

NATIONAL ARBITRATION
BEFORE IMPARTIAL ARBITRATOR STEPHEN B. GOLDBERG

In the Matter of Arbitration)	
)	
between)	
)	
UNITED STATES POSTAL SERVICE)	Case No. Q10T-4Q-C -13332310
)	MMO-057-12 MSC CLERKS
)	
)	
and)	
)	
AMERICAN POSTAL WORKERS)	
UNION, AFL-CIO)	
)	

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Erin E. Lynch, Mark A. Lippleman, Counsel;
Terry C. LeFevre, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Jason R. Veny, Attorney, Michelle
Cassoria, Attorney (Murphy Anderson, PLLC)

Place of Hearing: United States Postal Service, 475 L'Enfant Plaza,
SW, Washington, D.C.

Hearing Date: October 25-26, 2017

Date of Award: January 31, 2018

Relevant Contract Provisions: MMO-057-12; Settlement Agreement,
May 9, 2012

Contract Year: 2010-2015

Type of Grievance: Contract Interpretation

SUMMARY OF AWARD

The Postal Service did not violate MMO-057-12 or the May 9, 2012, Settlement by failing to count maintenance supervisors within the number of positions supported for determining Maintenance Support Clerk staffing.



Stephen B. Goldberg, Arbitrator

January 31, 2018

I. **SUMMARY OF RELEVANT EVIDENCE**

The Maintenance Support Clerk (hereafter MSC)¹ provides administrative services in the Maintenance Department. According to the MSC Position Description, the MSC:

Performs a variety of data collection and processing tasks in scheduling, planning, controlling, and reporting for maintenance operations; completes requisitions, stores and issues supplies, parts, and tools; and analyzes maintenance operations and recommends and implements changes or improvements.

The duties and responsibilities of the MSC include:

2. Develops and reviews checklists; plans, reviews, schedules and coordinates new or revised instructions; establishes maintenance schedules with operations supervisors. . .

8. Performs general computer support, including file maintenance, back-up and system security; uses software programs to produce reports; prepares correspondence, operates other office equipment; performs a variety of other tasks to support maintenance administration. . .

Steven Raymer, the Union's National Maintenance Division Director, testified that MSCs support maintenance supervisors in a number of ways. Among these are aiding the local implementation of national policies and procedures, including Maintenance Management Orders (MMOs), preventive

¹ The official job title for the Maintenance Support Clerk is Maintenance Operations Support Clerk, but this title is used interchangeably with MSC and MOS Clerk. The former official job title was Maintenance Control Clerk.

maintenance guidelines, how mechanics and technicians are assigned to routes, and how checklists are created. Mr. Raymer's testimony was corroborated by that of MSCs from three different Processing and Distribution Centers – Alzena Johnson (Lafayette, LA), Jennifer Johnson-Heiss (Madison, WI), and Jaime Kleeberger (St. Paul, MN) – each of whom testified to the extensive support MSCs provide to maintenance supervisors.

In order to determine the number of authorized MSCs, the Postal Service has, since 1977, issued Maintenance Management Orders (MMOs) containing a matrix in which the number of MSCs is set out as a function of the number of positions to be supported by the MSCs. For example, in the 2000 MSC staffing matrix, if there were 165-184 positions supported, 10 MSCs were authorized; if there were 185-204 positions supported, 11 MSCs were authorized.

Between 1997 and 2000, the MMOs addressing MSC staffing explicitly excluded supervisory positions from those positions to be counted in determining the number of authorized MSCs. MMO-19-77, issued March 18, 1977, contained "Staffing Guidelines for Maintenance Control and Stockroom," which provided that:

The number of maintenance control and stockroom positions authorized for staffing at NMICS [National Maintenance Inventory/Information Control System] Offices are a function of the workforce they support. The following chart shows authorized Maintenance Control & Stockroom Positions vs. Maintenance Force, supervisory personnel excluded.

The next MMO dealing with MSC staffing, MMO-30-87, issued in 1987, included a similar section called "Maintenance Control," which provided:

The number of maintenance control positions depends on the workforce supported. Maintenance Control does not support security personnel, telephone operators, elevator operators, supervision, or other administrative

personnel which do not require daily scheduling.

MMO-21-91, issued in 1991, and MMO-028-97, issued in 1997, contained identical language and staffing matrices as had MMO-19-77 and MOU-30-87. MMO-074-00, issued in October 2000, contained the same staffing matrix as had each of its predecessors. MMO-074-00, however, changed the means by which the number of MSCs was to be determined from a manual to a computer-based process. According to the MMO-074-00 instructions, the staffing matrix was to be completed by a software program called eWHEP (Electronic Work Hour Estimator Program).

The eWHEP was not, contrary to its predecessors, accompanied by instructions regarding which positions were to be counted as supported by the MSC. Instead, the eWHEP contains pre-programmed fields identifying which positions will be included as supported positions in the MSC staffing matrix. The supported positions in eWHEP did not include supervision, and eWHEP provided no opportunity for management to enter an additional field for a supervisor position. Supervisors were thus effectively excluded from the count of positions supported by the MSC.

In June 2010, shortly before the issuance of MMO-074-00, John Dockins, Postal Service Manager Contract Administration, wrote Union president William Burris to advise him that:

As a matter of general information, Maintenance Policies and Programs plans to review the estimated staffing recommendations for Maintenance Support Clerk PS-06 and Maintenance Support Clerk PS-07.

The staffing requirements for maintenance support activities have not been critically evaluated for over 30 years. Maintenance support operations have evolved with technology through four different computing systems through those years. Computer

evolution has impacted all aspects of the maintenance support function.

The review of MSC staffing was led by Dominic Bratta, Postal Service Manager of Maintenance Planning and Support. Mr. Bratta assembled a team of Postal employees and contractors. Together, they developed a survey instrument consisting of over 120 questions designed to collect data about the frequency with which MSCs performed the duties listed in the MSC job description. The team administered the survey to approximately 357 MSCs, 19% of the total MSC population.

One question on the survey asked the MSCs about the amount of time they spent on the task of "Assist Mechanics and Supervisors As Needed." In response, 54.3% of those surveyed indicated that they performed this task on a daily basis, 8.6% responded that they performed it weekly, and 6.1% responded that they performed it hourly.

According to Mr. Bratta, the team's key finding was that the total work load for the Maintenance Support operation had decreased significantly, warranting a change to the existing staffing criteria. Based on that key finding, the Postal Service revised the 2000 MSC staffing matrix in a manner that, Mr. Bratta testified, better reflected the current MSC workload.

Mr. Bratta's team made no recommendation with respect to how the supervisor position would be treated in the proposed new staffing matrix. The reason for this silence, Mr. Bratta testified, was that:

Because there was no change to that -- to the requirement for supervisors. They had not been counted in the past. The program, eWHEP, does not look at supervisor staffing. It only looks at craft staffing. There's another database that utilizes supervisor staffing. So it was not a practical decision. It was never entered into our mind.

On October 27, 2011, the Postal Service provided the Union with Article 19 notice of the Postal Service's intention to release updated staffing criteria for the MSC position. The notice stated that technological improvements had led to elimination or significant reduction in the work task requirements to support the maintenance operation, and that a new staffing calculation had been developed to correctly align the current workload to the number of authorized positions.

A draft of MMO-057-12 accompanied the Article 19 notice. The draft included a revised staffing matrix that listed the number of positions from supported and the corresponding number of authorized MSC positions, reducing the number of MSC positions from what they had been in prior years' staffing matrices. The draft did not contain any language excluding supervisors from the count of supported positions, but it did contain a note that the number of positions supported did not include Station/Branch maintenance personnel.

After the Union received draft MMO-057-12, the parties met on a number of occasions to discuss the draft MMO. In the course of these discussions, the Postal Service granted the Union's request to amend the draft MMO to provide that a local installation could request one more MSC than it would have under the matrix. The Union also successfully negotiated an upgrade of existing Level 6 MSCs to Level 7, resulting in all MSCs being Level 7.

According to Postal Labor Relations Specialist Terry LeFevre, in the course of a meeting between the Postal Service and the Union that took place on or about February 15, 2012, Maintenance Division Director Steven Raymer asked whether the revised staffing matrix included EAS positions among the positions supported, to which LeFevre answered, "No, bargaining unit only". According to Mr. LeFevre, that was the only discussion of the supervisor issue at that meeting. Nor was the supervisor issue discussed at any other time during the entire period between the October 2011 presentation by the Postal Service of the draft MMO-057-12 to the Union, and the Union's May 2012 acceptance of the final version of that MMO.

Mr. Raymer testified that if he had asked the question attributed to him by Mr. LeFevre, that question did not refer to including maintenance supervisors, who are included among EAS positions, as being supported by MSCs, but rather to including postmasters and supervisors in associate post offices as being supported by MSCs. Mr. Raymer did not deny Mr. LeFevre's testimony that there was no other meeting between the parties at which the issue of including supervisors among the positions supported by MSCs was discussed.

Mr. Bratta, who was also present at the February 15 meeting, corroborated Mr. LeFevre's testimony regarding what was said at that meeting regarding supervisors, as well as Mr. LeFevre's testimony that the supervisor issue was not raised at any other meeting between the parties. Mr. Bratta also testified that including the supervisor position in the staffing matrix would have been a major change for the Postal Service. This was partly due to supervisors never before having been counted in the MSC staffing matrix, and partly because the database from which the MSC staffing matrix is constructed is different from the database for supervisor staffing. Hence, adding supervisors to the database underlying the MSC staffing matrix would have required a substantial modification to that database.

On May 9, 2012, the parties entered into a settlement agreement which provided, among other matters, that:

The APWU accepts the staffing matrix proposed in MMO-057-12.

The APWU accepts the method of counting the Maintenance employees supported in the new MMO.

On June 16, 2012, the final version of MMO-057-12 was issued. The MSC staffing matrix was unchanged from the draft version. It provided:

Number of positions supported	0-19	20-39	40-59	60-79	80-100	101-125	126-150	151-175	176-200	201-225	226-250	251-285
MSC Positions Authorized	0	1	2	3	4	5	6	7	8	9	10	11
Number of positions supported	286-320	321-355	356-390	391-425	426-460	461-495	496-530	531-565	566-600	601-635	636-670	671-705
MSC Positions Authorized	12	13	14	15	16	17	18	19	20	21	22	23

The staffing matrix was preceded by an introductory explanation of the process used by the Postal Service in establishing the new staffing matrix. The introduction also states that the new matrix took into account the workload associated with the major components of the MSC operation, one of which is “total maintenance employees supported”.

The matrix was followed by a note providing that the number of positions supported in the matrix does not include Station/Branch maintenance personnel. There was no reference to maintenance supervisors.

II. DISCUSSION

The Union’s initial argument is that the plain meaning of the language in both the Settlement Agreement and MMO-057-12 is that supervisors are included in the count of positions supported by MSCs. Referring to the introduction to the new matrix, which states that the matrix is based, among other matters, on “total maintenance employees supported”, the Union asserts that “total” means “all”, and that “all maintenance employees” plainly includes maintenance supervisors. I

disagree. The categories of “supervisor” and “employee” in the labor-management context generally, and in the Postal Service specifically, are understood to be different, not the same, with the result that the term “employee” does not typically include supervisors. Indeed, Article 1.2 of the Agreement provides that the employees covered by the Agreement do not include “managerial and supervisory personnel”.

The Union next points out that the 1977 MMO provided that supervisory personnel were excluded from the “Total of Maintenance Force”. It states (Brief, p. 18), “Writing in such an exclusion indicates that the Postal Service understood that supervisors would have been included in the Total Maintenance Force count unless they were explicitly excluded.” An alternative explanation for the explicit exclusion of supervisory personnel from the Total Maintenance Force is that the Postal Service wanted to make explicit what it deemed implicit – that MSCs did not support supervisory personnel, hence that supervisory personnel were not to be counted in the Total Maintenance Force for purposes of determining the number of MSCs to be authorized.

In sum, I reject the argument that the plain language of MMO-057-12 demonstrates that supervisors were to be included among employees supported by MSCs. Nor does the language of the 1997 MOU add weight to the Union’s argument.

The Union argument is not limited to the plain language of the MMO. It states (Brief, p. 17):

[R]arely do national-level disputes rest only on plain meaning. Considering plain meaning in the context of the history of the MMO and the changes the MMO was memorializing still supports the APWU’s position.

The first argument that the Union raises in supports of its position that the MMO should be interpreted to include supervisors in the matrix count of supported employees is that all MMOs prior to 2012 contained language

explicitly excluding supervisors from the category of supported employees.² The failure of the 2012 MOU to exclude supervisors thus indicates that the Postal Service no longer sought to exclude supervisors from the category of supported employees – or, at least, that the Union could reasonably have so understood. The Union goes on to assert that the Postal Service, as the drafter of the 2012 MMO should be bound by the Union’s reasonable understanding of its meaning.³

It is undoubtedly true that in many situations such a change in language would constitute powerful evidence that the mutual understanding of the parties was that supervisors were to be included in the count of employees supported by the MSC. In this case, however, the contrary evidence is overpowering. First, it can hardly be disputed that the Postal Service did not intend, by the omission of the supervisory exclusion, to add supervisors to the category of supported employees. The evidence is clear that the purpose of the 2012 MOU was to reduce the number of MSCs, and including supervisors as supported employees would have had the opposite effect. The failure of the Postal Service to explicitly exclude supervisors is more likely to have been due, as Mr. Bratta testified, to the view that supervisory exclusion had been the practice for decades, that eWHEP had incorporated that exclusion without explicit language to that effect, hence no explicit language was necessary in the new MMO to continue that exclusion.⁴

The evidence that the Postal Service did not intend to add supervisors

² The Union states (Brief, p. 18). “While the language from MMO-028-97 was not specifically carried over to MMO-074-00, there was a provision on the first page of the MMO that incorporated the previous MMOs for “explanations of approved staffing hours,” thereby continuing the exclusion of supervisors in the number of positions supported.”

⁴ Mr. Bratta testified, with respect to the absence of any recommendation regarding supervisory exclusion in his team’s 2011 recommendations for changes in the staffing matrix

Because there was no change to that -- to the requirement for supervisors. They had not been counted in the past. The program, eWHEP, does not look at supervisor staffing. It only looks at craft staffing. There’s another database that utilizes supervisor staffing. So it was not a practical decision. It was never entered into our mind.

as supported employees in the new matrix is by no means the end of the matter. For, regardless of the Postal Service's actual intent to include supervisors, if, under all the circumstances, the silence of the MMO on that issue could reasonably have been understood by the Union to constitute Postal Service inclusion of supervisors, the Postal Service would be bound by that understanding.

The Union asserts that despite the Postal Service's desire to reduce the MSC population, counting supervisors as supported employees, would have been a small step in mitigating the number of MSC positions lost by the revised matrix. Hence, the Union could reasonably interpret the absence of an explicit exclusion of supervisors as an agreement to include them.

If the Union, in the course of its meetings with the Postal Service, had pressed for the inclusion of supervisors as a quid pro quo for the Union's acceptance of the new MMO, the Union's argument might have merit. However, despite the Union's efforts to negotiate other changes in the MMO that would reduce its impact on the MSCs – successful so far as obtaining a provision that local installations could request one more MSC than it would have under the matrix, and in obtaining an upgrade of all existing Level 6 MSCs to Level 7 – the Union made no effort to negotiate the inclusion of supervisors as supported employees. Postal Labor Relations Specialist Terry LeFevre testified that at the meeting at which Mr. Raymer asked whether the revised MMO matrix included EAS positions among the positions supported, to which LeFevre answered, “No, bargaining unit only”. There was no further discussion of the subject at that meeting or at any other time before the new MMO was finalized. The Union can hardly argue that this exchange, in which Mr. Raymer said nothing after Mr. LeFevre told him that only bargaining unit positions were to be counted as supported employees, amounted to a Union demand that supervisors be counted.⁵

⁵ According to Mr. Raymer, his asking about the inclusion of EAS positions in the matrix of supported employees did not refer to including maintenance supervisors, who are a subset of EAS employees, but rather to including postmasters and supervisors in associate post offices. Interpreting Mr. Raymer's question in this fashion, however, would result in a conclusion that the Union never even inquired about whether supervisors were to be included, a

In the absence of evidence that the Union negotiated for the inclusion of supervisors, the Union is reduced to arguing that the Postal Service, in the absence of a Union demand, nonetheless agreed to include supervisors because, as the testimony of Mr. Raymer and the three MSCs demonstrated, MSCs do in fact support supervisors, and the Postal Service recognized that fact. Whatever the facts may be as to MSC support of supervisors, or the Postal Service recognition that they do so, the Postal Service had never, dating back to 1977, counted supervisors as supported employees, and the Union could not reasonably assume that the Postal Service, in the absence of a Union demand, had changed its position on that point in the course of drafting a new MMO intended to reduce the number of MSCs.

The final Union argument is that even assuming that MMO-057-12 is unclear with respect to the inclusion of supervisors as supported employees, it was the Postal Service that drafted MMO-057-12, and any ambiguities should be construed against it. The principle that ambiguities should be construed against the drafter is widely accepted. It is, however, like other canons of contract interpretation, a guide, not a rule to be followed to the exclusion of all other indicia of the meaning of a particular contract. In the instant case, whatever ambiguity exists on the face of the MMO relating to whether or not supervisors should be counted as supported employees is sufficiently clarified by the evidence of the circumstances surrounding the MMO that the meaning of the MMO is no longer ambiguous. Hence, the principle that ambiguities should be construed against the drafter is inapplicable here.

To be sure, the task of interpreting MOU-057-12 would have been easier if the Postal Service had explicitly provided for the exclusion of supervisors from the matrix of supported employees. It is not, however, the Arbitrator's function to sanction imprecise draftsmanship, but rather to interpret the Agreement. Doing so in the instant case, I find that the interpretation of MMO-057-12 here

conclusion that would hardly strengthen the Union's claim that it interpreted the new MMO to provide for supervisory inclusion.

sought by the Union cannot be sustained.⁶

IV. AWARD

The Postal Service did not violate MMO-057-12 or the May 9, 2012, Settlement Agreement by failing to count maintenance supervisors within the number of positions supported for determining Maintenance Support Clerk staffing.



Stephen B. Goldberg, Arbitrator

January 31, 2018

⁶ I reach the same conclusion with respect to the Union's argument that the Postal Service violated the Settlement Agreement by its failure to count supervisors as supported employees. According to the Union, the sentence in the Settlement Agreement providing that the APWU "accepts the method of counting Maintenance employees supported in the new MMO" means that the Union accepted the change from not previously including supervisors in the employee count to counting them in the new MMO. Inasmuch as I have concluded that the new MMO did not provide for counting supervisors, and that the Union could not reasonably have believed otherwise, I reject the related argument that the Postal Service acted contrary to the Settlement Agreement in not counting supervisors.