



## MAINTENANCE DIVISION

# AMERICAN POSTAL WORKERS UNION, AFL-CIO

Idowu Balogun, Assistant Dir. A

Steven G. Raymer, Director

Terry B. Martinez, Assistant Dir. B

### **BMC Staffing Clarification Issued**

On July 5, 2016, Arbitrator Ira Jaffe finally issued his Supplemental Decision in Case Nos.: Q06T-4Q-C 11004742 and Q06T-4Q-C 11155080. The earlier merit issue award was whether the USPS violated Article 19 by issuing MMO 112-04 & changing staffing from the BMC Gold program to staffing based on e-WHEP.

Maintenance Director Steve Raymer stated, "The Maintenance Division put on a great team effort, along with our attorneys, in succeeding in the merit case. Assistant Director Idowu Balogun performed in exemplary fashion as the case officer. Unfortunately, this case exemplifies the lengths to which the employer will go to deny the rights of our members and to stymie the Union's efforts fighting to enforce them. We have made it through the unprofessional conduct of the Service's advocate at the hearings; the inexcusable need for seven hearing dates; the repudiation of a clear award; a remand from the District Court and we now enter the phase to ensure compliance with the Arbitrator's clarification."

#### **Background**

On October 19, 2015, Arbitrator Jaffe issued an award sustaining the position of the APWU. Despite the clear language of the award, the Postal Service notified the Maintenance Division on November 9, 2015 that they would not issue new staffing packages and nothing in the award required them to change or update existing staffing packages. The Service intended to keep the current staffing based on e-WHEP until such time as they felt like updating the staffing. This position was so outrageous that Division Director Raymer insisted on filing suit for enforcement in District Court, which was done on December 11, 2015. On March 17, 2016 the DC District Court issued its Order granting the defendant's (USPS) motion that the matter is to be remanded to the original arbitrator for interpretation consistent with the complaint filed. Arbitrator Jaffe received the matter jointly from the APWU and USPS on March 29, 2016. His Supplemental Award is quoted as follows:

#### **Supplemental Award**

The October 19, 2015 Award did not permit the Postal Service to continue to use indefinitely the staffing packages that were in place as of the date of the October 19, 2015 award and that were generated with eWHEP (MMO 112-10) until it elects to replace the existing staffing packages with new or revised staffing packages. The Postal Service is required by the Award and this Supplemental Award to develop staffing packages at those NDCs generated using BMC Gold (MMO 022-04) as soon as practicable, but no later than August 4, 2016 – a date thirty (30) calendar days following the date of this Supplemental Award.

The Postal Service is directed to provide the Union with copies of those revised staffing packages promptly after their development and information to permit the Union to determine if the revised staffing packages were developed consistently with the MMO 022-04 (BMC Gold) guidelines.

The Postal Service is directed to discontinue use of the existing staffing packages that were prepared using MMO 112-10 and implement the modified MMO 022-04 maintenance staffing packages at each of the affected NDCs as soon as practicable after the development of those staffing packages, but no later than October 1, 2016.

Nothing herein should be construed as preventing the Postal Service and the Union from jointly agreeing to a different implementation schedule or to the use of a different MMO maintenance staffing package at one or more of the affected NDCs. The December 24, 2015 Interpretative Review is resolved based upon the Supplemental Opinion and Award and the local grievances being held in abeyance are released for further processing.

Jurisdiction is retained to address any disputes that may arise with respect to the remedy directed by this Supplemental Opinion and Award that the Parties are unable to resolve on remand.

PLEASE POST

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.

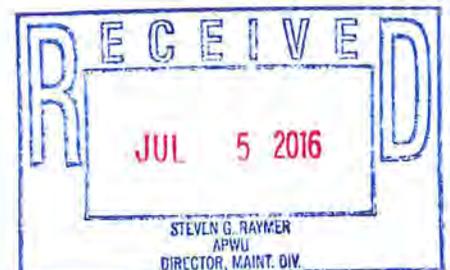
For the American Postal Workers Union:      Anton G. Hajjar, Esq.

Date of Supplemental Award:      July 5, 2016

Relevant Contract Provision:      Article 19

Contract Year:      2010 – 2015

Type of Grievance:      Article 19



## **SUPPLEMENTAL OPINION AND AWARD**

On October 19, 2015, an Opinion and Award issued in this matter. The October 19, 2015 Award (“Award”) found that the Postal Service improperly implemented MMO 112-10, which provided for use of eWHEP to determine maintenance staffing packages at the National Distribution Centers (“NDCs”). The Award provided in pertinent part as follows:

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 Award specifically declined to address the claim of the Union for monetary damages on the basis that there were pending local grievances that had sought damages following reductions in maintenance staffing pursuant to new staffing packages that were developed pursuant to MMO 112-10 that were alleged to have resulted in lower staffing than would have been provided if the maintenance staffing packages were prepared using MMO 022-04.

Following the issuance of the Award in this case, the Parties disagreed regarding the remedy that was directed. The Postal Service maintained that the Award did not require that the existing maintenance staffing packages that had been prepared using MMO 112-10 (eWHEP) be redone immediately using MMO 022-04 (BMC Gold). According to the Postal Service, it was permitted to continue to use those maintenance staffing packages indefinitely unless and until normal updating procedures would require

that a maintenance staffing package at a particular NDC be updated. The Postal Service's position did not indicate precisely when under normal circumstances maintenance staffing packages would be updated, but the record in the underlying arbitration suggested that updates occur when there are significant changes in operations in the NDC (e.g., significant changes in equipment) or annually when maintenance staffing needs are determined for the next year. The Union, on the other hand, maintained that the Award required the Agency to cease and desist from continuing to use the maintenance staffing packages prepared with MMO 112-10 and to promptly develop and implement maintenance staffing packages prepared with MMO 022-04.

On December 11, 2015, the Union filed an action in the United States District Court for the District of Columbia seeking to enforce the Award and to direct that the Postal Service comply with that Award. On March 17, 2016, the Honorable Ketanji Brown Jackson, issued an Order remanding the matter "for consideration and interpretation of the Arbitration Award of October 19, 2015, with respect to the issues raised in the Complaint . . . ."

On December 24, 2015, the Parties referred a grievance for Interpretative Review over the question of whether the Award required the Postal Service to recalculate existing Maintenance Staffing packages for the National Distribution Centers. The Interpretative Review noted the Postal Service's understanding that while it would cease and desist from using MMO 112-10 to prepare new or revised Maintenance Staffing packages at the NDCs, it was not obligated to recalculate, using MMO 022-04, those existing NDC staffing packages that had been prepared with MMO 112-10. The Union's position was that the existing staffing packages were required to be recalculated using MMO 022-04.

Local grievances were held in abeyance pending discussion or adjudication of the national level dispute described in the Interpretative Review.

Following a conference call, in which the appropriate process for resolution of the Supplemental Dispute was determined, the Parties submitted written submissions as to the issues presented for supplemental decision. On March 30, 2016, I determined that the issues presented for supplemental decision were:

- 1) Whether the Postal Service, consistent with the October 19, 2015 arbitration award, may continue to use the staffing packages that were in place as of the date of the Award and that were generated with eWHEP (MMO-112-10) until it elects to replace the existing staffing packages with new or revised staffing packages? If not, must the Postal Service immediately discontinue use of those existing staffing packages and develop and implement staffing packages at those NDCs generated using BMC Gold (MMO-022-04) or is there some period of time afforded to take those acts (and, if so, what is that period of time)?
- 2) Whether as part of the appropriate remedy with respect to the October 19, 2015 arbitration award, the Postal Service must discontinue use of the existing staffing packages that were generated with eWHEP (MMO-112-10) and develop and implement staffing packages at those NDCs generated using BMC Gold (MMO-022-04)? If so, must the Postal Service undertake that action immediately or is there some period of time afforded to take those acts (and if so, what is that period of time)?

The first question focuses upon what was directed by the Award. The second question is designed to address the issue that is the subject of the Interpretative Review. The Parties filed brief additional written statements regarding their positions.

The Award found that the Postal Service violated Article 19 in connection with its promulgation of MMO 112-10 and directed “the traditional status quo ante remedy.” The lapse of time since its promulgation, which was found to have been a shared responsibility between the Parties, was found not to be a persuasive reason to decline to impose the traditional status quo ante relief for the Postal Service’s unilateral change in violation of Article 19. The Opinion stated that the Postal Service was to “rescind MMO 112-10 and return to the prior Maintenance Staffing BMC Gold guidelines . . . 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.” (Opinion at 33) The Award did not address the precise time period in which the Postal Service was obligated to return to the prior Maintenance Staffing BMC Gold guidelines, but it was clear that such action was to proceed as soon as practicable and that the Postal Service would not be permitted, absent joint agreement to do so, to maintain indefinitely the maintenance staffing guidelines that were the product of the Postal Service’s contractually prohibited behavior.

The Award’s failure to include a precise time frame to return to using BMC Gold guidelines for the development and modification of staffing guidelines at the NDCs was intentional. While immediate implementation was not anticipated since it would be unnecessarily disruptive and not practicable, it was anticipated that, absent agreement by the Union and the Postal Service to the contrary, the new MMO staffing guidelines would cease being utilized as soon as practicable and that the existing staffing packages would be replaced by staffing packages prepared with the use of MMO staffing guidelines that were developed and implemented consistently with Article 19. Such action is an integral part of an award of status quo ante relief, which requires a return to the situation that existed prior to the improper unilateral action of the Employer abandoning MMO 022-04 and using MMO 112-10 to create maintenance staffing packages at the NDCs. What could not be forecast at the time of the Award was whether, following issuance of the Award, the Postal Service and the Union would reach agreement regarding a return to using the BMC Gold MMO staffing guidelines to create maintenance staffing packages at the NDCs or reach agreement as to the use of a different staffing guideline through use of

the Article 19 process.

It appears, however, that neither of these possibilities occurred and that the dispute of the Parties regarding the return to the use of the BMC Gold MMO staffing guidelines remains. Two questions are presented relative to the relief directed by the Award for the violations of Article 19 of the Agreement. The first addresses whether the Award obligated the Postal Service to revise the maintenance staffing packages for the NDCs that were developed using the MMO staffing guidelines and replace them with maintenance staffing packages prepared using the BMC Gold guidelines or permitted the Postal Service to continue to use the maintenance staffing packages that were developed using MMO 112-10 (eWHEP) until the current packages were updated, either in the ordinary course of business or if and when the Postal Service wished to make a change to the current packages. The second related question concerns the time frame and circumstances under which any replacement maintenance staffing packages are required to be prepared and implemented.

I find that the status quo ante relief directed by the Award included an obligation on the part of the Postal Service to discontinue at the earliest practicable time the use of maintenance staffing packages that were prepared based upon the MMO 112-10 guidelines that were improperly implemented in violation of Article 19 and to return to maintenance staffing packages that were prepared using the MMO 022-04 guidelines that were previously in effect. To hold otherwise would provide only prospective relief, not status quo ante relief, and would sanction the Postal Service's continued benefit and the Union's continuing harm resulting from the improper adoption of changed MMO maintenance staffing package guidelines.

The record does not contain specifics as to the soonest date on which the Postal Service could practicably develop and implement modified MMO maintenance staffing packages at its NDCs based upon MMO 022-04 (BMC Gold). Given the state of the record, and the request that a time certain be determined to accomplish this relief in the Supplemental Award, I find that the Postal Service is required to develop revised maintenance staffing packages for each of the NDCs as soon as practicable, but no later than August 4, 2016 – a date that is thirty (30) calendar days from the date of this Supplemental Award. The Postal Service is directed to provide copies of those revised maintenance staffing packages to the Union with sufficient information so that it may confirm that those revised maintenance staffing packages were developed in conformity with MMO 022-04. The Postal Service is further directed to discontinue the use of the maintenance staffing packages developed pursuant to MMO 112-10 (eWHEP) and to implement the modified MMO 022-04 (BMC Gold) based maintenance staffing packages at each of the affected NDCs, as soon as practicable after the development of those maintenance staffing packages, but no later than October 1, 2016. Nothing herein should be construed as preventing the Postal Service and the Union from jointly agreeing to a different implementation schedule or to the use of a different MMO maintenance staffing package at one or more of the affected NDCs.

The relief directed in this Supplemental Opinion and Award is both consistent with the October 19, 2015 Award and also represents the appropriate remedy for the contractual violations found in that Opinion and Award. This Supplemental Opinion and Award is also intended to address the questions presented in the December 24, 2015 Interpretative Review and permit those local grievances that were placed in abeyance as a

result of that Interpretative Review to resume being processed.

To promote the efficient resolution of any further disputes regarding the remedy in this case, jurisdiction is retained to address any questions concerning the relief directed pursuant to this Supplemental Opinion and Award that cannot be agreed upon on remand by the Parties.

### **SUPPLEMENTAL AWARD**

The October 19, 2015 Award did not permit the Postal Service to continue to use indefinitely the staffing packages that were in place as of the date of the October 19, 2015 Award and that were generated with eWHEP (MMO 112-10) until it elects to replace the existing staffing packages with new or revised staffing packages. The Postal Service is required by the Award and this Supplemental Award to develop staffing packages at those NDCs generated using BMC Gold (MMO 022-04) as soon as practicable, but no later than August 4, 2016 – a date thirty (30) calendar days following the date of this Supplemental Award.

The Postal Service is directed to provide the Union with copies of those revised staffing packages promptly after their development and information to permit the Union to determine if the revised staffing packages were developed consistently with the MMO 022-04 (BMC Gold) guidelines.

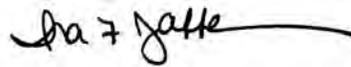
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Nothing herein should be construed as preventing the Postal Service and the Union from jointly agreeing to a different implementation schedule or to the use of a different MMO maintenance staffing package at one or more of the affected NDCs.

The December 24, 2015 Interpretative Review is resolved based upon the Supplemental Opinion and Award and the local grievances being held in abeyance are released for further processing.

Jurisdiction is retained to address any disputes that may arise with respect to the remedy directed by this Supplemental Opinion and Award that the Parties are unable to resolve on remand.

July 5, 2016

A handwritten signature in black ink that reads "Ira F. Jaffe" with a long horizontal line extending to the right.

Ira F. Jaffe, Esq.  
Impartial Arbitrator