



American Postal Workers Union, AFL-CIO

Maintenance Division

Idowu Balogun, Assist. Dir. A

Steven G. Raymer, Director

Terry B. Martinez, Assist. Dir. B

First Line H Regional Arbitration Award

We are pleased to share with you a very recent regional arbitration award. This award, J10T-4J-C 15092710, is on the issue of local application of Item 6 of the 7/9/2014 MS-47 T/L-5 MOU. We commonly refer to this as a Line H dispute (Line H is the total work hours per year of required custodial work from the PS Form 4852).

This is the crucial enforcement stage of the requirements to establish and maintain our custodial staffing and to properly schedule and perform custodial work. Obviously, the two will go hand in hand. As your National Officers and NBAs have been teaching and instructing, only the hours of work incorporated and reflected in the Line H total count for purposes of comparing those hours (LDC 38) with the Line H total.

The above referenced MOU was agreed to by your National Maintenance Officers containing the explicit requirement to staff and perform work and a penalty for local management not doing so. This included a work hour comparison (LDC 38) against the work that we are staffed to perform (Line H). Along with this was an agreement to pay for failing to meet the target at the overtime rate. Item 6 thus represents a significant job security clause. It does, however, require effort at the Local level (members and officers) as those in Jefferson City have clearly put forth.

The specific issue in this case was stipulated as:

1. Did the Service comply with Paragraph 6 of the July 2014 Memorandum of Understanding on MDS-47 TL-5 Implementation and Maintenance Craft PSE Conversions, between July 2014 and the end of the 2014 fiscal year, by working the Custodians at the main Post Office and the Capital View Station in Jefferson City, Missouri at least 90 percent of the hours shown on Line H of the applicable PS Form 4852?
2. If not, what is the appropriate remedy?

The text of the award is lengthy but worth stating here. First paragraph is:

Based upon the facts and circumstances of the instant grievance, the Undersigned Arbitrator must find that the Service failed to comply with Paragraph 6 of the July 9, 2014 Memorandum of Understanding Re: MS- 47 TL-5 Implementation and Maintenance Craft PSE Conversions, by failing to maintain and make available to the Union appropriate records delineating the actual work hours devoted by the Jefferson City MPO and Capital View Station Custodians to duties that were within the scope of custodial duties included in Line H of the PS Forms 4852 for the MPO and Capital View Station facilities.

Do note the requirement that the Service must maintain and make available to the Union the records to show the difference between the work performed attributable to Line H from other work hours. As we have consistently maintained, whatever the hours of custodial (and even non-custodial) work the Service puts under LDC 38, the only LDC 38 hours that can be used for Item 6 comparison is for work performed that is identified in Line H.

Maintenance Division, APWU

Idowu Balogun, Assist. Dir. A

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The second paragraph of the award is equally important and instructive:

The Service also failed to comply with Paragraph 6 of the MOU by not working the MPO Custodians in the final twelve weeks of FY 20 14 at least 90 percent of the prorated number of hours required by Line H of the Form 4852 for the MPO facility. Accordingly, the Service must immediately do the following: (1) compile and, on a timely basis under Paragraph 6 of the MOU, make available for discussion with the Union, records reliably reflecting the hours actually worked by Custodians assigned to the MPO and the Capital View Station, differentiating hours that involve actual custodial work included in Line H of the applicable PS Forms 4852 from hours devoted by the Custodians to other tasks; and (2) immediately compensate the Custodian(s) assigned to the Jefferson City MPO who may be designated by the Union in the total amount of \$12,429 for the extent to which their actual work hours in the final twelve weeks of FY 2014 fell short of 90 percent of the prorated hours listed on Line H of the Form 4852 for the MPO facility.

Please do follow the above advice regarding the supplying of the information on “*a timely basis*”. Request the records throughout the fiscal year (FY 2016 begins on October 1, 2015). This will permit you to keep on top of this and minimize the time and effort needed at the end of the FY in review and report construction. What you are doing here is ensuring local management compliance with the requirement to have “*... records reliably reflecting the hours actually worked by Custodians ..., differentiating hours that involve actual custodial work included in Line H of the applicable PS Forms 4852 from hours devoted by the Custodians to other tasks;*”.

In closing, here are some examples beyond the delivery of express mail (see award) that are likely not on your local 4852 and must be subtracted:

Increases in frequency of cleaning – for instance -- waxing the floor is done 3 times per year; if the floor is waxed 8 times per FY, then all hours spent waxing on occasions 4-8 are not reflected on the Line H hours and therefore are subtracted from LDC 38 hours.

Recycling – far too many of the PS 4852s fail to contain any hours for this essential custodial work. Your custodians are most likely on a standing work order or route for this work. If recycle is not on the 4852, then the FY totals of hours for that work order or route are subtracted from LDC 38.

Of course, this does all hinge on ensuring that you have your current and accurate custodial staffing package. Each facility must have its own package and there is a discussion by the arbitrator in the award on this.

We have attached the award here for your convenience and you should be able to already find this award in APWU Search.

If you have further questions, please do not hesitate to contact your NBA or your National HQ Maintenance Officers.

Please Post

In the Matter of Regular Arbitration Between

)
UNITED STATES POSTAL SERVICE) **Grievant: Class Action**
) **Post Office: Jefferson City, Missouri**
and)
) **USPS Case No. J10T-4J-C 15092710**
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO)
_____)

BEFORE **ARBITRATOR LAMONT E. STALLWORTH, PH.D.**

APPEARANCES

For the Service: Cassandra Walker
Labor Relations Specialist – Gateway Cluster

For the Union: Jeffrey Beaton
National Business Agent - Maintenance Craft

Place of Hearing: Jefferson City, Missouri

Dates of Hearing: August 7, 2015

Post-Hearing Submissions: August 11, 2015

Date of Award: September 20, 2015

Relevant Provision(s): Article 38 and MOU Re: MS-47 TL-5 PSE
Conversions

Contract Year: 2010 - 2015

Type of Grievance: Contract Interpretation

AWARD

Based upon the facts and circumstances of the instant grievance, the Undersigned Arbitrator must find that the Service failed to comply with Paragraph 6 of the July 9, 2014 Memorandum of Understanding Re: MS-47 TL-5 Implementation and Maintenance Craft PSE Conversions, by failing to maintain and make available to the Union appropriate records delineating the actual work hours devoted by the Jefferson City MPO and Capital View Station Custodians to duties that were within the scope of custodial duties included in Line H of the PS Forms 4852 for the MPO and Capital View Station facilities.

The Service also failed to comply with Paragraph 6 of the MOU by not working the MPO Custodians in the final twelve weeks of FY 2014 at least 90 percent of the prorated number of hours required by Line H of the Form 4852 for the MPO facility. Accordingly, the Service must immediately do the following: (1) compile and, on a timely basis under Paragraph 6 of the MOU, make available for discussion with the Union, records reliably reflecting the hours actually worked by Custodians assigned to the MPO and the Capital View Station, differentiating hours that involve actual custodial work included in Line H of the applicable PS Forms 4852 from hours devoted by the Custodians to other tasks; and (2) immediately compensate the Custodian(s) assigned to the Jefferson City MPO who may be designated by the Union in the total amount of \$12,429 for the extent to which their actual work hours in the final twelve weeks of FY 2014 fell short of 90 percent of the prorated hours listed on Line H of the Form 4852 for the MPO facility.

The Arbitrator shall retain jurisdiction over the remedial aspect of this Award for a reasonable period of time, not to exceed sixty (60) calendar days unless otherwise formally and mutually agreed by both Parties.

Grievance sustained per Opinion.



Lamont E. Stallworth, Ph.D.
Arbitrator

ISSUE

The Parties submitted the following issue to be decided by the Undersigned Arbitrator:

1. Did the Service comply with Paragraph 6 of the July 2014 Memorandum of Understanding on MDS-47 TL-5 Implementation and Maintenance Craft PSE Conversions, between July 2014 and the end of the 2014 fiscal year, by working the Custodians at the main Post Office and the Capital View Station in Jefferson City, Missouri at least 90 percent of the hours shown on Line H of the applicable PS Form 4852?
2. If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with 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.

* * * * *

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: MS-47 TL-5 Implementation and Maintenance Craft PSE Conversions

* * * * *

6. In facilities that are maintained by USPS custodians, upon the conclusion of each Postal Fiscal Year (FY), during October of the new FY, the total custodial work hours for the just completed fiscal year shown on the end of year report(s) for Labor Distribution Code (LDC) 38 (custodial work) will be compared with 90% of the custodial work hours shown on Line H of PS form 4852. The results will be provided to and discussed with the Local APWU President or designee. Falling short of 90% of the work hours shown on PS Form 4852 Line H will result in compensation for each hour short of 90% of the hours on PS Form 4852 Line H paid at the overtime rate to the custodial employees who will be identified in writing by the APWU Local Union. The APWU Local Union will determine the appropriate custodial employee(s) to compensate. In the fiscal year of the MDS-47 TL-5 implementation, the period shall be prorated for the time MSD-47 TL-3 PS Form 4852 was in effect and the time MSD-47 TL-5 PS Form 4852 was in effect. . . . The 90% of Line H work hours is not intended to permit the staffing

level for the individual facility (e.g. a station, branch, VMF, annex, etc.) covered by the PS Form 4852 to be below the number of employees shown on the PS Form 4852. . . .

a) Further, in any facility where the facility has fallen short of the 90% of work hours on PS Form 4852 Line H for a FY and in the succeeding Fiscal Year comparison, the facility is again short of achieving the 90% of work hours on PS Form 4852 Line H, the payments made under this paragraph will then be equal to the difference between the custodial work hours shown on the end of year report(s) for LDC 38 and 100% of the work hours shown on PS Form 4852 Line H for that Fiscal Year (after prorating if applicable).

* * * * *

BACKGROUND

The instant grievance involves the “Memorandum of Understanding between the United States Postal Service and the American Postal Workers Union, AFL-CIO, Re: MS-47 TL-5 Implementation and Maintenance Craft PSE Conversion” (hereafter, “the MOU”, Joint Exhibit No. 11). The Parties at the national level entered into the MOU on July 9, 2014. (*Id.*) In the MOU, the Parties affirmed their mutual commitment “to the orderly implementation of the MS-47 TL-5,” as agreed to on June 27, 2014, and accordingly agreed to several related orders and understandings primarily having to do with the conversion of Maintenance Craft Postal Support Employees (PSEs) to career status employees.

Among the understandings set forth in the MOU was a commitment, in paragraph 6 of the MOU, that henceforth the custodial employees at each Postal facility would work at least ninety percent of the work hours set forth for them on Line H of the PS Form 4852 applicable to their facility. Failing that, the MOU requires that the custodians be

compensated for the extent to which their work hours fall short of the ninety percent.

Specifically, Paragraph 6 of the MOU provides:

6. In facilities that are maintained by USPS custodians, upon the conclusion of each Postal Fiscal Year (FY), during October of the new FY, the total custodial work hours for the just completed fiscal year shown on the end of year report(s) for Labor Distribution Code (LDC) 38 (custodial work) will be compared with 90% of the custodial work hours shown on Line H of PS form 4852. The results will be provided to and discussed with the Local APWU President or designee. Falling short of 90% of the work hours shown on PS Form 4852 Line H will result in compensation for each hour short of 90% of the hours on PS Form 4852 Line H paid at the overtime rate to the custodial employees who will be identified in writing by the APWU Local Union. ... In the fiscal year of the MDS-47 TL-5 implementation, the period shall be prorated for the time MSD-47 TL-3 PS Form 4852 was in effect and the time MSD-47 TL-5 PS Form 4852 was in effect. ...

(Joint Exhibit No. 11, p. 2).

On August 6, 2014, another document (Union Exhibit No. 4) containing questions and answers on the implementation of the MOU was released and distributed by the Service to its Labor Relations Area Managers. The Q and as in that document included the following paragraph 26:

26. Regarding item 6 of the July 9, 2014 MOU, when determining the LDC work hours to be compared to Line H on the authorized PS 4852, is there [an] agreed upon report to use?

A. The LDC work hours can be shown by whichever report, or combination of reports, will be provide [sic] the best evidence. The end of FY LDC 38 work hours used must reflect the actual custodial work performed that is included in the Line H total. In other words, only custodial work identified in the staffing package and reflected on the Line H annual time will be used as the comparison. Work hours that do not reflect custodial work, improperly coded work or custodial work not included in Line H will be subtracted or ignored for the purposes of LDC 38 end of FY comparison.

(Union Exhibit No. 4, pp. 4 – 5).

In January 2015, APWU Local Union 336 (“the Union”), requested from Vince Owens, Maintenance Supervisor for the Service at Jefferson City, Missouri, certain information including the clock rings and various reports concerning the hours worked, from July through September 2014, by the four Custodians assigned to the Main Post Office (MPO) and the Capital View Station (Capital View Station) in Jefferson City. (Union Exhibit No. 1). There were two Custodians assigned to the MPO and two Custodians assigned to the Capital View Station.

In response to the information requests of the Union, the Service responded that certain of the detailed reports requested by the Union did not exist or were not available. (Union Exhibit No. 1). However, the Service produced the requested clock rings (Joint Exhibit 13) and the pay stubs (Joint Exhibit Nos. 4 – 7) for the four Custodians relating to the July – September 2014 time period. The Service also produced the LDC 38 reports for those months for the Jefferson City MPO and the Capital View Station. (Union Exhibit Nos. 2 and 3). These documents did not reflect the specific types of tasks performed by the Custodians during the twelve week period in question, although the pay stubs (Joint Exhibit Nos. 4 – 7) reflected the number of hours in each pay period for which the Custodians were paid at rates higher than their normal hourly rates due to their having performed certain tasks outside their normal duties as Custodians.

On January 20, 2015, the Union initiated the instant grievance alleging that the Service was in violation of Custodial staffing requirements, as outlined in the July 2014 MOU, at the Jefferson City MPO and Capital View Station. (Joint Exhibit No. 12). The grievance noted that the Union was still seeking information from the Service concerning the work that the four Custodians had performed and indicated that the Union believed

that “some of the work hours do not reflect Custodial work.” (*Id*, p. 5). The grievance asked that the Service come into compliance with the MOU at Jefferson City, and that the Custodial employees be compensated in accordance with the MOU if their Custodial work hours were below 90 percent of the hours set forth on Line H of the pertinent PS Form 4852. (*Id*, p. 6).

A Step 2 meeting on the grievance was held before Jefferson City Postmaster Jason Hirschvogel on February 18, 2015. (Joint Exhibit No. 3, p. 10). At the Step 2 meeting, the Union offered computations suggesting that, under the MOU, the Service was required to compensate the two Jefferson City MPO Custodians in the amount of \$10,253.30 each, and that the Service owed the two Capital View Station Custodians the sum of \$1,109.57 each. (Joint Exhibit No. 14).

On February 26, 2015, the Postmaster denied the grievance at Step 2, stating in part:

The actual hours worked for LDC 3800 (Custodial) for Jefferson City, MO in Fiscal Year 2024 were 7097 hours. 3667 hours at the Jefferson City MPO and 3340 at Capital View Station. The latest PS Form 4852 for Jefferson City, MO shows that there are 7461 hours that are allotted for LDC 3800. 4590 hours allocated for Jefferson City MPO and 2872 hours allocated for Capital View Station. As you can see above, the total hours worked of 7097 in Jefferson City, MO by our custodians is well within the 90% of the total hours allotted on PS Form 4852's for Jefferson City, MO which is what the memorandum of understanding regarding implementation of the MS-47 TL-5 handbook at the conclusion of Fiscal Year 2014 is requiring. With this being the case there is no possible way that the custodial employees are due the amount of money that is being requested by local union officials.

(Joint Exhibit No. 3, p. 8). The Union advanced the grievance to Step 3 on March 2, 2015. The Service denied the grievance at Step 3 on May 12, 2015, adhering to the

reasons set forth by the Postmaster in the Step 2 denial. (*See*, Joint Exhibit No. 3, pp. 5 – 6).

On May 19, 2015, the Union submitted Step 3 Additions and Corrections for the instant grievance. (Joint Exhibit No. 3, pp. 3 – 4). In the Additions and Corrections, the Union asserted, among other things, that to determine compliance with the MOU, the Jefferson City MPO and the Capital View Station had to be considered separately, and that only the hours worked by the Custodians between July 9 and September 30, 2014, on tasks included in the PS Form 4852, could be counted toward the 90 percent requirement of the MOU. (*Id.*) Also on May 19, 2015, the instant grievance was appealed to arbitration. (Joint Exhibit 3, p. 1).

POSITION OF THE UNION

It is the position of the Union that the Service did not satisfy the July 9, 2014 MOU at either the Main Post Office (MPO) or the Capital View Station (Capital View Station) in Jefferson City, Missouri, during the interval between the effective date of the MOU and the end of the 2014 fiscal year on September 31, 2014. The Union points out that, under paragraph 6 of the MOU (Joint Exhibit No. 11, p. 2), only the hours worked by custodians during that interval can be counted to determine if those work hours met or exceeded 90 percent of the Custodial work hours shown on the applicable PS Form 4852 for those facilities. The MOU, as the Union notes, provided that, for purposes of the 90 percent comparison, the annual work hours shown on the Forms 4852 were to be prorated to arrive at an amount attributable to just the twelve out of fifty two weeks that elapsed during that interval.

The Union further argues that, under the August 6, 2014 Q and As for implementing the MOU (Union Exhibit No. 4), only hours worked by the Custodians performing “custodial work identified in the staffing package and reflected on Line H” of the Forms 4852 can be counted in determining if the Service met or exceeded the 90 percent threshold prescribed in the MOU. Therefore, according to the Union, all work by Custodians at the Jefferson City MPO or Capital View Station that involved tasks other than the tasks included in Line H of the Forms 4852 cannot be counted in determining whether the 90 percent threshold was reached. The Union argues that the Custodians assigned to the Jefferson City MPO and Capital View Station devoted numerous hours to tasks not included in the Forms 4852 during the twelve weeks between July 9 and September 31, 2014. The Union is not able to specify exactly how many hours the Custodians devoted to such tasks, however, due to the failure or inability of the Service to produce reports indicating precisely what tasks the Custodians performed and when.

Finally, the Union argues that the Forms 4852 that must be utilized in performing the 90 percent calculations are the forms dated February 21, 2008 that are in the record as Joint Exhibit No. 8. According to the Union, those were the latest approved Forms 4852 for the facilities in question at the time the work was performed in 2014. The Union argues that the calculations reflected in the Step 2 answer by the Service to the instant grievance (Joint Exhibit No. 3, pp. 8 – 9) are invalid because those calculations rely on Forms 4852 (in the record as Joint Exhibit Nos. 9 and 10) that were not generated until January 2015 and that therefore were not in effect at the relevant time.

The Union notes that, at the time of the hearing in the instant grievance, the Service effectively conceded that the calculations required by Paragraph 6 of the MOU

had to be performed separately for the Jefferson City MPO and Capital View Station. The Service also effectively conceded that the 2008 Forms 4852 for those facilities had to be used, because they were the Forms in effect at the relevant time.

The Union observes that, considering the MPO and Capital View Station facilities individually, and using their 2008 Forms 4852, the Service calculated at the hearing that the actual work hours of the MPO Custodians fell 322.1 hours short of the 90 percent mark between July 9 and September 31, 2014 after subtracting some 112 hours that the Service conceded were for tasks not included in the Form 4852 staffing plan. Accordingly, the Service acknowledged at the hearing that, under the MOU, the Service owed compensation in the amount of \$12,429 to the appropriate MPO Custodian(s) whom the Union may identify as stated in the MOU. The Union states that it does not dispute this calculation of the compensation that is owed, due to the shortfall in work hours at the Jefferson City MPO.

As to the Jefferson City Capital View Station, however, the Union disputes the contention of the Service that the Capital View Station Custodians worked at least 90 percent of the prorated work hours set forth for them on Line H of the 2008 Form 4852 for the Capital View Station. The Union argues that, if the hours devoted by the Capital View Station Custodians to non-custodial duties not included in the Form 4852 are subtracted, the actual work hours for the Capital View Station Custodians also would fall below the 90 percent mark prescribed by the MOU. The Union is unable to specify exactly how many hours must be deducted from the actual work hours of the Capital View Station Custodians, however, due to the failure of the Service to produce records that would show the hours they devoted to extraneous tasks. As a result, the Union is

unable to calculate the amount of compensation that the Service may owe to the Capital View Station Custodians under the MOU.

Accordingly, the Union asks that the instant grievance be sustained, and that the Service be ordered to pay \$12,429 in compensation under the MOU to the Custodian (or Custodians) assigned to the Jefferson City MPO whom the Union may identify. The Union asks that the Service be deemed in noncompliance with the MOU at the Capital View Station facility as well, but the Union is unable to state what amount of compensation if any maybe due the Capital View Station Custodians. The Union further asks that the Service be ordered to come into compliance with the MOU at both facilities by henceforth compiling and producing reports from which one can differentiate the hours devoted by the MPO and Capital View Station Custodians to tasks that are included in Line H of the applicable PS Forms 4852 from their hours that involve duties not within Line H.

POSITION OF THE POSTAL SERVICE

It is the position of the Service that, even if the Union is correct that, for purposes of Paragraph 6 of the July 2014 MOU, only the work hours that custodians have devoted to tasks that were included in Line H of the applicable PS Form 4852 can be counted, the Jefferson City Main Post Office (MPO) fell short of the 90 percent mark by only 322.1 hours between July 9 and September 31, 2014. Accordingly, the Service argues that it owes compensation in the gross amount of only \$12,429 to the Custodians assigned to the MPO attributable to that period.

It is the position of the Service that, on the other hand, the Union has failed to show that the actual work hours of the Custodians assigned to the Jefferson City Capital

View Station for the same period fell short of 90 percent of the prorated figure from Line H of the Form 4582 applicable to the Capital View Station. The Service points out that Line H on the 2008 Form 4852 for the Capital View Station (Joint Exhibit No. 8, p.2) called for 3,310.27 annual work hours, which prorates to 685.23 hours for the twelve weeks between July 9 and September 31, 2014. In comparison, the Service notes, the LDC 38 reports for the Capital View Station (Management Exhibit No. 1) show that the Custodians assigned to the Capital View Station actually worked 914.53 hours during that twelve-week period. According to the Service, the pay stubs for the Capital View Station Custodians (Joint Exhibit Nos. 6 and 7) indicate that they were paid for performing 19.31 hours of higher-level duties during that period. The Service argues that, even if those 19.31 hours are subtracted from the 914.53 total hours worked, it still appears that the Capital View Station Custodians devoted 895.22 hours to regular custodial duties, or considerably more than the number of hours required by the MOU for that period.

For purposes of these calculations, the Service has utilized the February 2008 PS Forms 4852 for the Jefferson City MPO and Capital View Station (Joint Exhibit No. 8), which the Union argues must be used for this purpose, rather than the unapproved 2015 Forms 4852 (Joint Exhibit Nos. 9 and 10) that the Jefferson City postmaster used in his Step 2 answer to the instant grievance. The Service appears to acknowledge that the 2008 Forms must be used for MOU purposes in the instant case, because they were the applicable Forms in effect at the relevant time. However, the Service argues that the 2008 Forms overstated the appropriate work hours for Custodians in 2014, particularly at the Jefferson City MPO, since as the Postmaster testified, the Service in 2012 leased two

floors of the MPO facility to the State of Missouri, whereupon the MPO Custodians were no longer responsible for cleaning that space.

Accordingly, the Service argues that the instant grievance should be denied, subject to the stipulation that the Service owes compensation under Paragraph 6 of the MOU in the gross amount of \$12,429 to the appropriate MPO Custodian(s) whom the Union may identify. It is the position of the Service that such a dismissal of the grievance is appropriate, because the Union has failed to show that the Service failed to satisfy the MOU except to the limited extent that the Service has conceded, as set forth above.

OPINION

The instant grievance involves the issue whether the Postal Service satisfied the July 9, 2014 Memorandum of Understanding between the United States Postal Service and the American Postal Workers Union, AFL-CIO, regarding MS-47 TL-5 Implementation and Maintenance Craft PSE Conversions (“the MOU,” Joint Exhibit No. 11) at two postal facilities in Jefferson City, Missouri, between the effective date of the MOU and the end of the 2014 fiscal year. Thus, the issues submitted by the Parties to the Undersigned Arbitrator for decision are:

1. Did the Service comply with Paragraph 6 of the July 2014 Memorandum of Understanding on MDS-47 TL-5 Implementation and Maintenance Craft PSE Conversions, between July 2014 and the end of the 2014 fiscal year, by working the Custodians at the main Post Office and the Capital View Station in Jefferson City, Missouri at least 90 percent of the hours shown on Line H of the applicable PS Form 4852?
2. If not, what is the appropriate remedy?

The Undersigned Arbitrator has carefully considered all of the record evidence, arguments and positions of the Parties. Based upon all the facts and circumstances, the Undersigned Arbitrator must find that the Service failed to fulfill the requirements of Paragraph 6 of the July 2014 MOU at the Jefferson City Main Post Office (MPO) and Capital View Station (Capital View Station) with regard to the July through September 2014 time period. Specifically, the Service did not maintain and produce records regarding the Custodians assigned to either the MPO or the Capital View Station reflecting the hours worked by those Custodians that involved actual custodial work included in Line H of the applicable PS Forms 4852.

In addition, the Service did not meet the 90 percent requirement of Paragraph 6 of the MOU from July, 2014 through September 2014 with respect to the Custodians assigned to the MPO, and therefore owes compensation to those Custodians in the gross amount of \$12,429. However, the Undersigned Arbitrator is unable to find that the Service failed to meet the 90 percent requirement of the MOU with respect to the Custodians assigned to the Capital View Station during that period.

Accordingly, it is the conclusion of the Undersigned Arbitrator that the instant grievance must be sustained, and the Service must be ordered to do the following: (1) immediately begin maintaining records reflecting the work hours of Custodians assigned to the Jefferson City MPO and the Capital View Station that differentiate between hours relating to actual custodial duties included in Line H of the applicable PS Forms 4852 and hours relating to other tasks; and (2) immediately compensate those Custodian(s) whom the Union may designate, who were assigned to the Jefferson City MPO during the period in question, in the total amount of \$12,429. No monetary remedy is due to the

Custodians who were assigned to the Jefferson City Capital View Station during the period in question.

The Undersigned Arbitrator's consideration of the evidence, reasoning and conclusions leading to this determination are discussed below.

The July 9, 2014 Memorandum of Understanding Re: MS-47 TL-5 Implementation and Maintenance Craft PSE Conversion ("the MOU, Joint Exhibit No. 11) provided as follows in its Paragraph 6:

6. In facilities that are maintained by USPS custodians, upon the conclusion of each Postal Fiscal Year (FY), during October of the new FY, the total custodial work hours for the just completed fiscal year shown on the end of year report(s) for Labor Distribution Code (LDC) 38 (custodial work) will be compared with 90% of the custodial work hours shown on Line H of PS form 4852. The results will be provided to and discussed with the Local APWU President or designee. Falling short of 90% of the work hours shown on PS Form 4852 Line H will result in compensation for each hour short of 90% of the hours on PS Form 4852 Line H paid at the overtime rate to the custodial employees who will be identified in writing by the APWU Local Union. ... In the fiscal year of the MDS-47 TL-5 implementation, the period shall be prorated for the time MSD-47 TL-3 PS Form 4852 was in effect and the time MSD-47 TL-5 PS Form 4852 was in effect. ...

(Joint Exhibit No. 11, p. 2).

It is clear, as the Parties now appear to agree, that the analysis of custodial work hours required by this provision was to be performed for the Jefferson City MPO and Capital View Station separately, even though they are located in the same municipal area. Paragraph 10(a) of the MOU states that, "for purposes of the MOU . . . a 'facility' is a single site or location which has its own PS Form 4852." (*Id.*) The record reflects that, at the time in question during fiscal year 2014, the Jefferson City MPO and Capital View

Station were covered by separate, individual PS Forms 4852, both dated in February 2008. (Joint Exhibit No. 8, pp. 1, 2).

As the Parties also appear to now agree, it is the opinion of the Undersigned Arbitrator that the PS Forms 4852 from February 2008 are the Forms that must be used for the calculations required by Paragraph 6 of the MOU in the instant case. The new PS Forms 4852 for the MPO and Capital View Station facilities that were in process in January 2015 (Joint Exhibit Nos. 9 and 10), and that were relied on by the Jefferson City Postmaster in his Step 2 answer to the instant grievance (Joint Exhibit No. 3, pp. 8 – 9), were not then signed or approved by the Service, and therefore could not have been in effect in fiscal year 2014.

The February 2008 Forms evidently were the most recent, approved Forms at the time the MOU calculations were required to be made. Accordingly, the 2008 Forms must be used in the instant case. If circumstances have changed since 2008, such as due to the Service leasing some of the Jefferson City facilities to other entities that may warrant updating the Forms 4852; however the record indicates that no such updating had been completed at the time of the events of the instant grievance.

Consequently, Paragraph 6 of the MOU required the Service, in October of 2014, to examine end-of-year reports reflecting actual custodial work hours for the Custodians, separately for the Jefferson City MPO and Capital View Station. Paragraph 6 then required the Service to compare those actual custodial hours worked with the numbers of required custodial hours for each facility shown on Line H of the applicable Form 4852. Since FY 2014 was the fiscal year of the MS-47 TL-5 implementation, moreover, the last line of Paragraph 6 quoted above required the Service to compare just the actual hours

worked between July 9, 2014, when the MOU became effective, and the end of the fiscal year on September 30, 2014, with the annual Line H numbers prorated for that twelve week period of time.

Paragraph 6 of the MOU is not explicit about whether the comparison required of the Service as of the end of FY 2014 could include all the hours worked by the Custodians in the final twelve weeks of FY 2014, or only certain actual work hours. However, since the comparison was to be between actual hours worked and the number of required hours set forth on Line H of Form 4952, it is reasonable to conclude that only actual work hours devoted to the custodial duties included in Line H of the Form 4852 should count. This was made explicit, in any event, in the “Q and A” document released by the Service to its Area Labor Relations Managers on August 6, 2014 (Union Exhibit No. 4). That document included the following question and answer:

26. Regarding item 6 of the July 9, 2014 MOU, when determining the LDC work hours to be compared to Line H on the authorized PS 4852, is there [an] agreed upon report to use?

A. The LDC work hours can be shown by whichever report, or combination of reports, will be provide [sic] the best evidence. The end of FY LDC 38 work hours used must reflect the actual custodial work performed that is included in the Line H total. In other words, only custodial work identified in the staffing package and reflected on the Line H annual time will be used as the comparison. Work hours that do not reflect custodial work, improperly coded work or custodial work not included in Line H will be subtracted or ignored for the purposes of LDC 38 end of FY comparison.

(Union Exhibit No. 4, pp. 4 – 5 (Emphasis added).

Thus, in the opinion of the Undersigned Arbitrator, Paragraph 6 of the MOU, when read together with the Q and A document prepared by the Service, required the Service to consult records that delineated the actual hours worked by the Jefferson City

MPO and Capital View Station Custodians on tasks that were among the tasks included in Line H of their respective Forms 4852. **The MOU and Q & A item 26 further required that the Service identify from those records the actual hours worked by the Custodians on such tasks between July 9 and September 31, 2014.** The documents then required the Service to compare the resulting number of actual work hours for each facility with twelve fifty-seconds (12/52) of the number on Line H of the Form 4852 for that facility, since the Line H number is an annual number and the comparison was to be prorated for only twelve weeks of the year.

Once the Service had (1) compiled for each facility the reports that revealed the hours actually devoted by the Custodians in 2014 to custodial duties included in Line H, and (2) extracted from those reports such actual work hours for just July 9 through September 31, and then (3) compared those numbers with the prorated figures from Line H of Form 4852, Paragraph 6 of the MOU imposed an additional obligation on the Service, stating:

The results will be provided to and discussed with the Local APWU President or designee.

(Joint Exhibit No. 11, p. 2).

To satisfy this obligation, in the opinion of the Undersigned Arbitrator, the Service obviously had to **possess** reports or records reliably differentiating the hours worked by the Custodians on tasks within Line H from the hours they worked on other tasks, within the applicable period. The Service also had to be able and willing to promptly share those records, and to discuss them, with the Union.

The Service evidently was unable to comply with this obligation in the instant matter. The Parties essentially agree that reports do not exist at the Jefferson City MPO or

Capital View Station, at least for FY 2014, differentiating the hours worked by Custodians on tasks within Line H of the pertinent Forms 4852 from the hours they may have worked on other tasks. The Union claims, and there was testimony tending to corroborate, that the MPO and Capital View Station Custodians performed work that was beyond the scope of custodial duties that are included in Line H of the 2008 Forms 4852. Neither the Union nor the employees, however, were able to specify exactly when such duties were performed or precisely how many hours were devoted to such tasks during the relevant twelve-week period in 2014.

Capital View Station Custodian Dwayne Smith testified that, on most of his workdays during 2014, he was asked by the Service to deliver express mail, which took him from one to three hours on each such occasion. The Parties agree that delivering express mail is not a normal custodial function, and that Mr. Smith should have been paid at a higher wage rate for his time devoted to such work. The Service does not concede that Mr. Smith delivered express mail as often as he suggested, although other witnesses tended to corroborate Mr. Smith's testimony about the frequency with which he did so. The Service also insisted that Mr. Smith was paid at a higher wage rate whenever he did deliver express mail, which the record (Joint Exhibit No. 7) indicates did not amount to more than a couple hours here and there.

The Service now acknowledges that the Capital View Station Custodians assigned to the Jefferson City MPO did not work enough hours, especially when their hours devoted to concededly non-custodial tasks are ignored, to meet the 90 percent of Line H hours required by Paragraph 6 of the MOU. The Service calculates that the prorated number of hours that the MPO Capital View Station Custodians should have worked in

the relevant time period, based on Line H of their Form 4852, was 1083.82 hours. After subtracting hours for which they were paid at a higher wage rate, the Service computes that the MPO Custodians actually worked 761.72 hours on legitimate custodial tasks in the last twelve weeks of FY 2014.

Accordingly, the Service concedes that it owes compensation for 322.1 work hours, calling for a payment (at the overtime rate as required by the MOU) in the gross amount of \$12,429 to the MPO Custodian(s) whom the Union may designate. (As the Service acknowledges, Paragraph 6 of the MOU specifies that “[t]he APWU Local Union will determine the appropriate custodial employee(s) to compensate” in such a situation). The Union does not dispute these calculations by the Service regarding the shortfall in custodial hours at the MPO and the compensation therefore owing to the MPO Custodians.

A dispute remains between the Parties, however, concerning whether the Custodians assigned to the accordingly in Jefferson City failed to work 90 percent of the legitimate custodial work hours prescribed for them on the 2008 Form 4852 for the Capital View Station. The Service calculates that the prorated number of hours required for the Capital View Station Custodians, based on Line H of their Form 4852, was 685.23 hours. Using the LDC 38 report (Management Exhibit No. 1) and after subtracting the hours for which the Capital View Station Custodians were compensated at higher wage rates, the Service computes that the Capital View Station Custodians actually worked 895.22 hours on legitimate custodial duties in the final twelve weeks of FY 2014. Accordingly, the Service argues that the Capital View Station Custodians substantially

exceeded the work hours prescribed for them on Line H of their Form 4852, and therefore do not come close to requiring compensation under Paragraph 6 of the MOU.

The Union does not dispute that Line H of the 2008 Form 4852 for the Capital View Station, when prorated for just the relevant twelve weeks, required that the Capital View Station Custodians work only a total of 685.23 custodial hours during the period in question. The Union argues that the Capital View Station Custodians worked enough non-custodial hours during that period to have fallen below 90 percent of 685.23.

That would require, however, that the hours worked by the Capital View Station Custodians on Line H-qualifying tasks during the period would have to be fewer than 616.7 hours. That in turn would mean that the number of their actual work hours during the period, i.e., 914.53 hours as reflected on Management Exhibit No. 1, would have to be inflated by almost 300 hours, or nearly 33 percent.

In the opinion of the Undersigned Arbitrator, the evidence is insufficient to indicate either that as many as one third of the 914.53 actual work hours were devoted to non-Line H-qualifying duties. For example, even if Capital View Station Custodian Dwayne Smith devoted some eight hours each week (two hours per day, four days per week) to delivering express mail instead of performing custodial duties, that would reduce the figure of 914.53 total hours only to about 816 hours, still 200 hours in excess of the 616.7 hour mark which would have triggered the obligation to monetarily compensate the Capital View Station Custodians under the MOU.

Accordingly, the Undersigned Arbitrator cannot conclude that the Service must compensate the Capital View Station Custodians for not having worked at least 90 percent of the prorated Line H hours in the relevant period, as required by the MOU.

The Undersigned Arbitrator is mindful that the Union was handicapped, in showing that the actual number of work hours the Capital View Station Custodians devoted to legitimate custodial work during the relevant period was fewer than 616.7 hours, by the failure of the Service to keep and produce pertinent records concerning the actual duties they performed. That failure, as stated above, constituted non-compliance by the Service with Paragraph 6 of the MOU, in the opinion of the Undersigned Arbitrator.

In the absence of contemporaneously-maintained records, neither Party can now reconstruct precisely how many hours the Capital View Station Custodians devoted to which duties during the relevant twelve-week period. However, the record indicates to the Undersigned Arbitrator that, even if appropriate records had been maintained and made available by the Service, as the MOU required, the records would not likely establish that nearly one of every three hours worked by the Custodians during the period in question involved non-custodial duties, so as to require that the Custodians now receive monetary compensation from the Service under the MOU.

Nonetheless, it is the opinion of the Undersigned Arbitrator that the Service violated Paragraph 6 of the July 2014 MOU by not maintaining, providing and discussing with the Union, in October 2014, records reliably reflecting the hours actually worked by the Jefferson City MPO **and** the Capital View Station Custodians between July 9, 2014 and September 30, 2014 on tasks included in Line H of their respective Forms 4852. Paragraph 6 of the MOU clearly required the Service to have such records and to provide and discuss them with the Union at that time.

The “Q & A document” (Union Exhibit No. 4) does not require that the information be contained in any particular report. Instead, that document states that the hours actually worked on Line H-qualifying tasks “can be shown by whichever report, or combination of reports, will provide the best evidence.” As a consequence, in the Arbitrator’s opinion, the Service has discretion as to what records or reports to maintain. However, to satisfy Paragraph 6 of the MOU the Service must maintain and make available to the Union for discussion **some** records or combination of records constituting solid “evidence” regarding hours worked on Line H-qualifying versus non-qualifying tasks. The failure of the Service to do so in the instant case requires remediation, through an arbitral order that the Service immediately begin compiling such records and making them available to the Union for MOU compliance purposes on a timely basis in the future.

In addition, the Service must be ordered to compensate the MPO Custodian(s) whom the Union may designate under Paragraph 6 of the MOU in the stipulated gross amount of \$12,429, for the undisputed shortfall in actual custodial hours that the MPO Custodians experienced during the final twelve weeks of FY 2014.

AWARD

Based upon the facts and circumstances of the instant grievance, the Undersigned Arbitrator must find that the Service failed to comply with Paragraph 6 of the July 9, 2014 Memorandum of Understanding Re: MS-47 TL-5 Implementation and Maintenance Craft PSE Conversions, by failing to maintain and make available to the Union appropriate records delineating the actual work hours devoted by the Jefferson City MPO and Capital View Station Custodians to duties that were within the scope of custodial duties included in Line H of the PS Forms 4852 for the MPO and Capital View Station facilities.

The Service also failed to comply with Paragraph 6 of the MOU by not working the MPO Custodians in the final twelve weeks of FY 2014 at least 90 percent of the prorated number of hours required by Line H of the Form 4852 for the MPO facility. Accordingly, the Service must immediately do the following: (1) compile and, on a timely basis under Paragraph 6 of the MOU, make available for discussion with the Union, records reliably reflecting the hours actually worked by Custodians assigned to the MPO and the Capital View Station, differentiating hours that involve actual custodial work included in Line H of the applicable PS Forms 4852 from hours devoted by the Custodians to other tasks; and (2) immediately compensate the Custodian(s) assigned to the Jefferson City MPO who may be designated by the Union in the total amount of \$12,429 for the extent to which their actual work hours in the final twelve weeks of FY 2014 fell short of 90 percent of the prorated hours listed on Line H of the Form 4852 for the MPO facility.

The Arbitrator shall retain jurisdiction over the remedial aspect of this Award for a reasonable period of time, not to exceed sixty (60) calendar days unless otherwise formally and mutually agreed by both Parties.

Grievance sustained per Opinion.



Lamont E. Stallworth, Ph.D.
Labor Arbitrator

Dated this 20th day of September, 2015

City of Chicago
County of Cook
State of Illinois

Sworn to and subscribed before me this 20th day of September, 2015



LES/sg/cs

