

## REGULAR ARBITRATION PANEL

In the Matter of the Arbitration  
between

Grievant: APWU

THE UNITED STATES POSTAL SERVICE,

And

Post Office: CNTR Cedar Rapids  
USPS No: E10T-4E-C 16654149  
APWU No.: 201623

THE AMERICAN POSTAL WORKERS  
UNION, AFL-CIO.

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Before: Jeanne Charles Wood, Arbitrator  
For the Postal Service: Kent Campbell, Labor Relations Specialist  
For the Union: Jeff Beaton, National Business Agent  
Place/Date of Hearing: Cedar Rapids, IA/May 4, 2018  
Date of Award: June 4, 2018  
Relevant Contract Provisions: TL-5 MOU  
Contract Year: 2015-2018  
Type of Grievance: Arbitrability

### AWARD SUMMARY

The TL-5 MOU dictates that Management must 1) provide the relevant information using the best reporting evidence to the Union and 2) have a substantive discussion about the results contained in the information. Here, the discussion did not occur until May 12, 2016. The Union arranged to meet for a Step 1 grievance on May 18, 2016, which was delayed by agreement until June 2, 2016. However, the time between May 12 and May 18 was clearly within the 14-day time period required by the CBA. Therefore, the grievance was timely.



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Jeanne Charles Wood  
Arbitrator

**ISSUE**

The parties did not stipulate to the issue to be decided but agreed to allow the Arbitrator to frame the issue.

*The Service proposed the issue as:*

Did the APWU waive arbitration by failing to file the instant grievance in a timely manner pursuant to Article 15, Section 2, Step 1 of the National Agreement?

*The Union proposed the issue as:*

Is the Union's challenge that the Service failed to comply with the July 9, 2014 TL-5 MOU arbitrable?

The Union's framing of the issue is adopted.

**RELEVANT CONTRACT LANGUAGE**

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**Section 2. Grievance Procedure Steps**

**Step 1:**

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance.

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

**MS-47 TL-5 IMPLEMENTATION AND MAINTENANCE CRAFT PSE CONVERSIONS**

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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....

### **RELEVANT FACTS**

This matter concerns the threshold issue of whether a grievance filed over the alleged violation of the TL-5 Memorandum of Understanding (MOU) was timely. By way of background, on July 9, 2014, the Parties agreed to several terms concerning the MS-47 TL-5 Implementation and Maintenance Craft PSE Conversions. The term at issue in this case is contained in Item 6 of the MOU. It requires that the total custodial hours or Labor Distribution Code (LDC) 38 (custodial work) hours will be compared to 90% of the custodial work hours shown on Line H of PS Form 4852. PS Form 4852 is used to calculate the custodial staffing needs at each facility in accordance with the MS-47 Handbook. Line H shows the fiscal year total custodial hours that have been staffed for each facility based on specific criteria stipulated in the MS-47 Handbook. According to the MOU, this comparison must occur at the end of each fiscal year (October 1st to September 30th), during the month of October of the new fiscal year (FY).

The TL-5 MOU requires Management to schedule custodians to work 90% of the total staffing hours as shown on Line H. As referenced above, during the month of October of the new fiscal year, Management must share the total LDC 38 hours worked with the Union president or designee. If the total LDC 38 hours worked is less than 90% of the total hours shown on Line H of PS Form 4852, Management is required to compensate custodial employees identified by the Union for each hour short of 90% at

the overtime rate. Additionally, falling short of 90% in consecutive years will result in compensation for 100% of work hours shown on Line H.

It is undisputed that on or about October 19, 2015, Maintenance Manager Jeffrey Roads (Roads), provided the Union with a report consisting of LDC 38 hours for the Cedar Rapid facilities. Current Union President Brian Hammar (Hammar) testified that the initial report did not provide sufficient information to establish whether or not the Service had complied with the MOU. Therefore, he requested additional information that was received on or about November 20, 2015.

The Service provided the Union with a large amount of additional documentation that had to be reviewed and evaluated in order to prepare for a discussion with Management. It was not until May 12, 2016, that Hammar and Roads agreed to meet and discuss a combination of reports that provided the best evidence of an actual comparison of hours worked and what work was performed by the custodians per Line H. At this meeting, Manager Roads advised that he would not settle the challenge of non-compliance with the TL-5 MOU and stated, "You're a little late aren't you?" In any event, Hammar and Roads agreed to meet for a Step 1 grievance on May 18, which had to be rescheduled. The parties ultimately met on June 2, 2016, for the Step 1 meeting. The grievance was not resolved and advanced through the grievance process. The Service maintained throughout the grievance process that the grievance was untimely.

## ARGUMENTS OF THE PARTIES

### The Employer's Position

The Service contends that the Union was required to file a Step 1 grievance within fourteen (14) days of when it became aware or reasonably became aware that a grievance existed. Even if Management had failed to comply with the MOU and did not meet during the month of October, the Union would be required to file within fourteen (14) days of Management's failure to meet. The Union requested additional information and was provided that information on November 20, 2015. Once the information was provided, the Union had fourteen (14) days to file a grievance. The Union also had the option of requesting an extension. However, it did neither. There was no further discussion on the issue. Management was under the belief that the issue had been discussed in November when the additional information was provided. And, since no grievance had been initiated at that time, the issue had been laid to rest.

The Service contends further that this is not an on-going violation. The time frame being grieved in this case is from October 1, 2014 through September 30, 2015. The MOU specifically states that Management must meet and discuss the LDC 38 work hours during the month of October of the new fiscal year. This is a static time frame with a specific end date. There is nothing that states the parties cannot extend discussions past the month of October. However, there must be some type of mutual agreement. Since the Union requested additional information and since there was further discussion, Management concedes that the timeframe the Union had to initiate a Step 1 grievance had been delayed as long as they were still in discussion. However, once those

discussions ended, the Union was obligated to initiate a Step 1 grievance or request an extension. Therefore, the grievance is untimely.

### The Union's Position

The Union contends that the grievance was filed in a timely manner. Since Management was required to provide information and to meet to discuss that information, the timeframe for filing a grievance did not begin until both events occurred. The discussion did not take place until May 12, 2016. Upon learning on this date that Management would not settle the Union's claim, Management was put on notice of the Step 1 grievance and agreed to meet about it on May 18, 2016. The grievance was, therefore, timely.

Additionally, a verbal extension was granted by Management for the Step 1 meeting. According to the Step 1 denial, Roads stated, "Mr. Hammar and I agreed to meet on May 18th where he would present a formal grievance for me to sign and deny." By the Service's own admission, a verbal extension was agreed to by both parties establishing the meeting date of May 18 for a "formal Step 1 meeting."

Next, the past practice between the parties dictates that throughout the grievance process, the Union challenged the fact that the local Parties have had a long history of relaxed standards regarding the grievance timelines. In fact, the FY 2014 noncompliance of the TL-5 MOU was handled in the same manner as the instant case. It was ultimately settled in late July of 2015. The only noticeable difference between the two cases is the amount of liability.

Finally, it is the position of the Union that each day the Service fails to comply with the TL-5 MOU generates a new violation, therefore the violations are ongoing until resolved. The Service continued to fail to comply with the requirement of meeting *and* discussing reports that show the best evidence of what work was performed by the custodial workforce until May 12, 2016. Upon learning that Management would not file the claim, a grievance meeting was scheduled within fourteen (14) days. Therefore, the grievance was timely.

### **FINDINGS AND OPINION**

Having considered the entire record and arguments of the Parties, the undersigned finds that the grievance was filed in a timely manner. Therefore, the underlying grievances shall proceed on the merits. The reasons for this conclusion are set forth below.

#### **The Pertinent Language in the MOU is Clear and Unambiguous**

The MOU states, in relevant part, that "The results will be provided to and discussed with the Local APWU President or designee...." This language is clear and unambiguous. It dictates that two (2) events must occur: 1) Management must provide the relevant information to the Union and 2) Management must discuss the results obtained from the information provided. In addition, the Questions and Answers guidance issued by and agreed to between Terry C. LeFevre, Labor Relations Specialist, Contract Administration (APWU) for the Service and Steven G. Raymer, Director, Maintenance Division for APWU on May 12, 2017, confirms that the Parties

intended that the Service "will provided the best evidence of hours worked per Line H." (Joint Exhibit 7). This Q&A guidance also unequivocally states that "the results will be provided to **and discussed with** the Local APWU President or designee." *Id.* (Emphasis added).

Based on a plain reading of the MOU language and the Q&A guidance of the Parties, this Arbitrator concludes that the burden is placed on Management to provide the information and to discuss the substance of the information. Obviously, some type of meeting should occur to facilitate the discussion. Taking note of the sophisticated negotiation skills of the Parties, were the discussion optional, it would logical to conclude that language such as "at the option of the APWU the parties will discuss"; "upon the request of the APWU, the parties will discuss;" or something similar would have been included in the MOU. No such language is found int Item 6 of the MOU. Accordingly, any time frame for the purpose of filing a grievance could not begin until a meeting to discuss the substantive information containing the best evidence provided by the Service had occurred. If the Parties want to fix a specific time frame for the Union to review the best evidence reports, they must come to an agreement about that. In sum, the MOU requires that the Service will provided the best evidence of hours worked per Line H and discuss the results with the Union.

#### Management Did Not Satisfy the Required Terms of the MOU Until May 12, 2016

As referenced above, the burden is on Management to satisfy two (2) requirements under the TL-5 MOU. The first requirement is that Management must provide the relevant information to the Union. In mid-October 2015, Manager Roads,



provided the Union a report with LDC 38 hours for the Cedar Rapid facilities. The report did not include sufficient information to determine with the Service had complied with the MOU. When questioned what the numbers on the document reflected and what reports the Service relied upon to generate the report, Roads was unable to provide an explanation. It was later revealed, in an e-mail, that Roads' inability to explain the reports was because the reports were generated by an outside source and e-mailed to him. Since Roads could not provide an explanation of the report or validate its accuracy, the Union requested that additional documentation be provided to establish whether or not the Service had in fact complied with the MOU. On or about November 20, 2015, the Service provided the Union with a large amount of documentation. Former Steward and current Union President, Brian Hammar, testified that it took months to review, assemble and calculate the information contained in the large number of documents that had been provided by Management. Only after analyzing this information could the Union determine that a challenge needed to be raised concerning the TL-5 MOU.

The second requirement under the MOU is that Management must meet to discuss the information. I find Hammar's testimony credible that the first meeting to discuss the relevant information did not occur until May 12, 2016. The Service does not dispute that additional information was provided on or about November 20, 2015. It contends that a discussion took place at that time which satisfied the requirement to hold a discussion under the MOU. I disagree. The only thing that could have been discussed at that time was generalities about the information provided to the Union. The results or substance of the Union's findings could not have been discussed (which is what the MOU contemplates) because the Union had not had an opportunity to review

and digest the information. Management's interest in wanting to close out any issues concerning the prior FY as soon as possible is recognized. However, in furtherance of this interest, it could have scheduled a meeting for this very purpose but did not. Union President Hammer put Manager Roads on notice as early as October 22, 2015, that even with the more limited data that had been provided to the Union, it would "require LOTS of time to calculate." (Union Exhibit 1). (Emphasis in the Original).

By failing to schedule a meeting, Management ran the risk of leaving the issue open until the Union determined there was or *became aware of* the matter to be grieved. This is exactly what happened. Only after analyzing the data did Hammar learn that there were TL-5 MOU concerns that needed to be raised, which he took to Roads on May 12. This was the first substantive discussion about the alleged staffing deficiencies reported in the data. This is also the first time that the Union became aware that Management was not in agreement with the timeliness of the Union's challenge. Accordingly, the record evidence supports a finding that the discussion required by the MOU did not occur until May 12, 2016.

#### The Service was on Notice within 14 Days from the Union's Awareness of the Grievance

The CBA states that the Union may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. As established above, the Union was not aware of any grievable concerns in connection with Item 6 of the TL-5 MOU until May 12, 2016, when Hammar took the information he analyzed and discussed it with Roads.

Upon being informed by Roads that the Service would not settle the Union's challenge to non-compliance of the TL-5 MOU, the time for filing a grievance began since at this point the Union was reasonably aware of the claimed violation by the Service and the Service's position that it would not settle the claim. The Union arranged to meet for a Step 1 grievance on May 18, 2016, which was delayed by agreement until June 2, 2016. However, the period between May 12 and May 18 was clearly within the 14-day timeframe required by the CBA. Therefore, the grievance was timely.

#### Lax Enforcement of Timeframes and Continuing Violation

Given the findings above, it is unnecessary to address the arguments concerning the lax enforcement of the timelines or the existence of a continuing violation. On the threshold issue of arbitrability, it is concluded that the grievance was timely.

#### **AWARD**

The grievance is arbitrable.

