

NATIONAL ARTICLE 19 ARBITRATION PANEL

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In the Matter of Arbitration between

UNITED STATES POSTAL SERVICE      USPS Case Nos.: Q06T-4Q-C 11004742 and  
Q06T4QC11155080

and      APWU Case No. A19T20110150

AMERICAN POSTAL WORKERS      Draft MMO mm09134af - Maintenance  
UNION, AFL-CIO      Work Hour Estimating Guide for Network  
Distribution Centers

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BEFORE:      Ira F. Jaffe, Esq., Arbitrator

APPEARANCES:

For the United States Postal Service:      Mark F. Wilson, Esq.

For the American Postal Workers Union:      Anton G. Hajjar, Esq.

Place of Hearing:      APWU Headquarters, Washington D.C.

Dates of Hearing:      October 16, 2014  
December 9, 2014  
December 10, 2014  
January 21, 2015  
January 22, 2015  
March 31, 2015  
April 2, 2015

Date of Award:      October 19, 2015

Relevant Contract Provision:      Article 19

Contract Year:      2010 – 2015

Type of Grievance:      Article 19

## **AWARD SUMMARY**

The Postal Service violated Article 19 when it implemented MMO 112-10 (including prior Draft MMOs mm09134ad and mmo9134af) without first complying with the requirements of Article 19 regarding the information that must accompany notice of proposed changes to handbook, manual or published regulations provisions that directly relate to wages, hours or working conditions of bargaining unit employees and without first complying with the requirements of Article 19 regarding who must attend the Article 19 meetings.

The Postal Service is directed to cease and desist from using MMO 112-10 (eWHEP), and to return to using MM 022-04 (BMC Gold), to prepare Maintenance Staffing packages for the NDCs, unless and until the Postal Service complies in full with the requirements imposed by Article 19.

## **BACKGROUND**

This case arose under Article 19, Handbooks and Manuals, of the Parties' 2006 – 2010 National Agreement, which provided in pertinent part that:

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

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. The Employer shall furnish the Union with the following information about each proposed change: a narrative explanation of the purpose and impact on employees and any documentation concerning the proposed change from the manager(s) who requested the change addressing its purpose and effect. Proposed changes will be furnished to the Union by hard copy or, if available, by electronic file. At the request of the Union, the parties shall meet concerning such changes. If the Union requests a meeting concerning proposed changes, the meeting will be attended by manager(s) who are knowledgeable about the purpose of the proposed change and its impact on employees. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within ninety (90) days after receipt of the notice of proposed change. Within fifteen (15) days after the issue has been submitted to arbitration, each party shall provide the other with a statement in writing of its understanding of the precise issues involved, and the facts giving rise to such issues. . . .

This proceeding was held pursuant to the terms of Article 19, Section 2, of the 2010 – 2015 Agreement, which states in pertinent part that:

Section 2. Article 19 Arbitration

A. A separate arbitration panel will be appointed by the National parties for the sole purpose of hearing Article 19 appeals to arbitration.

B. A docket of Article 19 cases appealed to Arbitration at the National level shall be maintained for the Union.

C. The arbitrators on the National Article 19 Panel shall be scheduled to hear cases on a rotating basis, unless otherwise agreed to by the parties. Cases on the docket will be scheduled and heard within 120 days of the appeal to arbitration, but no later than 180 days after the union was notified of the proposed change(s), unless the Union and the Employer otherwise agree. . . .

The Postal Service's Use of Maintenance Management Orders

The Postal Service utilizes policy documents known as Maintenance Management Orders ("MMOs") to govern maintenance procedures for individual pieces of equipment as well as to set forth maintenance staffing guidelines. The MMOs, which are generated by subject matter experts at the Postal Service's Maintenance Technical Support Center ("MTSC") in Oklahoma, specify, at least in some cases, the amount of staffing time available for managers to assign for the performance of certain maintenance activities.

A 2006 letter from Patrick Devine, a Postal Service Labor Relations Specialist for Contract Administration, to Steven G. Raymer, Director of the Union's Maintenance Division, with a subject line of "Q00T-40-C 05017233; APWU HQT20054; Class Action; Washington, DC 20260-9998" stated in relevant part that:

Recently, we met to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

**The issue in this grievance is whether Maintenance Management Orders (MMO's) are a handbook, manual or published regulation that directly relates to wages, hours or working conditions?**

**After reviewing this matter the parties mutually agree that no national interpretive issue is fairly presented in this case. The parties mutually agree that not all MMO's are necessarily Article 19 documents as a particular MMO may not directly relate to wages, hours or working conditions. In such instances, we agree that each party reserves all rights and claims as to whether any particular MMO is an Article 19 document.**

**However, the parties mutually agree that all MMO's concerning staffing and/or Preventative Maintenance Guidelines are Article 19 documents. These documents shall be provided to the APWU as required by Article 19.**

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case.

Time limits at Step 4 were extended by mutual consent.

(emphasis supplied). Mr. Devine's letter was signed, and was countersigned by Mr. Raymer, on April 13, 2006.

#### The Bulk Mail Centers and their Maintenance Staffing Guidelines

For many years, the Postal Service utilized various Bulk Mail Centers ("BMCs") located throughout the United States. BMCs are large mechanized industrial-type facilities designed to handle and process Priority Mail, parcels, and trays of envelope ("flats") mail.

The BMCs have footprints that often exceed multiple football fields in area and containing between one and three distinct layers of machinery, including conveyors, that are reached via ladders, catwalks, and other walkways. The process of cleaning the tops of each layer of machinery is known as "High Bay Cleaning." High Bay Cleaning of the lowest layer of machinery is denoted as Type I or "light," while High Bay Cleaning of machinery at the second layer of equipment in the BMC is denoted as Type II or "medium," and High Bay Cleaning of machinery found at the third layer of equipment in the BMC is denoted as Type III or "heavy." In the BMC environment, paper dust and other light debris often settles throughout the facility, including above each layer of machinery. This dust and debris is flammable and, if not cleaned, can lead to respiratory problems for those who work at the BMC. As a consequence, the dust and debris must be removed periodically. Type I High Bay Cleaning is performed via Verti-Lift devices, while Type II and III High Bay Cleaning is performed via the catwalks and other means of access within the facility. The maintenance staffing guidelines, both prior to and subsequent to the changes at issue in this case, recognize that light, medium, and heavy High Bay Cleaning is to be done certain schedules (which differ for the light, medium, and heavy High Bay Cleaning work).

The Postal Service's Processing & Distribution Centers ("P&DCs" or "Plants"), by contrast, are generally smaller and more highly automated single-level facilities designed to handle and process flats. In order to give a sense of physical scale, it was undisputed that maintenance employees can generally walk to any machines requiring repair in the Plants, but repairs to machinery in BMCs may require that a maintenance employee utilize a bicycle or other vehicle to permit repairs to be timely addressed.

In 1979, the Postal Service issued an interim set of Maintenance Staffing

Guidelines and Criteria for its BMCs. This 1979 document was replaced in 2004 by MMO-22-04, which directed that software, identified as “BMC Gold” (named after Gary Gold who played a significant role in the development of the guidelines) be used to create staffing packages for BMC maintenance activities.

The BMC Gold software was Excel based and was maintained on a non-networked computer in each BMC. The software could not be easily updated to account for new equipment or new or revised MMOs for particular types of equipment that might identify changes in maintenance requirements for that equipment or to accept inputs as to the real-time use of the equipment. Annual maintenance staffing calculations for BMCs under BMC Gold was not dependent on the frequency with which particular equipment was operated. Rather, maintenance staffing was allocated via block grants based upon assumptions that maintenance activities were to be performed according to certain fixed calendar intervals (e.g., daily, weekly, or annually) and assumptions as to the frequency of use of the equipment covered by those guidelines.

As part of its operations, the BMC Gold system populated several Excel worksheets with information regarding a BMC’s staffing package, including Worksheet 2A (denoting a BMC’s building equipment and the maintenance staffing for that equipment); Worksheet 2B (denoting the hours of staffing for maintaining the BMC’s mail processing equipment; and Worksheet 2C (hours related to miscellaneous staffing needs, including those not contained within the 2004 BMC Gold programming).

Within the BMC environment, four types of maintenance are generally performed on mail processing equipment: Preventive Maintenance (“PM”) (the timely adjustment, repair or replacement of a part, assembly or subassembly before a failure or malfunction occurs); Corrective Maintenance (“CM”) (the scheduled or unscheduled repair or replacement of a failed or defective part, subassembly or assembly of an equipment item, or portion of a building or facility, which returns the equipment or unit to operating condition); Reactive Maintenance (“RM”) (emergency or priority maintenance responses to equipment malfunctions or breakdowns after they occur); and Operational Maintenance (“OM”) (the use of maintenance or other postal personnel made available in the vicinity of operational critical mechanized and automated equipment to ensure minimum downtime from equipment failure).

Maintenance staff at the BMCs also engaged in mail search activities, which involve the recovery of mail that has fallen off of a conveyor belt or machine or which has otherwise not been processed properly through the NDC's equipment. While the single-level Plant facilities make mail search a relatively straightforward undertaking, the multiple layers of the BMCs make mail search more complicated, often requiring that one or more machines be taken out of service for mail to be recovered.

#### The Change from BMC Gold to eWHEP and from BMCs to NDCs

For a number of years, the Postal Service has utilized an electronic Maintenance Activity Reporting System ("eMARS") that tracks the hours of work performed on various types of equipment.

In or about 2000, the Postal Service issued MMO 074-00, which adopted an electronic system known as the Workhour Estimation Program ("WHEP") to generate maintenance staffing packages for its Plants. In a section entitled "Scope," MMO 074-00 notes that:

- a. The WHEP is intended for use in plants, stations, branches, annexes, airmail facilities, etc. It is not intended for use in the Bulk Mail Centers.
- b. The WHEP provides the means to estimate workhours for Mail Processing Equipment (Miscellaneous Postal Equipment and Major Equipment), Building and Building Equipment, Field Maintenance Operations, and Maintenance Operations Support.
- c. The WHEP does not estimate workhours for Building Services, but accepts and displays data from other sources to provide a complete picture of a given facility.

The WHEP system for the Plants resided on the eMARS platform and integrated the data contained in that system such that the hours that a piece of equipment was operated affected the number of annual maintenance staffing hours to which the Plant would be entitled (i.e., greater use, such as on an additional tour, would result in greater future allotments of maintenance staffing hours). The WHEP system, which is accessed via a networked Postal Service computer, also allows for the introduction of MMOs for new equipment and for modifications to existing MMOs, such that the Postal Service's determination that a particular type of machine required less (or more) PM time could be input into the WHEP system to modify the maintenance staffing package for the Plant.

In 2009, the Postal Service converted its BMCs to Network Distribution Centers ("NDCs") as part of an overall plan to increase operational efficiency and reduce costs.

The NDC environment mirrored to a significant degree the highly mechanized BMC environment. As part of the NDC conversion, certain types of automated equipment, including Automated Package Processing System (“APPS”) equipment and Singulate Scan Induction Units (“SSIU”) that had previously been utilized in the Plants, were introduced into the BMC/NDC environment for the first time. Because these types of equipment had not previously been used in the BMCs/NDCs, staffing hours for those equipment types were not contained in BMC Gold. Mail search activities, as well as Type I, II, and III High Bay Cleaning, continued to be performed in the NDCs.

NDCs are classified by Tier. A Tier 1 facility is not necessarily smaller than a Tier 2 or Tier 3 facility; rather, the facilities are differentiated by responsibility. A Tier 1 facility is responsible for the distribution of local and destination Standard Mail, Periodicals, and Package Services. A Tier 2 facility is tasked with the responsibilities of a Tier 1 facility, with additional responsibility for the distribution of outgoing Standard Mail, Periodicals, and Package Services into the Postal Service’s network. A Tier 3 facility is tasked with the responsibilities of a Tier 2 facility and also serves as consolidation point for less-than-truckload volumes of mail from Tier 2 facilities, such that the Postal Service can achieve cost savings by reducing the number of partly-filled trucks on the road.

In or about 2008, Ed Gamache, the Postal Service’s Manager for Maintenance Policies and Procedures, made the decision to utilize the WHEP system in the Postal Service’s NDC facilities. Thereafter, between 2008 and 2010, Robert Albert (the MTSC Manager), a team of subject matter experts (“SMEs”) from the MTSC, and field managers, including Leonard Henderson, the Postal Service’s Manager of Maintenance Operations for its Western Region, worked to develop a replacement (“eWHEP”) for BMC Gold which integrated much of the WHEP system that had been used in the Plant environment. This team surveyed several NDCs as to, among other things, the requisite amount of operational maintenance staffing (i.e., hours of stand-by maintenance support required during the time that equipment was operated) and the time needed for mail search.

Like the WHEP system used in the Plants, the eWHEP system would also reside within eMARS and would create annual maintenance staffing packages on the basis of

MMOs for particular pieces of equipment, as well as on the basis of equipment use as reflected in eMARS. The record reflects, however, that many of the MMOs for NDC-specific equipment that were intended to populate eWHEP were not developed at the same time as the NDC eWHEP and were in fact completed in 2012. Moreover, as discussed in more detail below, the eWHEP system contained several features that decreased overall the staffing maintenance hours that were provided to each NDC as compared with the staffing maintenance hours for those same NDCs that would have resulted from the use of BMC Gold for that purpose.

At or about the same time that the Postal Service sought to adopt eWHEP in the NDC environment, it engaged in a number of other efforts, including Area Mail Processing Studies and voluntary retirement incentive offerings, intended to reduce its maintenance staffing.

#### Comparisons Between BMC Gold Staffing Packages and eWHEP NDC Staffing Packages

The record revealed a number of significant differences between the terms of BMC Gold and eWHEP relative to the construction of annual maintenance staffing packages for the NDCs. Specifically, there was testimony that focused upon the following: 1) differences in the hours allotted for High Bay Cleaning; 2) differences in the hours allotted for Mail Search activities; 3) differences in the hours allotted for OM time; 4) differences in the adjustments made based upon prior eMARS utilization data for the equipment; and 5) differences in the use of the MMOs that populated each system.

##### High Bay Cleaning

Under BMC Gold, NDCs were allotted maintenance staffing (not including custodial staffing) for Type I cleaning at a rate of .069 minutes per square foot per annual quarter, for Type II cleaning at a rate of .155 minutes per square foot every two months, and for Type III cleaning at a rate of .188 minutes per square foot each month. The record reflects that, under eWHEP, staffing hours for maintenance staff to perform Type I cleaning in the NDCs was eliminated, and Custodians were given full responsibility for such cleaning. Both the 1979 BMC Interim Staffing Guidelines and the BMC Gold system contemplated the use of Custodians to perform Type I High Bay Cleaning, particularly where such cleaning did not require climbing on or over potentially



hazardous areas, and within at least some NDCs, such as Springfield, Custodians performed all Type I High Bay Cleaning under BMC Gold.

The maintenance staffing package for Type II cleaning remained at the same level in eWHEP as under BMC Gold, but the maintenance staffing package for Type III cleaning was reduced by .003 minutes per square foot per month. The Postal Service made the .003 minutes per square foot per month change on the basis of a belief that the figure used in BMC Gold had been erroneously set at .188 instead of .185. No direct evidence was introduced, however, in support of the assertion that the .188 minute per square foot per month provision in BMC Gold was actually the product of an error.

The Parties disputed whether and in what circumstances the performance of any High Bay Cleaning work by Custodians predated the changes reflected in MMO 112-10 and whether, regardless of the answer to that question, the Agreement restricted the Postal Service's ability to assign Tier 1 High Bay Cleaning work to Custodians.

#### Mail Search Activities

Under BMC Gold, BMCs and NDCs were allotted staffing for mail search activities at a rate of 15 workhours per 1000 square feet of a given building. Under eWHEP, the MMOs for some types of equipment within the NDCs specify certain allotments of maintenance staffing hours associated with mail search related to such equipment. Those hours are thus prorated in the same way as other maintenance staffing hours for individual pieces of NDC equipment.

As a temporary measure pending future updates to the eWHEP system or the equipment-specific MMOs, NDCs are also provided a block allocation of mail search maintenance staffing hours according to their Tier – Tier 1 NDCs may receive up to 4200 hours; Tier 2 NDCs may receive up to 5850 hours; and Tier 3 NDCs may receive up to 7500 hours. As noted above, a Tier 3 NDC is not necessarily larger than a Tier 2 or Tier 1 NDC, though Mr. Henderson testified that the increased complexity of operations at a Tier 3 NDC compared to a Tier 2 or Tier 1 NDC (or at a Tier 2 NDC compared to a Tier 1 NDC) justifies the emphasis on tier over square footage. The record reflects that individual NDCs were also able to request additional mail search hours through worksheet 2C if supported by historical data as to need and usage. The record further reflects that a number of new and updated MMOs were promulgated in 2012 that

provided for increases in mail search hours, linked to particular pieces of equipment.

#### Operational Maintenance Hours

Under BMC Gold, BMCs were allotted operational maintenance staffing hours of between 2.1 and 9.1 persons per tour (depending on the square footage of the mail processing area of the particular BMC), with additional staffing available if the BMC had Parcel Automatic Container Unloader/Sack Automatic Container Unloader equipment requiring operational maintenance. Under the formula set forth in BMC Gold, a BMC facility with a mail processing area of 250,000 square feet operating with 21 eight hour tours per week for 52 weeks per year could expect to receive a block allocation of 18,354.60 OM hours.

Under eWHEP, the Postal Service eliminated the block allocation of hours for Operational Maintenance and instead allocated OM hours on the basis of the MMOs for particular equipment. Mr. Henderson noted that the Postal Service's records indicated that the overwhelming majority of OM hours were attributable to the SSIU, and that the Postal Service had allocated 5,280 operational maintenance hours per SSIU at a given NDC. In addition, the Maintenance Manager for each individual NDC was permitted to request a block allocation of Reactive Maintenance hours (which Mr. Henderson testified were treated as equivalent to OM hours within the NDC environment) equal to up to 23% of the published PM hours set forth in the MMO for a particular piece of equipment. Mr. Henderson explained that the Postal Service's eWHEP team of managers and SMEs had arrived at the 23% figure on the basis of historical data from the Denver, Kansas City, Springfield, and Pittsburgh NDCs indicating that a 23% figure would be sufficient in most cases to meet any OM needs above and beyond those OM hours provided for the SSIUs until the MMOs for other equipment requiring OM could be updated.

#### Effect of eWHEP on Maintenance Staffing Aggregate Hours

The record reflects documentation indicating that the St. Louis, Philadelphia, and Denver NDCs experienced significant net maintenance staffing reductions in 2009 and/or 2010 at least partly on the basis of estimates made by an iteration of the WHEP system. These staffing cuts preceded the formal adoption of eWHEP in the NDC environment in April 2011. The record further reflects that the Springfield NDC also experienced reductions in maintenance staffing in 2012, and that such reductions occurred as the

Springfield NDC experienced substantially reduced mail volume as well as consolidation associated with the Postal Service's Area Mail Processing initiative, among other issues.

The Parties disputed whether the reduction in staffing hours was a rationalization of the system to better reflect actual needs or merely a change designed to save money at the expense of performing necessary maintenance work.

Communications Between the Union and the Postal Service Regarding eWHEP

In a November 20, 2009 memorandum to John W. Dockins, the Postal Service's Manager for Contract Administration (APWU), entitled "Article 19: MM09134AB.doc; Interim Staffing Guidelines for Network Distribution Centers," Mr. Albert wrote:

Due to the restructuring of Bulk Mail Centers (BMC) to Network Distribution Centers (NDC) the Interim Staffing Guidelines for Network Distribution Centers is needed to support automating staffing needs through eWHEP. The use of the old BMCGOLD Excel package provided within MM0-022-04 is cumbersome and very much in need of replacing to keep up with current technologies used by all other maintenance facilities for staffing.

The record is not clear as to whether the Union was provided with a copy of the November 20, 2009 memorandum prior to the arbitration in this matter.

In a letter dated April 7, 2010 to then-Union President William Burrus, Mr. Dockins provided the Union with a draft MMO entitled "Interim Staffing Guidelines for Network Distribution Centers." The document was authored by Mr. Albert, and was identified as "mmo09134ad." There was no dispute that the numbering system utilized by the Postal Service was such that the "09" related to 2009, the 134 to the fact that 133 previously numbered MMOs were published in 2009, and the "d" in the "ad" indicated that it was the fourth version of that draft MMO.

The Union and the Postal Service conducted several in-person and telephonic or web conferences regarding the eWHEP MMOs. On May 6, 2010, Idowu Balogun, the Union's Assistant Maintenance Director, and Gregory See, then the Assistant Director of the Union's Maintenance Division, met with Ronald Scott, a Postal Service Labor Relations Specialist, to discuss the draft MMO. Mr. Balogun testified that Mr. Scott had told him that the change from BMC Gold to the eWHEP system would not result in any staffing changes and was simply a migration of data from the Excel-based system of BMC Gold to the eWHEP software package. Mr. Balogun explained that he had sought from Mr. Scott an "apples-to-apples" comparison of two staffing packages for the same

facility for the same period of time, with one generated by BMC Gold and the other generated by eWHEP so that the Union could compare the staffing packages and determine whether the change to eWHEP would be problematic for the Union and/or its membership. The record reflects that the Union was never provided with such a comparison, and Mr. Balogun testified that he had eventually been told that it was not possible to produce such a comparison. Mr. Balogun noted that he had neither filed a formal information request nor filed an unfair labor practice charge as a result of the Postal Service's failure to provide the comparison, largely because he had trusted the Postal Service labor relations staff who had repeatedly promised to obtain such information for him. Mr. Henderson – who had not been involved in the interactions between the Postal Service and the Union in 2010 and 2011 – testified that, at the time that Mr. Balogun had requested such a comparison, it had not been possible to produce such a comparison, but that, as of the time of his testimony in this matter, it was in fact possible to do so. Nevertheless, no such “apples to apples” comparison was introduced into evidence by the Postal Service.

Although the Union had been given access to a copy of the BMC Gold software, it had not been given access to the eWHEP software. The Postal Service maintained that doing so was not practical in light of its integration with eMARS and it being resident on the Postal Service's servers.

The record reflects that, at the Postal Service's Denver BMC/NDC, the WHEP system was utilized for limited staffing purposes as early as 2006. Mr. Henderson testified that it was plausible that at a BMC/NDC location that is in close proximity to a Plant, such as the one in Denver, the manager of the BMC/NDC would have access to the WHEP system for the Plant and could use the Plant WHEP to supply staffing information to supplement that which would be provided through the BMC Gold system. Mr. Balogun testified that, after meeting with Mr. Scott, he had contacted local Union presidents at each of the NDCs about the upcoming adoption of eWHEP and was told in response that a similar system was already in use in the field. Mr. Balogun stated that, when he had subsequently asked Mr. Scott about the apparent use of WHEP in NDCs prior to the formal adoption of eWHEP, Mr. Scott had responded, “So.” Mr. Balogun explained that he had subsequently interacted with Barry Carpenter, a Postal Service

Labor Relations Specialist. The record reflects that Terry LeFevre, currently a Labor Relations Specialist for the Postal Service and, in 2010, a Postal Maintenance Specialist, testified that he had been tangentially involved in the development of eWHEP, mostly fulfilling a labor relations compliance role, and that he had communicated with the Union regarding eWHEP.

Neither Mr. Albert, Mr. Gamache, nor Mr. Scott testified at the hearings in this matter. Counsel for the Postal Service represented that the latter two were retired and that none of the three had any recollection of the decision making which led to the adoption of eWHEP in the NDC environment. Counsel for the Postal Service identified a number of other managers and subject matter experts whom he represented either did not recall the matters relevant to this case or were no longer employed by the Postal Service and whose presence at the hearing could not be arranged.

On October 14, 2010, the Union appealed to arbitration the Postal Service's adoption of the "mmo09134ad" eWHEP draft MMO.

In a letter dated December 20, 2010 to Cliff Guffey, then the Union's President, Mr. Dockins wrote:

The enclosed draft Maintenance Management Order supersedes MMO-022-04 entitled: "BMC Maintenance Staffing Guidelines" and provides the steps for Network Distribution Centers (NDCs) to start using the electronic Work Hour Estimator Program (eWHEP).

Mr. Dockins' December 20, 2010 letter enclosed a document, also authored by Mr. Albert, that was identified as "mmo09134af" and that would eventually be issued as MMO-112-10, as well as a memorandum from Mr. Albert with a subject line of "Article 19: MM09134af.doc; Maintenance Work Hour Estimating Guide for Network Distribution Centers," which, virtually identically to his November 29, 2009 memorandum, stated:

Due to the restructuring of Bulk Mail Centers (BMC) to Network Distribution Centers (NDC) the Maintenance Work Hour Estimating Guide for Network Distribution Centers is needed to support automating staffing needs through eWHEP. The use of the old BMC GOLD Excel package provided within MMO-022-04 is cumbersome and very much in need of replacing to keep up with current technologies used by all other maintenance facilities for staffing.

On March 25, 2011, the Union appealed to arbitration the Postal Service's adoption of the "mmo09134af" eWHEP MMO.

In a letter dated April 12, 2011 to Mr. Guffey, Mr. Dockins wrote:

After several discussions in accordance with Article 19, the parties have been unable to reach agreement on mm09134af, "Maintenance Work Hour Estimating Guide for Network Distribution Centers." The enclosed document reflects the final version that will be published and implemented. The parties exchanged position statements on April 8, as a result of the APWU's Article 19 Appeal to Arbitration.

Mr. Dockins' April 12, 2011 letter contained as an attachment the final version of the mm09134af eWHEP MMO.

Mr. Raymer testified that the Union had never been directly informed of the withdrawal of the "mmo09134ad" draft eWHEP MMO. The Postal Service's April 11, 2011 Article 19 "15 Day" Statement to the Union noted that the "mmo09134ad" draft MMO had been withdrawn. Mr. Raymer also testified that the Union never received a finalized version of the eWHEP MMO from the Postal Service's labor relations staff, and that the Union had received the final version of the MMO from the field.

The record reflects that the Parties have agreed not to pursue arguments related to Article 38.4 of the Agreement.

### **CONTENTIONS OF THE UNION**

There can be no question that the Postal Service's development of draft mmo09134ad MMO, the draft mmo09134af MMO, and its adoption of the final MMO-112-10 ("eWHEP MMOs") developed and issued by the Postal Service regarding the use of eWHEP in the NDCs are subject by Article 19 of the Parties' Agreement. The Postal Service violated the terms of Article 19 when it failed to comply with certain procedural requirements of that Article, including the requirement that it notify the Union that eWHEP was being used in the NDC environment, the requirement that it provide a narrative explanation of and documents related to the impact of eWHEP on bargaining unit employees, and the requirement that it provide the Union with a subject matter expert to explain the changes in maintenance staffing calculations that were or would be wrought by the change from BMC Gold to eWHEP, as well as the Postal Service's overall failure to precisely explain to the Union how the eWHEP system operates. The adoption of eWHEP was also not fair, reasonable, and equitable to maintenance bargaining unit employees because it reduced bargaining unit work on the basis of an arbitrary series of calculations. Finally, the Postal Service's adoption of the eWHEP MMO resulted in the reassignment of Type I High Bay Cleaning work from maintenance employees to Custodians and, therefore, violated other provisions of the Agreement.

To the extent that the Postal Service asserts that this matter is not properly the subject of this Article 19 arbitration proceeding, such assertion is clearly without merit. First, the April 13, 2006 Step 4 settlement agreement clearly subjects all MMOs concerning staffing to the Article 19 process. The memoranda from Mr. Albert that the Postal Service submitted to the Union in connection with the “mmo09134ad” and “mmo09134af” draft MMOs explicitly refer both to staffing and to the Article 19 process. Based on the agreement of the Parties and the conduct of the Postal Service in this matter, there should be no dispute that the eWHEP MMOs are covered by the Article 19 process. To the extent that the Postal Service sought to take a different position in the arbitration hearings, they are precluded from doing so by Article 15.5.D.4 of the Agreement, which provides that

Issues and arguments raised for the first time during national arbitration must be re-discussed at Step 4 to explore the new issue, argument, or evidence. . . .

The Postal Service has made no effort to have the issue of whether the Article 19 process should apply to the eWHEP MMOs remanded or re-discussed at Step 4, and therefore should not be permitted to raise that issue at arbitration. To the extent that the Arbitrator considers the Postal Service’s position on this issue, the Union notes that the cases that the Postal Service is likely to cite in support of its position are easily distinguishable from the instant case. Despite the statement of Arbitrator Richard Mittenthal that “[o]nly those [Postal Service regulations] that ‘directly relate to wages, hour, or working conditions’ can be attacked by the APWU on the ground that they are not “fair, reasonable, and equitable,” and that “[a] regulation not related, or only indirectly related, to ‘wages, hour or working conditions’ cannot violate Article 19,” USPS-APWU, Case No. H4C-NA-C 81 (Mittenthal) (1990) (emphasis in original), the fact remains that the Parties, in the case before Arbitrator Mittenthal, had not entered into an agreement defining the regulation at issue as subject to the Article 19 process. The record is clear that the Parties have done so in this case. The Postal Service’s reliance on the June 8, 2015 decision of Arbitrator Stephen B. Goldberg in USPS-APWU, Case No. Q06C-4Q-C 10033773 (Goldberg) (2015) is similarly inapposite, as the Parties had not entered into an agreement defining the regulation at issue in that case as subject to the Article 19 process and, moreover, the case before Arbitrator Goldberg addressed

regulations governing work that was being performed by contractors. Here, the staffing at issue relates directly to bargaining unit work. Moreover, the National Labor Relations Board has recognized that an employer's changes to its staffing matrices (which determined the number of employees to be used on a shift according, in this case, to patient census) as constituting a mandatory subject of bargaining. See, e.g., Good Samaritan Hospital, 335 N.L.R.B. 901 (2001). To the extent that the Postal Service seeks to rely upon the decision in USPS and NALC, AFL-CIO, Case No. Q11N- 4Q-C 14032224 (Nolan) (2015), that decision should be given no weight. First, the decision arose from the interpretation of a collective bargaining agreement to which the Union is not a party in a proceeding in which the Union was not involved. Second, there does not appear to have been a settlement or other agreement between the parties to that case with terms similar to those set forth in the April 13, 2006 Step 4 settlement agreement. Third, Arbitrator Nolan emphasized that his decision was based, at least in part, on his review of the history and use of the handbook at issue in that proceeding; clearly, he did not review the use of BMC Gold in the BMCs/NDCs, and his decision cannot be extended to govern the facts here.

Significantly, because eWHEP takes into account the number of hours on which a piece of equipment actually operates in determining the maintenance staffing associated with that equipment, it will always result in less staffing than would have been allotted under BMC Gold. Moreover, even if the record reflects that Postal Service initiatives other than eWHEP resulted in staffing reductions, there is no evidence that eWHEP did not also contribute to staffing reductions. Also, regardless of whether the staffing packages created through BMC Gold constituted actual staffing guarantees, the reality is that staffing packages act as an upper limit for staffing.

Finally, to the extent that the Postal Service asserts that the management rights provision of Article 3 takes precedence over the terms of Article 19, it is clear that Article 19 represents a negotiated compromise between the Union and the Postal Service regarding the Postal Service's management rights and the Union's need to understand management's rationale in issuing policy documents.

The Postal Service clearly failed to comply with the procedural requirements of Article 19. Despite the requirement that notice of proposed changes directly relating to



wages, hours, or working conditions be provided to the Union, the Postal Service never provided the Union with finalized versions of either of the eWHEP MMOs. Instead, the Union received draft versions, with final versions sent directly to employees in the field. In addition, none of the letters sent by the Postal Service purporting to notify the Union of the eWHEP MMOs were explicitly identified as serving as Article 19 notices, and none contained the narrative explanation of the purpose and impact of the MMOs as required by Article 19. In addition, the Postal Service, at the arbitration hearings in this matter, identified Mr. Gamache as the manager who requested the change from the BMC Gold system to the eWHEP system in the NDC environment; however, despite the requirements of Article 19, no information from Mr. Gamache was communicated by the Postal Service to the Union. Similarly, at meetings between the Parties regarding the eWHEP MMOs, the Postal Service made available labor relations managers, rather than the subject matter experts or field managers who would be knowledgeable about the purpose of the change to eWHEP and its impact on bargaining unit employees. Although Mr. Scott, in his discussions with Mr. Balogun, claimed that eWHEP would not create any change in staffing, the Postal Service was unwilling to provide the side-by-side or “apples to apples” comparisons of BMC Gold and eWHEP that would validate the Postal Service’s otherwise unsupported assertions and similarly failed to provide narrative explanations as to the need for the change to eWHEP and as to how eWHEP would work in the NDC environment. In addition, without receiving the necessary information from the Postal Service, the Union was unable to reverse engineer the changes to the Postal Service’s maintenance staffing program. This inability indicates that the limited description of changes described by the Postal Service to the Union did not encompass the full measure of the differences between BMC Gold and eWHEP.

To the extent that the Postal Service’s witnesses (and its counsel) provided rationales and explanations regarding eWHEP, these should have been timely provided at Article 19 meetings rather than being first raised at arbitration. The Arbitrator should find in this case, as Arbitrator Das found in USPS-APWU, Q98C-4Q-C 02013900 (Das) (2006), that the Postal Service’s explanations for the changes at issue, as provided in Article 19 meetings, were insufficient. Moreover, the Postal Service did not call a single subject matter expert as a witness at the arbitration hearings in this matter, instead listing

a number of missing witnesses – i.e., individuals identified in testimony or otherwise during the proceedings as having knowledge regarding the development and adoption of eWHEP – who the Postal Service claimed it could not reach or about whom it was asserted that they possessed no useful information regarding this matter. These individuals included Mr. Dockins, Mr. Scott, and Barry Carpenter, a Postal Service labor relations specialist with whom the Union interacted regarding eWHEP, in addition to a number of individual subject matter experts. The Postal Service's failure to call these witnesses and to allow them to be subjected to cross-examination as to those issues about which they are claimed to have no knowledge should give rise to an adverse inference that any testimony that they would have provided would have been unfavorable to the Postal Service.

Under the Agreement, Custodians are considered to be in a separate occupational group from maintenance employees. The Postal Service's apparent reassignment of High Bay Cleaning work from maintenance staff to Custodians violates the MS-47 staffing guide governing the work of Custodians as well as Articles 7.2 (governing employee classifications and the assignment and movement of work between occupational groups) and 25 (governing higher level assignments and pay for such work) of the Agreement.

If the Arbitrator were to conclude that the eWHEP MMOs were handled properly in the Article 19 process, that the Postal Service complied with all Article 19 procedural requirements with regard to eWHEP, and that eWHEP is not in conflict with or inconsistent with any other provisions of the Agreement, then the record is clear that eWHEP is not fair, reasonable, or equitable to bargaining unit employees and that it, therefore, violates Article 19.

The change in mail search hours, which is now tied to the alleged complexity of an NDC's mission instead of its size, ignores the reality that bigger facilities take longer for employees to traverse as they search for mail. In at least some cases, the eWHEP system unreasonably allots smaller facilities more mail search hours than it does larger facilities.

Because the Postal Service failed to properly explain its changes to the maintenance staffing hours allotted to High Bay Cleaning work, its rationale for its change remains unclear. However, the changes (even the .003 value change for Type III

work) resulted in significant decreases to the staffing package hours allotted for High Bay Cleaning work.

The elimination of most operational maintenance hours under eWHEP is mystifying, particularly in light of the fact that operational maintenance work still needs to be performed. As a result, hours must be shifted from other priorities and/or employees are asked to do more work in less time. The record is clear that certain facilities, including the Kansas City and Denver NDCs, have had their staffing packages reduced by management under eWHEP.

Moreover, the Postal Service's failure to permit the Union to access and validate eWHEP makes the adoption of eWHEP unfair, unreasonable, and inequitable. The Postal Service provided the Union with a copy of BMC Gold, which allowed the Union to review the software and understand both the staffing packages that it created and how it created those packages. Without similar access to eWHEP, the Union (despite its best efforts to reverse engineer eWHEP without the assistance of the Postal Service) had no choice but to take the word of the Postal Service as to the impact of eWHEP, but the Postal Service nevertheless refused to provide the sort of side-by-side comparisons that would allow the Union to at least understand the impact of the use of eWHEP. To the extent that the record reflects that such a comparison could now be produced, the Postal Service should be required to provide the Union with same. Similarly, any time studies used by the Postal Service to validate the use of eWHEP should also be provided to the Union consistent with Arbitrator Das' holding in USPS-APWU, Q98C-4Q-C 00183263 (Das) (2005) ("I agree that the Union at the national level should have had an opportunity to review the observation notes generated at the pilot sites, or at least have had the opportunity to question Company witnesses who participated in those observations. For one thing, as the Union brief asserts, that might have satisfied the Union as to the reasonableness of the estimated times.").

In addition, the record reflects that eWHEP was adopted before updated or new MMOs for NDC equipment had been finalized and input into eWHEP. As a result, even assuming arguendo that eWHEP produces appropriate staffing packages now, the interim staffing packages produced by eWHEP prior to the use of the updated and new MMOs were likely insufficient or inappropriate.

Finally, the very text of the WHEP documentation makes clear that it is not for use in the BMC – i.e., the NDC – environment. The Postal Service’s decision to nevertheless adopt it in that environment is further proof of the unfairness, unreasonableness, and inequity of the Postal Service’s decision to do so.

For all of these reasons, the Arbitrator should declare eWHEP to be null and void; order the Postal Service to staff its NDCs consistent with BMC Gold, without prejudice to the Union’s challenges to certain deficiencies within BMC Gold; order that all affected employees be made whole; and retain jurisdiction for a period of 60 days to resolve any disputes relating to the implementation of the Award in this matter.

### **CONTENTIONS OF THE POSTAL SERVICE**

There is no basis for the Union to claim a violation of Article 19 in this matter. First, the adoption of eWHEP is not subject to Article 19 review, as the eWHEP MMOs do not directly relate to wages, hours, or working conditions. Even if Article 19 were to apply, it is clear that the Postal Service complied with all of the procedural requirements of that Article. Finally, even if Article 19 review is appropriate here, the record contains no basis to find the adoption of the eWHEP MMOs to be unfair, unreasonable, and inequitable.

The record is clear that the Postal Service complied with all procedures required by Article 19 in connection with the eWHEP MMOs. The Postal Service provided the Union with narratives from Mr. Albert regarding the purpose and impact of the draft eWHEP MMOs, and his memos also constituted documents from one of the managers initiating the changes. The Postal Service also made available to the Union knowledgeable managers – Mr. Scott, Mr. Carpenter, and Mr. LeFevre – who were able to explain the eWHEP MMOs, and it provided the Union with a final copy of the eWHEP MMO as an attachment to Mr. Dockins’ letter of April 12, 2011 to Mr. Guffey.

Significantly, the Postal Service did not implement eWHEP prematurely. The eWHEP MMO did not receive final approval until April 19, 2011, well past the 60-day notice period required by Article 19. Moreover, the record does not support the Union’s contention that eWHEP was implemented before that date. Prior thereto, the Postal Service continued to utilize BMC Gold to create maintenance staffing packages in its NDCs, and supplemented the BMC Gold packages with staffing information from the

WHEP system used in the Plant environment for certain equipment used in the Plant environment which was not accounted for in BMC Gold and which had been integrated into the NDC environment. Mr. Scott's communications with the Union accurately reflected that the eWHEP system designed for the NDC environment had not been implemented in the NDCs prior to April 2011.

The Union's assertion that it did not fully understand how eWHEP worked is not itself a basis upon which to find a procedural (or substantive) violation of Article 19. While it may be obliged to explain the eWHEP program to the Union, there is no obligation on the part of the Postal Service to ensure that the Union understands every aspect of eWHEP, particularly where the staffing package outputs of that system are highly dependent on a number of variables. Moreover, many of the alleged procedural deficiencies in the Postal Service's handling of the Article 19 process were not raised in the Union's 15-day submission as required by Article 19, Section 1.

The Postal Service's decision to adopt eWHEP should not be subject to substantive Article 19 review. Although the Parties did enter into an April 13, 2006 grievance settlement which provided that "all MMO's concerning staffing and/or Preventative Maintenance Guidelines are Article 19 documents," such agreement provided only that maintenance staffing guides, such as eWHEP, are subject to the procedural requirements of Article 19. For an MMO to be subject to substantive review under that Article, it must either violate or be inconsistent with a specific term of the Parties' Agreement or it must "directly relate" to wages, hours, or working conditions. Neither test for substantive review is met here.

The adoption of eWHEP was an appropriate exercise of the Postal Service's management right, set forth in Article 3 of the Agreement, to determine the methods, means, and personnel by which its operations are to be conducted and to maintain the efficiency of those operations. In a National Arbitration decision between these Parties not involving issues under Article 19, Arbitrator Das determined that the Postal Service's Article 3 rights permitted it to eliminate or reduce staffing on certain tours on a nationwide, region-wide, or district-wide basis so long as such actions do not violate other provisions of the Agreement. USPS-APWU, Case No. Q06C-4Q- 09051867 (Das) (2010); see also NLRB v. USPS, 8 F.3d 832 (D.C. Cir. 1993) (holding that Article 3 of

the Agreement gives the Postal Service the right to unilaterally make reductions in service and changes in work schedules). Similarly, the Postal Service's decision in this matter to change the way that it produces and calculates maintenance staffing packages similarly falls within the managerial discretion provided for in the Agreement. The Postal Service's agreement to submit maintenance staffing guides to Article 19 procedures was not a waiver or compromise of its Article 3 rights, particularly in the absence of clear and unmistakable evidence of such waiver.

It is evident that the eWHEP MMOs did not violate any terms of the Agreement. There is no minimum staffing guarantee for maintenance bargaining unit members, and the Agreement does not address staffing guides or, except to the extent encompassed in Article 3, the procedures for determining the number of maintenance employees to be utilized by the Postal Service. Moreover, Arbitrator Das found that, with regard to an MMO setting forth a predecessor of the WHEP program used in the Postal Service's mechanized offices, such MMO did not contain a staffing guarantee. USPS-APWU, Case No. Q94T-4Q-C 97040815 (Das) (December 14, 2009).

Substantive Article 19 review is inappropriate here because the changes made in the eWHEP MMOs do not directly relate to wages, hours, or working conditions. Specifically, unless the subject matter of the changes directly relate to such issues, a violation of Article 19 cannot be found. See, e.g., USPS-APWU, Case No. H4C-NA-C 81 (Mittenthal) (1990) ("It is the subject matter of the regulation, not its effect, which determines whether Article 19 can be properly invoked."). The fact that the Postal Service directs its managers to undertake certain actions that may impact bargaining unit employees does not mean that such direction is necessarily subject to Article 19 review. See, e.g., USPS-APWU, Case No. H8C-NA-C-61 (Gamsler) (1982) (noting that the Postal Service's communications with its managers need not constitute an Article 19 document); USPS-APWU, Case No. Q94T-4Q-C 98099959 (Das) (2009) (finding that issuance of vehicle maintenance bulletin, where bulletin set forth frequency of tasks and estimated timing for performance of tasks but where failure to meet frequency and timing values did not result in discipline, did not directly relate to wage, hours, or working conditions and that Postal Service was not required to have provided Article 19 notice before issuance); USPS-APWU, Case No. Q06C-4Q-C 10033773 (Goldberg) (2015) (holding

that changes in Postal Service handbook for contract postal units did not directly relate to wages, hours, or working conditions as handbook contained guidance for field managers which did not establish rules for employees or impact existing employee rights or benefits); see also USPS-APWU, Case No. B06C-4B-C09112269 (Sulzner) (2009) (finding that because subject matter of handbook – guidelines for Area Mail Processing – did not directly relate to wages, hours, or working conditions, Postal Service’s failure to abide by handbook did not violate Article 19, even if the effect of management’s action impacted on wages, hours, and/or working conditions by resulting in the excessing and transfer of employees). See also USPS-NALC, Case No. Q11N- 4Q-C 14032224 (Nolan) (2015) (finding that Article 19 of Postal Service - National Association of Letter Carriers collective bargaining agreement – which originated from same language as that in the Parties’ Agreement – was not violated by changes to a handbook setting forth guidelines for managers regarding scheduling of employees because the subject matter of the handbook did not directly relate to wages, hours, or working conditions and because the handbook merely instructed managers as to how to perform their duties).

It is apparent that the changes to maintenance staffing packages dictated by the eWHEP MMOs do not directly relate to wages, hours, or working conditions. The staffing packages serve as guides for managers and do not directly dictate the actual staffing of NDCs or the actual hours, tours, or shifts to be worked by particular employees. Rather, the staffing packages generated by eWHEP give information to managers regarding budget and maintenance priorities. To the extent that eWHEP references staffing hours, such hours relate to time budgeted for equipment maintenance rather than hours of employment for bargaining unit employees. In sum, the staffing packages have no direct relationship to the wages, hours, or working conditions of bargaining unit employees. A contrary finding would dramatically broaden the scope of management decisions and documentation subject to Article 19 review in a manner inconsistent with the binding precedents set forth above.

The staffing packages generated by eWHEP are more accurate than those produced by BMC Gold because they are based on actual equipment usage and can be updated based on experience with existing equipment and the addition or removal of equipment. eWHEP allows for more accurate forecasting of needs, greater transparency

in the generation of staffing packages, and more consistency in staffing packages across similar NDCs. The staffing issues addressed by eWHEP, however, do not directly relate to wages, hours, and working conditions. While staffing decisions may have an eventual impact on working conditions, they do not relate directly to working conditions and should therefore be excluded from Article 19 substantive review.

Even if the Arbitrator were to subject the eWHEP MMOs to substantive review under Article 19, the record is devoid of any evidence to support the Union's contentions in this matter. The Union bears the burden of demonstrating that the eWHEP MMOs represent changes that are not fair, reasonable, or equitable, and it must do so with evidence rather than the speculation it has presented in this case. The Union's claim of substantial staffing cuts at the St. Louis, Philadelphia, Denver, and other NDCs are based on data which indicate that these cuts were generated prior to the release of the eWHEP MMOs, instead being generated by the WHEP program utilized in the Plant environment. The assertion by the Union that the 2012 staffing reductions at the Springfield NDC can be attributed to eWHEP is without merit, particularly as the Springfield facility was subject to realignment, AMP consolidation, and a reduction in mail volume and overall operations at the same time that its staffing package was generated by eWHEP. The Union declined to parse the impacts of these factors to determine to what degree, if any, the staffing reductions at the Springfield NDC were as a result of the eWHEP staffing package as opposed to those other circumstances that likely affected the reduction in staffing at that facility.

In addition, the Union was unable to produce a comparison of staffing hours at a particular facility before and after the adoption of eWHEP that would demonstrate an actual reduction in staffing hours due to eWHEP. While certain block grants of staffing hours were reduced or eliminated in eWHEP, other grants of staffing hours were made available based on the presence and utilization of certain equipment. Moreover, the Union's case did not address variations in staffing hours due to causes other than the staffing package program itself, such as those variations due to errors by local management in requesting or seeking staffing hours.

Furthermore, the Parties' Agreement contemplates the actions taken by the Postal Service on the basis of the eWHEP staffing packages. It permits the Postal Service to



reduce headcount at particular locations by attrition and by excessing on the basis of the needs of the Postal Service, as set forth in Article 12.5. The Agreement authorizes overtime work and premiums, including mandatory overtime work, overtime penalty premiums, and the scheduling of employees to perform work on holidays. The Postal Service's exercise of its rights in accordance with the provisions of the negotiated Agreement cannot be considered unreasonable. Significantly, the Agreement provides the bargaining unit with layoff protection in exchange for the Postal Service's right to reassign employees.

The Union also asserted that the use of eWHEP led to reduced staffing, which itself led to other negative or dangerous conditions, including increased workloads; excessive use of overtime; increased work on holidays; less frequent cleaning efforts and a subsequent increase in the amount of flammable detritus in the NDC environment; less frequent mail searches; and a reduction in the use of the assignment of multiple maintenance employees to the same work as a buddy system safety measure. The record, however, did not contain evidence demonstrating that any of these conditions were caused or exacerbated by eWHEP. In fact, many of these issues are longstanding ones that significantly predate the use of eWHEP, and there was no showing that these issues have worsened since the introduction of eWHEP.

The fact remains that the Postal Service's use of eWHEP and the staffing packages that it produces are in fact fair, reasonable, and equitable. As noted above, eWHEP allows for more accurate forecasting of needs, greater transparency in the generation of staffing packages, and more consistency in staffing packages across similar NDCs. The Postal Service's subject matter experts and field managers engaged in research and review of historical data to calculate actual needs for maintenance staffing hours for different equipment and across NDC facilities. The block grants previously used to allocate operational maintenance staffing hours were changed to equipment-based allocations based on historical data regarding the operational maintenance needs of particular equipment. Similarly, to the extent that the basis for mail search hours was changed, mail search hours were also subsequently linked to particular types of equipment. The assignment of Type I High Bay Cleaning work to Custodians was a change contemplated by the BMC Gold MMO (MMO-022-04), which included space to

include staffing estimates for High Bay Cleaning work to be performed by Custodians (referred to as LDC 38) as well as in the 1979 BMC Interim Staffing Guidelines, which notes the expectation that the cleaning of high bay mechanization that can be accomplished from floor areas, catwalks, platforms, or approved lifts should be accomplished by Custodians. The remaining changes to staffing hours for High Bay Cleaning were minimal and were driven by suggestions from subject matter experts. The minor change to the Type III High Bay Cleaning staffing formula resulted from the Postal Service's attempt to correct a longstanding error in that formula, and Type II staffing hours remained unchanged. These changes to staffing guides produced minimal effects on day to day staffing while allowing management to better understand and forecast its maintenance staffing needs at the NDCs and to reduce its expenses as a result.

For all of these reasons, the Arbitrator should deny the Union's Article 19 appeal in this matter.

### **DISCUSSION AND OPINION**

The dispute in this case concerns: 1) whether Article 19 applied to the Postal Service's promulgation of MMO 112-10 – i.e., the new maintenance staffing guidelines utilizing eWHEP; 2) whether, if Article 19 is applicable, the Postal Service complied with the procedures set forth in Article 19; and 3) whether if the Postal Service complied with the procedures set forth in Article 19, the changes in question are fair, reasonable, and equitable, as that phrase is used in Article 19. After careful consideration of the entire record, I find that Article 19 was applicable to the new maintenance staffing guideline MMO and that the Postal Service failed to comply in a number of material respects with the required procedures contained in Article 19. Accordingly, the Postal Service improperly promulgated MMO 112-10, regardless of whether that change was shown to be fair, reasonable, and equitable, and an appropriate remedy for that contractual breach is directed. A summary of the principal reasons for these holdings follow.

#### **Article 19 was Applicable to the Promulgation of MMO 112-10**

The initial disputed question is whether MMO 112-10, either in its final form or in the two draft forms mmo09134ad and mmo09134af, is covered by Article 19. The Postal Service argued that staffing guidelines do not “directly relate” to wages, hours or

working conditions as they apply to employees covered by the Agreement; that, regardless of the question of direct relation, the Postal Service enjoyed the right under Article 3 to unilaterally make changes to the staffing guidelines without regard to the limitations contained in Article 19; and that, for each of these reasons, the Article 19 appeal of the Union in this case must be dismissed. For both procedural and substantive reasons, I am unpersuaded by that position and find that the particular MMOs in question are governed by Article 19 of the 2006-2010 National Agreement.

The Postal Service and the Union both recognize that, for Article 19 to be applicable, the proposed change to a handbook, manual, or published regulation must directly relate to wages, hours, or working conditions, as they apply to bargaining unit employees. In regard to staffing guidelines, the Postal Service argues that any relation to the wages, hours, or working conditions of bargaining unit employees is, at best, indirect. The problem with this argument, however, is that the Parties considered this precise question in the context of Q00T-40-C 05017233; APWU HQTT20054 in 2006, and reached the opposite conclusion, finding that changed staffing guidelines were agreed to directly relate to wages, hours, and working conditions of the bargaining unit and to be subject to the strictures of Article 19. That matter was settled at the fourth step of the grievance procedure with an express agreement that: “all MMO’s concerning staffing and/or Preventative Maintenance Guidelines are Article 19 documents.” That agreement stood in sharp contrast to the agreed upon treatment of other MMOs as to which an initial determination would need to be made regarding whether and to what extent the MMO directly relates to wages, hours, or working conditions. No similar individual determination of direct relation need be made with respect to MMOs concerning staffing and/or PM Guidelines which were agreed, in blanket fashion, to be Article 19 documents and which, therefore, were to be treated as directly related to the wages, hours, or working conditions of bargaining unit employees. No valid basis has been shown to revisit this agreement in this arbitration. There was no showing of any changed relevant contract language and no showing of other intervening events or agreements that would serve to render the April 13, 2006 agreement unenforceable.

It is also significant that the “15 Day” statements prepared by the Parties make no mention of any dispute as to whether the subject matter of the changed staffing guidelines

in this case was covered by Article 19. Rather, the dispute in the Parties' pre-arbitration discussions appears to have focused upon the draft nature of the proposed changes, whether the Postal Service improperly implemented the proposed changes prior to providing the Union with Article 19 notice, whether appropriate information was provided, and whether valid grounds for implementing the changes were shown pursuant to Article 19 (including both claims of inconsistency with other contractual provisions and claims that the changes were not fair, reasonable, and equitable).

The evidence of arbitral precedent introduced in the record also supports viewing the change to the maintenance staffing guidelines contained in MMO 112-10 (and the predecessor draft versions of that MMO) as Article 19 covered changes that directly relate to the wages, hours or working conditions of bargaining unit employees. The record reveals that a substantial number of the Article 19 changes and appeals concern changes to maintenance MMOs, including those that relate to changes in staffing guidelines or maintenance schedules. Prior arbitration decisions between the Parties have treated a number of similar situations as being subject to Article 19, rather than holding that the changes could be issued unilaterally by the Postal Service without adhering to those negotiated requirements. *See, e.g., USPS-APWU, Case No. Q98C-4Q-C 02013900 (Das) (2006) (recognizing that changes to Handbook MS-47 addressing custodial staffing guidelines was covered by Article 19); USPS-APWU, Case No. Q94T-4Q-C 97040815 (Das) (2009) (recognizing that changes in MMO-028-977, a Maintenance Bulletin, addressing maintenance workhour estimating requirements was covered by Article 19 even though the changes challenged by the Union were ultimately approved as fair, reasonable, and equitable); USPS-APWU, Case No. AS-NA-0375 (Gamser) (1981) (holding that unilateral changes to the performance standards contained in MS-47 relative to the minimum frequencies that floor cleaning work were to be performed were subject to Article 19, finding that those changes impacted upon tenure and workload of bargaining unit employees, and directing that the changed standards and instructions were to be rescinded until the handbook provisions were properly amended in compliance with the requirements of Article 19); and USPS-APWU, Case No. H1C-NA-C-49 (Mittenthal) (1983) (Change to Handbook M-15 that changed to an "on the fly" rotation of relief for Keyboard Operators working on letter sorting machines and deleted language*

discouraging such assignments was subject to Article 19, but was made in accordance with Article 19 and was fair, reasonable, and equitable; the appeal was, therefore, denied on its merits).

That is not to say that Article 3 is irrelevant to the disposition of Article 19 grievances that involve changes to handbooks, manuals or published regulations that both directly relate to wages, hours, or working conditions, and also involve matters that relate to the exercise of managerial prerogatives. The history and language of Article 19, including appropriate consideration of relevant national arbitration awards, make clear that:

1) to the extent that handbooks, manuals, and published regulations directly relate to wages, hours, or working conditions of bargaining unit employees, those provisions must: a) not conflict with the Agreement; and b) must be continued in effect during the life of the Agreement, with the proviso that the Postal Service may make unilateral changes in accord with the provisions of Article 19;

2) the procedures required by Article 19 include notice to the Union at the National level in advance of the proposed changes; certain narrative information regarding the purpose and effect of the proposed changes and all documentation concerning the proposed change from the manager(s) who requested the change must be provided in order for that notice to be deemed compliant with Article 19; further, pursuant to changes implemented in interest arbitration in 2001, part of the procedural requirements of Article 19 is that if there is a Union requested meeting, then that meeting will be attended by managers who are knowledgeable about the purpose of the proposed changes and its impact on employees;

3) if, following the Article 19 meeting, the Union submits the issue to arbitration, then there are time limits and appeals procedures applicable to those matters that vary from the general grievance and arbitration provisions of the Agreement, and

4) the Article 19 arbitration, to the extent that it involves the substantive ability of the Postal Service to adopt the changed handbook, manual, or regulation provisions at issue, will focus upon two issues: a) whether the proposed changes are inconsistent with the Agreement; and b) whether the proposed changes are fair, reasonable, and equitable.

Prior arbitration cases have refrained from attempting to identify the components

of what is “fair, reasonable and equitable” and have looked at the phrase as a single standard. The degree to which the proposed change is projected to adversely impact existing wages, hours, and working conditions, on the one hand, and the degree to which the proposed change involves matters that are traditional and necessary areas of managerial discretion and flexibility and have been shown to be operationally needed, on the other hand, have been given significant weight in making the determination as to whether a particular proposed change is fair, reasonable and equitable. In making those judgments, arbitrators have not found it particularly helpful or necessary, for the most part, to identify burdens of proof or persuasion and have viewed the fair, reasonable and equitable standard as one that is ambiguous, flexible, and grounded squarely in careful consideration of the relevant facts and circumstances of the particular case.

#### The Postal Service Failed to Comply with the Requirements of Article 19

The Union proposed a number of changes to Article 19 during the 2001 interest arbitration proceedings for the 2000-2003 National Agreement. The Arbitration Award adopted some of the proposed changes, including specifically a requirement that the Postal Service furnish the Union with the following information about each proposed change that is covered by Article 19: 1) “a narrative explanation of its purpose and impact on employees” and 2) “any documentation concerning the proposed change from the manager(s) who requested the change addressing its purpose and effect.” The Arbitration Award also adopted new language that required that the meeting with the Union with respect to the proposed change in handbook, manual, or regulations “be attended by a manager(s) who are knowledgeable about the purpose of the proposed change and its impact on employees.” Proposed language that would have clarified that the Postal Service not be permitted to make the proposed changes in manual and handbook provisions prior to receipt of an arbitration award finding those proposed changes in compliance with Article 19 was opposed by the Postal Service on the basis of its assertion that changes in government-wide regulations may compel it to make the changes prior to receipt of an arbitration award. Without an articulation as to its rationale in that regard, it is clear that the interest arbitration award did not adopt the Union’s proposed Article 19 language regarding a proscription on implementing proposed Article 19 changes prior to receipt of an arbitration award approving those proposed

changes.

The evidentiary record is clear that the meetings regarding the proposed Article 19 changes in this case, including the meetings that preceded the 15 Day statements, were not attended by a manager who was knowledgeable about the purpose of the proposed change and its impact on the wages, hours, and working conditions of bargaining unit employees. Even more significantly, there was no evidence that the Postal Service provided accurate, relevant requested information to the Union in connection with the Article 19 process. When asked for an “apples to apples” comparison designed to show the impact of the proposed change in staffing guideline methodology on staffing at the NDCs, the Postal Service declined to provide one. The record evidence reflects that the Postal Service’s representatives at the Article 19 meeting represented that the transition from the BMC Gold method of calculating maintenance staffing hours to the eWHEP method of calculating maintenance staffing hours would have no impact on the level or composition of maintenance staffing authorized for any of the NDCs – a representation that was not shown to be accurate and that is at odds with the underlying concepts built into the eWHEP model for calculating maintenance staffing needs (which includes for the first time in an NDC environment proration of authorized time based upon actual prior runtime for equipment in prior years, reductions in the authorized High Bay Cleaning staffing hours for mechanics, changes in authorized staffing time for mail search, significant eliminations of OM staffing time, and other changes that were intended to rationalize maintenance staffing in response to the changed manner in which maintenance work was to be performed and to reduce the overall number of maintenance hours authorized when compared to a similar staffing calculation performed pursuant to MMO 022-94 (BMC Gold). Even during the arbitration process, in which the question of the fairness, reasonableness, and equity of the proposed changes were being litigated (since the ruling on the coverage and procedural predicate Article 19 issues had not then been made), the Postal Service failed to introduce significant and detailed, first hand information that made clear the projected impact of the proposed changes on wages, hours, and working conditions at the time that the changes were developed and proposed or the actual impact of the changes on wages, hours, and working conditions based upon subsequent events. These requirements are significant in a case like the instant case to

allow the Union the information and perspective necessary to effectively provide meaningful input and response prior to proposed changes being implemented. The information is also objectively significant to making an informed decision as to whether or not to continue to challenge the proposed changes in arbitration. The information is particularly critical in the instant case where the effects of the change to an eWHEP based maintenance staffing guideline system may not be transparent, where these changes are occurring in the context of other significant changes to the way in which maintenance is being provided at the NDCs, and where it was clear by 2010 that the transition in the staffing system was incomplete given the reliance of the eWHEP based maintenance staffing guidelines system upon revised equipment MMOs and the fact that the revision of the equipment MMOs was then underway and not completed. In fact, it appears that eWHEP took effect gradually in terms of the maintenance hours staffing package in the NDCs, with some impact at certain NDCs as a means of supplementing MMO 022-94 (BMC Gold) staffing guidelines even prior to the Postal Service's initial notice to the Union in the Article 19 process, and with other changes being made on an evolutionary basis after the process. There was no evidence as to whether, as new MMOs populated the eWHEP maintenance staffing model, new Article 19 notices were issued. Regardless, however, there was no record evidence that the Postal Service advised the Union in 2011, when MMO 112-10 and its predecessors were being discussed, that MMO 112-10 was a work in progress and that the ultimate maintenance staffing that would be approved at the NDCs would be a constantly changing matter at least until the point that final MMOs for all of the significant equipment operated in the NDCs were issued.

When the situation is viewed in its totality, I find that the Postal Service proceeded to implement MMO 112-10 prior to satisfying the express conditions on consultation and information disclosure that were agreed contractually to be predicates to moving forward unilaterally with changes of this type. The Postal Service failed to disclose sufficient, detailed, relevant information regarding the purpose and effect of the proposed change or to provide direct documentation from the managers who requested the change and oral explanations at the Article 19 hearing from managers who were knowledgeable about the purpose and effect of the proposed changes to satisfy the requirements of Article 19.



### The Appropriate Remedy

The Postal Service's significant failures to comply with Article 19 cannot be dismissed as harmless error in this case. The failures were significant and continuing. Given those failures in 2011, it follows that having failed to act in accord with the Article 19 process, the Postal Service was obligated to continue to generate its NDC staffing levels pursuant to the guidelines then in effect prior to implementing the changes set forth in MMO 112-10. It did not do so.

The customary remedy in cases of this type is one that will direct the rescission of the improperly implemented MMO 112-10 (and any improper implementation of predecessor drafts) and direct a return to the status quo ante – i.e., to the maintenance staffing guidelines set forth in MMO 022-04 (BMC Gold). The question is presented as to whether the facts of this case present persuasive reasons for an award that departs from the traditional status quo ante remedy. After careful consideration, I am unpersuaded that different remedial relief is appropriate. Any resulting disruption in the development of post-Award maintenance staffing for NDCs is unfortunate, but is the product of the Postal Service's failures to have provided sufficient and accurate information to the Union at the time that the changes were first being considered for formal implementation. The lapse of time is something that is the responsibility of both Parties and cannot provide grounds in this case for the entry of an award different than is otherwise warranted.

The Postal Service is, therefore, directed to rescind MMO 112-10 and return to the prior Maintenance Staffing BMC Gold guidelines (including the potential for modification based upon the challenge to BMC Gold that the Union asserted was still pending in 2011) and maintain those guidelines unless and until they are changed by mutual agreement of the Parties or by a valid Article 19 process, including the submission of a valid Article 19 notice and holding a contractually compliant Article 19 meeting (if requested by the Union).

The Union's request that employees affected by the improperly implemented staffing guidelines be made whole is rejected. The dispute in this case related to the improper promulgation of changes to MMO 022-04 (BMC Gold Maintenance Staffing Guidelines). Disputes over the actual performance or non-performance of maintenance work, including the referenced dispute over the assignment of certain High Bay Cleaning

work to Custodians, are beyond the scope of the appeal in this case which addresses an improper change in staffing guidelines. There was no showing that the Postal Service was precluded under MMO 022-04 from deciding when and whether particular maintenance work should actually be performed in light of the totality of circumstances then present. Moreover, it appears from the testimony that a number of changes that the Union asserts were the result, in whole or in part, of replacing MMO 022-04 with MMO 112-10 (e.g., reductions in authorized maintenance staffing at a number of NDCs, changes in overtime assignments, etc.) are the subject of separate local grievances in any event.

In light of the holding in this case, it is not necessary to opine with respect to the remaining disputed contentions of the Parties, including: 1) whether MMO 112-10 satisfied the contractual “fair, reasonable and equitable” standard that would have been applicable if the Postal Service had provided the notice and accompanying information that was required to be provided to the Union by Article 19 and if the Postal Service had required the attendance at the Article 19 meetings of managers who were sufficiently knowledgeable about the purpose of the proposed changes and their anticipated impact on the wages, hours and working conditions of bargaining unit employees, and 2) whether any provisions of MMO 112-10 were improperly implemented due to being in conflict with or inconsistent with other provisions of the Agreement.

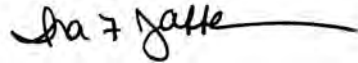
**AWARD**

The Postal Service violated Article 19 when it implemented MMO 112-10 (including prior Draft MMOs mm09134ad and mmo9134af) without first complying with the requirements of Article 19 regarding the information that must accompany notice of proposed changes to handbook, manual or published regulations provisions that directly relate to wages, hours or working conditions of bargaining unit employees and without first complying with the requirements of Article 19 regarding who must attend the Article 19 meetings.

The Postal Service is directed to cease and desist from using MMO 112-10 (eWHEP), and to return to using MMO 022-04 (BMC Gold), to prepare Maintenance Staffing packages for the NDCs, unless and until the Postal Service complies in full with the requirements imposed by Article 19.

The Article 19 claims are sustained to the extent consistent with the foregoing Opinion and Award.

October 19, 2015



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Ira F. Jaffe, Esq.  
Arbitrator