Esq.

Background:

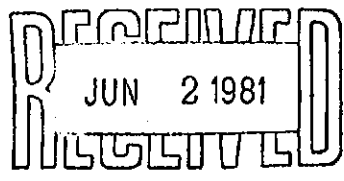
Pursuant to the provisions of the current collective bargaining agreement between the above-captioned parties, this case was duly noticed for arbitration. At the opening of the hearing, the parties agreed that the case had been duly processed through the requisite steps of the grievance procedure and was before the arbitrator for final and binding disposition.

THE ISSUE:

Although the parties did not agree upon a definition of the matter in issue, from the conflicting contentions which they advanced it is apparent that this dispute involves the force and effect of Article XIX of the current agreement. The Union contended that, pursuant to the requirements of this Article, the Employer could not put into effect forms and bulletins, in various districts and regions, which varied substantially from the relevant specifications which are contained in Maintenance Handbook, Series MS-47. In order to implement such departures from the custodial manpower needs as they are established by the formulae, the time standards, and the time frequencies to be found in this Handbook, the Union does not regard as fair, reasonable and equitable.

Management alleged that the Union was seeking to impose upon the Postal Service certain staffing requirements and staffing levels which it did not achieve through collective bargaining. Management asserted that the Handbook is a guide for supervision in carrying out its custodial functions and

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responsibilities at a satisfactory level. Management is not required by any provisions of the Handbook not to vary the frequencies of cleaning, how cleaning will be carried out, what will be cleaned and by whom it will be cleaned. Management pointed out that it reserves the right to manage in Article III of the Agreement. It makes assignments and reassignments pursuant to Article VII of the Agreement, and the right to excess certain employees in the Maintenance Craft is covered in Article XXXVIII of the Agreement. As long as management maintains a satisfactory level of cleanliness, management has the right to change forms, formulae, frequencies of cleaning, and the time standards as set forth in the Handbook without such guidance imposing a staffing level which cannot be changed.

STATEMENT OF THE CASE:

The specific issue raised by this grievance is well summarized in the exchange of correspondence which attended the filing of this national level grievance on October 17, 1979. The then General President of the APWU wrote to the Postal Service in part as follows:

"Repeated grievances have pointed out that when it benefits Management, the Handbook is a strict criteria. This is when usage of the Handbook causes the reduction of the custodial hours in an office. When it benefits the Union, it is only a guideline that does not have to be strictly adhered to. This is usually when usage of the Handbook would indicate the need for increasing the custodial man-hours in an office."

The position of the USPS is neatly stated in a January 29, 1980 letter regarding this grievance:

"It is our position that the MS-47 Handbook sets forth guidelines rather than strict criteria where the frequency of cleaning is concerned. This provides necessary flexibility to clean when needed, or to police when this action is sufficient to maintain compliance with safety and health provisions. While the frequency of cleaning may vary, there are minimum times (criteria) which have been established for the performance of specific cleaning tasks."

OPINION OF THE ARBITRATOR:

Article XIX of the Agreement provides as follows:

Article XIX

HANDBOOKS AND MANUALS

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

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement shall be furnished the Unions upon issuance.

What the Union repeatedly asserted, during the processing of this grievance in arbitration, was that it did not allege that it had the right to tell the USPS that a certain function had to be performed. That was a management decision, but when management did decide how much cleaning was to be done and how long each act of cleaning is to take any material changes in these decisions are of concern to it. As the Union alleged, when management varied the amount of cleaning to be done or the time each facet of the cleaning operation was to take, it impacted upon the number of people who would be required to perform the cleaning functions, the job security of incumbents in those cleaning positions, and the amount of effort which would be required of those remaining to do the work at hand.

In the January 29, 1980 letter from the USPS to the Union regarding this national level grievance, the Postal Service stated:

"As explained during the meeting, it is our position that the MS-47 Handbook sets forth guidelines rather than strict criteria where the frequency of cleaning is concerned. This provides the necessary flexibility to clean, when needed, or to maintain compliance with safety and health provisions. While the frequency of cleaning may vary, there are minimum times (criteria) which have been established for the performance of specific cleaning tasks."

In a number of regional instructions sent to responsible maintenance officials, the USPS typically stated: "Per the MS-47 Handbook, management does have the right to change frequencies; however, the time allotment for each cleaning task as provided for in the MS-47 must be honored." (Underlining contained in the original).

The question therefore in issue now appears to be whether the USPS is complying with the MS-47 Handbook, as such compliance is required pursuant to Article XIX, when local management has unilaterally changed frequencies or substituted policing for actual cleaning operations. The evidence indicates this has been done, as reflected on Forms 4852 and 4864, departing from criteria in the MS-47, employed in certain regions. There does not appear to be a contention on the part of the USPS that adherence to the Handbook's criteria in this area would not be required of the Service if frequency of performance alterations, impacting upon conditions of employment, were not countenanced by the provisions or criteria established in the Handbook.

The APWU argued that in numerous management bulletins and correspondence there were references made to the standards in the Handbook being regarded as criteria without a distinction between frequencies and units of performance. The Postal Service pointed out that the purpose of the Handbook, as they maintained, was only to provide guidelines for management. It was the USPS position that the Handbook permitted changes in frequencies as long as the facility maintained a "satisfactory level of cleanliness", as the MS-47 requires.

The USPS emphasized in its presentation that management had to be allowed flexibility in determining the staffing which would be required, the frequencies necessary, and when policing could be substituted for cleaning depending on changing circumstances which might present themselves at any facility in

a region. The Postal Service contended that the terms of the MS-47 contemplated that staffing "will be subject to modification based upon local experience."

More specifically, as to the language of the Handbook, the Service made references to the following in Part One:

Section 1.13:

Local conditions (climate, weather, activity, volume, type of construction, etc.) may provide a legitimate basis for exceptions to the methods, materials, equipment or frequencies, specified herein. Local management must exercise its judgement and authorize only such exceptions as are not inconsistent with good housekeeping practices and do not violate the collective bargaining agreement.

To this argument, the Union replied that in the more specific provisions of the Handbook relating to the actual maintenance practices which are to be followed, found in Parts II and III of the Handbook, as well as in the instructions which have been issued to the field, the frequencies referenced in the Handbook are regarded as minimums, and only increases in such frequencies are countenanced by these latter provisions.

An examination of these other provisions of the Handbook does reveal that the unit of performance determinants were calculated through the use of industrial engineering principles and practices. The Form 4852 is held out to be a form "which is designed to permit calculation of WEEKLY building cleaning manhour requirements in smaller buildings." Form 1627, the form on which daily assignments are recorded, forms the basis for the workload figures on Form 4864. The other forms which are described and whose use is required also provide the input for the calculation of staffing requirements. Part 4, of the Handbook not only describes in detail all the operations entailed in the housekeeping required for various postal facilities but it also establishes the equipment and materials which will be employed; qualifying factors which must be taken into account; performance expected per man day; the unit performance in minutes and the frequency with which the described tasks shall be performed.

It must be apparent that if the USPS were going to design a system which would insure the maintenance of standards of cleanliness and safety in its buildings, and provide such detailed guidance to the field as is contained in the MS-47 Handbook, the question of frequency of performance could not be left open ended. To do so would provide no assurance whatsoever that such standards of cleanliness and safety would be met. If the officer in charge at each postal facility or the respon-

sible official in each region or district could set frequencies of performance, and lower than at will, a deterioration of cleanliness and safety standards could surely result. There is a Postal Service commitment to the maintenance of a clean and safe working environment. The Handbook criteria, both dealing with unit performance as well as frequencies, provide assurance that this commitment will be kept.


The Postal Service, during the presentation of this case, made reference to new technological discoveries which might materially modify the unit performance standards or the frequencies which might be required. The discovery of a new "miracle" self-cleaning floor or self-waxing floor finish was mentioned. As the Union pointed out, Article XIX does provide for a modification of standards if such were the case. After meeting the notice and consultation requirements of that Article, the USPS could undertake an amendment to the relevant provisions of the Handbook dealing with unit performance standards for floor cleaning and frequencies of cleaning such floors in the Handbook. The new provision could also permit facilities without the new miracle floor to use the old standards. If the Union felt that such changes in the Handbook were not fair, reasonable and equitable, resort to arbitration is provided.

By requiring that the Postal Service adhere to the standards or criteria for unit performance as well as frequencies contained in the MS-47 Handbook, this Arbitrator is not imposing a manning floor or any manning commitment on the Service in carrying out its maintenance responsibilities. The Service is required to instruct its facilities to employ these unit performance criteria and frequency standards in determining the number of man hours which will be required to perform the tasks at hand. Whether the man hours thus required are filled by employing overtime or by the reassignment of employees from activities in which they might otherwise have been engaged, not prescribed by standards or criteria in some other handbook, manual or published regulation, is a management decision.

For the reasons outlined above, the Arbitrator is of the opinion and must find that the provisions of Article XIX impose upon the Service a duty to abide by the criteria or standards established in the MS-47 Handbook for both unit performance as well as frequencies. The unilateral determinations to depart from those standards, and particularly from the minimum frequencies contained in the Handbook, have resulted in violations of Article XIX. Article XIX incorporates by reference these working conditions into the collective bargaining agreement. Such modifications thus unilaterally imposed by management which have an adverse impact upon the tenure of employment or the workload of the employees affected must be rescinded.

A W A R D

This grievance is sustained. Those Postal Service forms or bulletin instructions inconsistent with the standards and criteria contained in Handbook MS-47 are to be rescinded or modified to conform until or unless those provisions of the Handbook are amended in compliance with the requirements of Article XIX.



HOWARD G. GAMSER, ARBITRATOR

Washington, DC
June 1, 1981