



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

To: Regional Coordinators
National Business Agents
Resident Officers

From: Tony D. McKinnon, Sr. 
Director, Industrial Relations

Date: January 10, 2014

Re: Das Award – PSEs in Clerk Complement for Lead Clerks

In a recent national award, Arbitrator Das ruled that “[f]or purposes of applying the ratio in Section 2 of the Clerk Craft Jobs MOU, clerk PSEs are not included in ‘the clerk craft complement in a facility.’” (USPS #Q10C-4Q-C 12291235, 12/20/2013)

The language at issue in the award of Arbitrator Das is in paragraph 2.C of the Clerk Craft Jobs MOU negotiated in 2011, found in the National Agreement at page 377:

The ratio of Lead Clerk assignments in the clerk craft complement in a facility shall be:

5 to 49 clerks – 1

50 to 99 clerks – 2

100 - 199 clerks – 3

200 - 499 clerks – 5

500 or more clerks - 5 plus 1 for each additional 100 clerks

The Postal Service initiated this dispute. The Postal Service argued that the phrase “clerk craft complement” is limited to the “**career** clerk craft complement” (emphasis added), and that the ratios do not count PSE clerks. The Postal Service focused on the absence of a parenthetical note in the MOU stating that it applied to PSEs, like those found throughout the National Agreement. The Postal Service also contended that wherever the word “complement” is found in the National Agreement it applies to career employees.

The APWU argued that the plain language of the contract does not limit the complement to career clerks only. The bargaining history showed that, although the details of the

PSE category were not yet finalized, both sides were aware that there would be some kind of non-career work force in the bargaining unit, and that the cost savings of PSEs dwarfed any cost of creating Lead Clerks, particularly in light of the parties intention of eliminating 204Bs. Although the specific issue did not come up during negotiations, the Union's chief spokesperson on the issue testified that the Union believed that the MOU intended to include PSEs and the Postal Service never said otherwise. The Union also demonstrated that in the Postal Service's administrative practice, it issues various "complement reports" that include PSEs. Finally, the Union stressed that it makes little sense to require Lead Clerks for career clerks in facilities without supervisors but not for inexperienced PSEs. The parties agreed that the language in the MOU was based almost entirely on the steward ratios in Article 17.2.A, in which PSEs are included. In answer to the parenthetical note argument, the Union explained that the MOU did not "apply" to PSEs but rather to the ratio of clerks to Lead Clerks, so such a notation was not required to include PSEs in the clerk complement to determine the ratios of Lead Clerks. And although it is true that the word "complement" in the National Agreement and the JCIM addresses career employees, read in context it is obvious in each of those instances that the parties intended to include only career employees; the PSE bargaining unit category did not exist at the time these provisions were negotiated.

The Union contended that the Postal Service bore the burden of proof because it initiated the dispute. Arbitrator Das disagreed. He said (at 10): "Deciding that question turns on which party's position is more persuasive; it is difficult to see any meaningful way in which the initiating party has a greater burden in this respect."

On the merits, the arbitrator's reasoning was very brief. He ruled (at 10-11):

The bargaining history evidence in this case shows that the parties did not discuss the meaning of the term "clerk craft complement" or whether or not it included clerk PSEs. The evidence does show that the parties "signed off" on the Clerk Craft Jobs MOU before they finalized their agreement regarding the new bargaining unit classification of PSEs, although the expectation was that some such classification would be agreed to. When the parties finalized their agreement on the PSE MOU they specifically designated the articles, or portions of articles, and MOUs in the National Agreement that applied to PSEs. It seems to me that this is the best evidence as to whether they intended PSEs to be included in applying the Lead Clerk ratio in Section 2 of the Clerk Craft Jobs MOU. If that was their mutual intent, it stands to reason they would have listed this MOU or the Lead Clerk section of the MOU, particularly since, as the Postal Service stresses, the only other references to "complement" in the National Agreement and JCIM -- references that predate the 2010 National Agreement -- encompass only career employees.

Addressing the Union's argument, Arbitrator Das said (at 11):

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The Union's argument that it makes no sense not to include PSEs in determining the number of Lead Clerks -- given their relatively greater need in general for guidance and direction by a Lead Clerk -- has some appeal. At the same time, however, it would not be illogical for the parties not to equate "X" number of PSEs to "X" number of career clerks for this purpose, given that there may be significant variations and fluctuations in both the number of PSEs assigned at a facility and in their hours of work, in contrast to career clerks.

The arbitrator said (at 11): “While a close question, on balance I conclude that the Postal Service's position on the interpretive issue in this case is more persuasive than that of the Union.”

Enclosure

TDM/MW:jm
OPEIU#2
AFL-CIO

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
between)
UNITED STATES POSTAL SERVICE) Case No. Q10C-4Q-C 12291235
and)
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO)
)

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service: James P. Verdi, Esq.

For the APWU: Anton G. Hajjar, Esq.

Place of Hearing: Washington, D.C.

Date of Hearing: June 26, 2013

Date of Award: December 20, 2013

Relevant Contract Provisions: Appendix B - MOU Re: Clerk Craft Jobs

Contract Year: 2010 - 2015

Type of Grievance: Contract Interpretation

Award Summary:

For purposes of applying the ratio in Section 2 of the Clerk Craft Jobs MOU, clerk PSEs are not included in "the clerk craft complement in a facility."

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator

In negotiating the current 2010-2015 National Agreement, the parties entered into a Memorandum of Understanding Re: Clerk Craft Jobs (Clerk Craft Jobs MOU) that is included in Appendix B of the National Agreement. The parties also established a new classification -- Postal Service Employees (PSEs) -- as set forth in a MOU Re: Postal Support Employees (PSE MOU) included in Appendix A. As stated in Article 7.1.B.1 of the National Agreement: "The PSE work force shall be comprised of non-career bargaining unit employees." PSEs are hired for a term "not to exceed 360 days." PSEs do not have the 40-hour work week guarantee that regular full-time employees have -- they are guaranteed only two hours of work or pay for every scheduled day of work. The previous non-bargaining unit "casual" category of supplemental employees was eliminated.

Section 2 of the Clerk Craft Jobs MOU provides for the creation of Lead Clerk assignments in any facilities "where clerks work without direct supervision and in facilities that have a minimum complement of five (5) clerks." Section 2 also establishes a ratio between the number of Lead Clerk assignments in "the clerk craft complement in a facility" and the number of "clerks." The issue in this case is whether, for purposes of applying this ratio, clerk PSEs are included in or not included in "the clerk craft complement."

Relevant provisions of the Clerk Craft Jobs MOU state as follows:

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

SUBJECT: Clerk Craft Jobs

The United States Postal Service (USPS) agrees to create certain duty assignments in the Clerk Craft of the American Postal Workers Union (APWU), AFL-CIO in accordance with the following provisions:

* * *

2) Mail Processing/Customer Service

The intent behind the creation of the Lead Processing Clerk and the Lead Sales and Services Associate is to provide oversight, direction and support, in the absence of Supervisory presence to bargaining unit employees in both Mail Processing and Retail operations. Lead Clerk positions will be created at one level above other employees in the group.

The Employer will fill duty assignments of a Lead Clerk in any facilities where clerks work without direct supervision and in facilities that have a minimum complement of five (5) clerks. Lead Clerk assignments shall include duties in both the Retail and Mail Processing operations in Post Offices. Lead Clerk assignments will also be filled in facilities with only a Retail operation.

- A) Lead Clerk-Mail Processing - Responsibilities include, but are not limited to, resolving problems that may occur during tour operations and determining when a supervisor should be involved, work as a working leader of mail processing employees in a mail processing activity; maintaining records related to mail on hand and mail processed; maintaining a working knowledge of regulations, policies and procedures related to mail processing activities.
- B) Lead Clerk-Customer Service - Responsibilities include, but are not limited to, maintaining a working knowledge of regulations, policies and procedures related to all phases of retail services and Post Office mail processing operations; acting alone or as a working leader to retail and mail processing employees; providing technical guidance to retail clerks in addition to communicating regulations, policies and procedures to those employees; performing administrative duties in both retail and mail processing operations; and ensuring that all work is performed efficiently.
- C) The ratio of Lead Clerk assignments in the clerk craft complement in a facility shall be:

5 to 49 clerks - 1

50 to 99 clerks - 2

100 - 199 clerks - 3

200 - 499 clerks - 5

500 or more clerks - 5 plus 1 for each additional 100 clerks

Lead Clerk assignments may also be established in Retail only offices or stations. Existing LSSA's, Window Service Technicians and other existing clerk craft positions of a similar nature identified by the parties shall be grandfathered into the new position of Lead Clerk.

- D) In order to ensure the orderly establishment of the new Lead Clerk position, the Employer will have 1 year from the signing of this memorandum to develop the Lead Clerk senior qualified job descriptions and any training program that may be necessary, post and fill the positions and complete any other relevant activities. During year 2 of this agreement the parties will jointly agree upon a procedure to be used to review the effectiveness of the newly established position. At the end of year 2, the parties will meet to apply the review procedure with the expectation that the number of work hours utilized for 204-B activities will be reduced or eliminated in those work units with a Lead Clerk position. Additional reviews will be conducted by the parties at the end of years 3 and 4 of this agreement. Not later than June 1, 2012, the Employer will eliminate the usage of 204-B's except in the absence or vacancy of a supervisor for 14 days or more. The usage of a 204-B in this exception is normally limited to no more than 90 days.

(Emphasis added.)

Section 2 of the PSE MOU, titled "Contract Provisions," provides that only designated articles and portions of articles of the National Agreement and Memorandums of Understanding from the 2010 National Agreement apply to PSEs. The Clerk Craft Jobs MOU is not listed among the MOUs that apply to PSEs.

The parties agree that in the negotiation of the Clerk Craft Jobs MOU there was no discussion as to whether PSEs are to be included in determining the number of required Lead Clerk assignments or as to the meaning of the term "Clerk Craft complement" in Section 2 thereof. This MOU was tentatively agreed to prior to completion of negotiation of the PSE MOU, but it seems fair to conclude on the present record that the parties by then contemplated there ultimately would be agreement to establish a new category of non-career bargaining unit employee.

The parties also agree that the ratio formula in Section 2.C of the Lead Clerk provision of the Clerk Craft Jobs MOU essentially was derived (with the exception of the 5-clerk minimum) from the existing formula in Article 17.2.A of the National Agreement applicable to appointment of stewards, which is as follows:

ARTICLE 17 REPRESENTATION

Section 1. Stewards

* * *

Section 2. Appointment of Stewards

A. ... The number of stewards certified shall not exceed, but may be less than, the number provided by the formula hereinafter set forth.

Employees in the same craft per tour or station

Up to 49	1 steward
50 to 99	2 stewards
100 to 199	3 stewards

200 to 499	5 stewards
500 or more	5 stewards plus additional steward for each 100 employees

* * *

(The preceding Section, Article 17.2, shall apply to PSEs)

In addition to the statement in the parenthetical following Article 17.2, shown above, that portion of Article 17 is among those identified in the PSE MOU as applying to PSEs.

EMPLOYER POSITION

The Postal Service stresses that the Clerk Craft Jobs MOU, which uses the terms "clerks" and "clerk craft complement," is silent about PSEs. Hence, it argues, the plain language of the MOU indicates that only clerks in the clerk craft complement are to be counted in determining the corresponding number of Lead Clerks.

The Postal Service stresses that the term "complement" is used in the National Agreement and the parties' Joint Contract Interpretation Manual (JCIM) only to refer to career employees, so the phrase "clerk craft complement" only includes career clerks. Article 7.3, appropriately titled "Employee Complements" only refers to career employees, also known as the "regular work force."¹ In addition to Article 7.3, the term "complement" is used in Article 12 and Article 13, neither of which apply to PSEs. Furthermore, the JCIM supports the conclusion

¹ Article 7.3 begins as follows:

Section 3. Employee Complements

A. The Employer shall staff all postal installations in the regular work force as of the date of this Agreement as follows:

1. With respect to the clerk craft, ...

(Emphasis added.)

that "complement" only refers to career employees. In one provision, discussing how to calculate work years at an office, the JCIM uses the terms "complement" and "career employees" interchangeably. A review of the National Agreement and the JCIM -- the Postal Service adds -- uncovered no example where the term "complement" refers to, or includes, non-career employees.

The Postal Service further points out that the Clerk Craft Jobs MOU does not include the parenthetical, repeated elsewhere throughout the National Agreement, that would show the parties' intent to have PSEs included in the ratio establishing Lead Clerk positions. The PSE MOU bolsters the conclusion that PSEs are not to be included in the ratio used to establish Lead Clerk positions because it does not list the Clerk Craft Jobs MOU -- specifically the section concerning Lead Clerks -- as among the contractual Articles and MOUs that apply to PSEs.

The Postal Service also contends that a comparison between the Clerk Craft Jobs MOU and Article 17.2.A, which contains a strikingly similar ratio between stewards and employees, supports the conclusion that PSEs are not to be counted in the ratio calculating Lead Clerks. Article 17.2 is listed in the PSE MOU as applying to PSEs and Article 17.2 contains a parenthetical statement explicitly applying its provisions to PSEs.

The Postal Service does not necessarily disagree that PSEs can serve, under limited circumstances, as Lead Clerks, but it insists that it does not follow that PSEs are included in the ratio for determining the number of Lead Clerk assignments. Indeed, the Postal Service asserts, the provision in the PSE MOU on PSEs serving in higher level positions, including, for example, Lead Clerk, only proves that if the parties want a provision to apply to PSEs, it must be negotiated and reduced to writing.

Citing testimony of Michael Mlakar, Manager of Field Labor Relations, and Bernis Owen, Manager for Operations Complement Management, the Postal Service notes that including PSEs -- non-career employees who do not have layoff protection -- in the ratio to establish Lead Clerk positions would create approximately 500 more career Lead Clerk

assignments. If the number of PSEs subsequently was to decrease (and with it, the need for additional Lead Clerks), that reduction would not automatically correspond -- due to saved pay and saved grade protections of the contract -- to reductions in pay for those clerks who formerly served as Lead Clerks. The Union's interpretation, therefore, would be costly to the Postal Service at a time when it can ill afford additional financial burdens.

UNION POSITION

Initially, the Union asserts that because this is a dispute initiated by the Postal Service, the burden of demonstrating the correctness of its interpretation is on the employer.²

The Union contends that the plain language in the Clerk Craft Jobs MOU controls. The reference therein to "clerk craft complement," it maintains, can only be a reference to the entire clerk complement. The Union cites a number of dictionary definitions of the word "complement" in support of its position that "complement" means "complete" -- the complement is the entire group. Without strong proof that "complement" was meant to mean something other than the complete group, and there is none in the record, the word must take on its ordinary meaning.

Moreover, the Union argues, the purpose of the Lead Clerk category supports the Union's position. The Lead Clerk duties in both Mail Processing and Customer Service not only are useful to career clerks in the absence of supervision but are particularly suited to leading the new category of bargaining unit PSEs, who virtually always would be less experienced than career employees. As APWU Industrial Relations Director Mike Morris testified at arbitration, it is absurd to argue that career employees need the guidance and direction of Lead Clerks, but inexperienced PSEs do not.

² The APWU local in Emporia, Kansas, filed a grievance alleging that local management violated the contract when it failed to post a Lead Clerk duty assignment in a facility with four full-time regular clerks and one PSE clerk in accordance with the Clerk Craft Jobs MOU. The Postal Service representative referred the question of whether management was obligated to post the Lead Clerk assignment to the national level as an interpretive issue. The Postal Service subsequently initiated the present Step 4 dispute. As the parties were in disagreement, the Union appealed the dispute to arbitration in accordance with Article 15.

The Union maintains that the context in which the Clerk Craft Jobs MOU was negotiated also must be taken into consideration. Eliminating temporary assignment of bargaining unit clerks to supervisory positions ("204-Bs") was part and parcel of the Union's overall goal in 2010 negotiations to obtain work for the bargaining unit. Lead Clerks facilitate assignment of non-supervisory duties from supervisors to bargaining unit employees. Limiting the number of Lead Clerks deprives the APWU of part of its bargain.

The Union argues that the bargaining history evidence further supports its interpretation. Morris testified that the parties were aware that there would be PSEs in the bargaining unit, although all the details of their working conditions and use still were being worked out, when the Clerk Craft Jobs MOU was agreed to. He also testified that the Union always understood that the term "clerk craft complement" in the MOU meant the entire clerk craft complement and not only career clerks. The Union stresses that the Postal Service during negotiations never told the Union that "clerk craft complement" in the MOU meant only career clerks, and the Union never had reason to think the Postal Service thought that.

The Union points out that the source of the Lead Clerk ratios is a contract clause in Article 17 that applies to all employees, and not just career employees, and insists this is strong support for the Union's position that the Lead Clerk ratios similarly include all employees.

The Union asserts that the Postal Service's own administrative practices also support the Union's interpretation. In its complement reports including those provided to the Union, the Postal Service includes both career and PSE employees demonstrating there is no basis for its argument that "complement" is a specialized term of art limited to career employees. Management's complement report known as WebCOINS is an example. Various other administrative reports presented by Postal Service witness Owen also include PSEs in the total employee clerk complement. In any event, it is the ordinary English usage of the word that controls in interpreting the provision of the Clerk Craft Jobs MOU in issue.

The Union insists that the absence of a footer (parenthetical) stating that the Lead Clerk portion of the MOU applies to PSEs provides no support for the Postal Service position because that portion does not "apply" to PSEs, but rather to Lead Clerks. This is to be contrasted to the provision in the PSE MOU which states that higher level pay under Article 25 -- for Lead Clerk assignments among others -- applies to PSEs.

The Union rejects the Postal Service argument that because use of the word "complement" in other provisions of the National Agreement and JCIM are all references to "career complement" it has that meaning in all contexts. The Union stresses that in those other instances the context of the specific provision makes it clear that the term "complement" refers only to career employees. The same is not true of the Clerk Craft Jobs MOU. Nothing in it supports a restricted reading of "complement" to mean career clerks only.

The Union offers several responses to the Postal Service's contention that if PSEs are included and staffing were to fall below one of the ratio break points the Postal Service still would have to continue paying the employee who had been assigned as a Lead Clerk at one level higher, causing an unnecessary expense to the Postal Service. The Union points out that this rationale is not found in the Postal Service's 15-day letter, and therefore is not properly raised in arbitration. Moreover, as Morris explained, this alleged cost factor is miniscule given the small number of Lead Clerk assignments at issue under the Union's interpretation. In any event, the Postal Service saves money by using Lead Clerks instead of 204-Bs, and, more generally, under other provisions of the new contract.

The Union states that if its interpretive position is affirmed, the arbitrator should remand the matter to the parties to address remedy, retaining jurisdiction for a 30-day period.

FINDINGS

In the underlying grievance filed by the Local Union in Emporia, Kansas, it is the Union's burden to establish that the Postal Service violated the contract, in this case Section 2 of the Clerk Craft Job MOU. As for the national interpretive issue presented in this national

arbitration, which was initiated by the Postal Service, the basic question is how to interpret the term "the clerk craft complement in a facility." Does it or does it not include clerk PSEs? Deciding that question turns on which party's position is more persuasive; it is difficult to see any meaningful way in which the initiating party has a greater burden in this respect.

The word "complement," as the Union's dictionary references reflect, generally means "complete" or "entire," usually in reference to a group. The issue here is not the meaning of "complement," but the meaning of "clerk craft complement" as it is used in Section 2 of the Clerk Craft MOU. As various administrative reports prepared by the Postal Service reflect, career clerks may constitute a complement, clerk PSEs may constitute a complement or "Clerks-All" (a combination of career clerks and PSE clerks) may constitute a complement. The Union submitted a report provided by the Postal Service to the Union as the "Clerk Complement Report for PP 12, FY 2013," which includes a "Count of on rolls FT, NTFT, and PSE clerks by Area." This "count" specifies the number in each of those categories together with a "Total" for each Area. Thus, a reference to "All" or "Total" clerks might well support inclusion of PSEs. But, by itself, the term "clerk craft complement" does not clearly include or exclude clerk PSEs, who constitute a supplemental work force to regular craft clerks.

The bargaining history evidence in this case shows that the parties did not discuss the meaning of the term "clerk craft complement" or whether or not it included clerk PSEs.³ The evidence does show that the parties "signed off" on the Clerk Craft Jobs MOU before they finalized their agreement regarding the new bargaining unit classification of PSEs, although the expectation was that some such classification would be agreed to. When the parties finalized their agreement on the PSE MOU they specifically designated the articles, or portions of articles, and MOUs in the National Agreement that applied to PSEs. It seems to me that this is the best evidence as to whether they intended PSEs to be included in applying the Lead Clerk ratio in Section 2 of the Clerk Craft Jobs MOU. If that was their mutual intent, it stands to reason they would have listed this MOU or the Lead Clerk section of the MOU,

³ Prior to addition of the provision in Section 2.C establishing the ratio in issue, an earlier draft of the MOU included language calling for a Lead Clerk "where clerks work without direct supervision and in facilities that have a minimum complement of five (5) clerks," language that remains in Section 2.

particularly since, as the Postal Service stresses, the only other references to "complement" in the National Agreement and JCIM -- references that predate the 2010 National Agreement -- encompass only career employees.

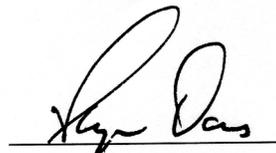
The Union sees support for its position in the applicability of the ratio formula in the steward provision in Article 17 to PSEs, not just career employees. Article 17.2.A, which establishes a ratio of stewards to "[e]mployees in the same craft per tour or station," does apply to PSEs as well as career employees, and was the derivation of the Lead Clerk ratio formula. But, not only does that provision not use the term "complement," the parties expressly agreed in the PSE MOU that Article 17.2 applies to PSEs and included a parenthetical to that effect in Article 17.

The Union's argument that it makes no sense not to include PSEs in determining the number of Lead Clerks -- given their relatively greater need in general for guidance and direction by a Lead Clerk -- has some appeal. At the same time, however, it would not be illogical for the parties not to equate "X" number of PSEs to "X" number of career clerks for this purpose, given that there may be significant variations and fluctuations in both the number of PSEs assigned at a facility and in their hours of work, in contrast to career clerks.

While a close question, on balance I conclude that the Postal Service's position on the interpretive issue in this case is more persuasive than that of the Union.

AWARD

For purposes of applying the ratio in Section 2 of the Clerk Craft Jobs MOU, clerk PSEs are not included in "the clerk craft complement in a facility."



Shyam Das, Arbitrator