

NATIONAL ARBITRATION
BEFORE IMPARTIAL ARBITRATOR STEPHEN B. GOLDBERG

In the Matter of Arbitration)
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between)
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UNITED STATES POSTAL SERVICE)
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)
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and)
)
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO)
)

Case No. Q10T-4Q-C 14171644
Q10T-4Q-C 16481407

MS-1 Handbook Revisions

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Kevin B. Rachel, Labor Counsel; Terry L. LeFevre, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Melinda K. Holmes, Jeremiah C. Fugit, Attorneys (Murphy Anderson, PLLC)

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

Hearing Dates: November 15-16, 2016; February 1, 2017; April 25-26, 2017

Date of Award: September 13, 2017

Relevant Contract Provisions: Article 19, Article 34

Contract Year: 2010-2015

Type of Grievance: Contract Interpretation

SUMMARY OF AWARD

1. The Postal Service revision of the MS-1 Handbook did not violate Article 34.
2. The Postal Service revision of the MS-1 Handbook did not violate Article 19 in providing increased discretion to local management to customize MS-1 preventative maintenance times and frequencies.
3. The Postal Service revision of the MS-1 Handbook did not violate Article 19 in transferring building maintenance work in stations and branches from Building Maintenance to the Field Maintenance Organization.
4. The issues of whether the revisions to the MS-1 dealing with (a) preventative maintenance time allowances and frequencies, and (b) space adjustments and miscellaneous work time allowances violated Article 19 are remanded to the parties. As part of that remand, I shall direct the Postal Service to provide the Union with all data and data analysis collected by the Review Team, including Mr. Bratta, relating to appropriate allowances for (a) preventative maintenance time and frequencies; (b) space adjustment and miscellaneous work. (If the parties wish to jointly validate appropriate allowances, they are encouraged to do so.) If this exchange of information does not lead to agreement, either party may request the Arbitrator to reopen the hearing, which I shall retain jurisdiction to do. In the event additional proceedings before the Arbitrator are necessary, neither party may introduce evidence in those proceedings that has not previously been provided in a timely fashion to the other party.

If, in a subsequent arbitration hearing, the Postal Service fails to present verifiable evidence that would on its face warrant a finding

that the proposed revisions in (a) preventative maintenance time allowances and frequencies; (b) space adjustment and miscellaneous work allowances are fair, reasonable, and equitable, it cannot prevail with respect to those proposed revisions. If, however, it does so, the Union must then demonstrate, by evidence and argument, why the Postal Service's position should not be accepted. No burden of proof will be placed on either party.

5. I shall retain jurisdiction of this matter to resolve any issues with respect to the remand here ordered and/or further proceedings arising out of the instant Award or the remand.



Stephen B. Goldberg
Arbitrator

September 13, 2017

I. ISSUES

Two issues are presented by this case: (1) Do the revisions to the MS-1 Handbook and related MMOs satisfy the Article 19 test of being “fair, reasonable, and equitable”? (2) Do those revisions violate Article 34?

II. SUMMARY OF RELEVANT EVIDENCE

A. Introduction

Maintenance operations at the Postal Service are divided among various functions. The building maintenance function, in which the instant dispute has arisen, consists of the maintenance of postal service buildings and building equipment. Work includes maintaining heating, ventilation, and air conditioning (HVAC), plumbing, electrical power distribution, and roof repair. The bargaining unit positions that perform the building maintenance function are Building Equipment Mechanics (BEM) and Maintenance Mechanics (MM). These positions are within the Maintenance Craft.

The MS-1 Handbook, *Operation and Maintenance of Real Property*, along with its associated Maintenance Management Orders (MMOs), govern building maintenance policies at plants and certain other facilities. Included in the MS-1 are staffing requirements for building operation and maintenance. The overall principle of these staffing requirements is that staffing should be based on the work that needs to be performed to insure the effective functioning of buildings and equipment.

B. The MS-1 Prior to the 2015 Revisions

The first step in determining staffing for the building maintenance function is to identify what needs to be maintained. Pursuant to the MS-1, local management was required to complete an inventory of the physical plant and its equipment. Each piece of equipment had a corresponding number of work hours, set out in the MS-1, for how long it should take to perform preventative maintenance on that equipment and the frequency with which that work should be performed. Some equipment had a range of work hours, and local management chose within that range. Local management then multiplied the work hours by the number pieces of that equipment in the facility. Added to the necessary work hours under this approach was the time necessary to travel to and from each piece of equipment on what was referred to as a “travelling route”. Finally, local management was free to alter frequencies or times provided in the MS-1 to account for local conditions or the presence of building equipment for which there was no MS-1 guide.

In addition to the work hours anticipated for preventative maintenance of buildings and equipment, the MS-1 provided time for corrective maintenance – dealing with the day-to-day malfunctions of building equipment. Unlike preventative maintenance, corrective maintenance work hours were calculated on the square footage of a facility. For every 1,000 square feet of a facility, eight workhours were added to the total number of workhours.

The MS-1 also included provision for space adjustments - time spent by maintenance personnel in modifying the layout of a facility. This included removing, adding, or moving doors, partitions, electrical outlets, and HVAC or other utility equipment. Some space adjustments, such as adding electrical outlets, were done to facilitate mail processing equipment; other space adjustments were to accommodate management requests to change offices, add conference rooms, or otherwise change the layout of a building. The MS-1 provided a standard allowance of five work hours per 1,000 square feet for space adjustments.

Finally, the MS-1 recognized that maintenance personnel also perform administrative tasks such as filling out corrective maintenance work orders and attending trainings or meetings. The MS-1 provided a miscellaneous time allowance for those tasks by adding 10% to the total work hours for preventative maintenance, corrective maintenance, and space adjustments.

The final calculation of the total number of work hours of building maintenance necessary to staff an installation was determined by adding hours necessary for preventative maintenance, corrective maintenance, space adjustments, and miscellaneous work. That number was divided by 1760, the work hours of one full-time BEM or MM, to determine the number of employees needed to staff the installation.¹

C. Revisions in the MS-1 and MMO-074-00

1. The Review Process

On July 3, 2012, the Postal Service notified the Union that it would begin a formal review of the MS-1 and the associated MMO-074-00.² According to Dominic Bratta, USPS Manager, Maintenance Planning and Support, this review was warranted by the fact that the MS-1 had not been comprehensively reviewed and revised since 1986. Since that time, building equipment had changed dramatically, including advanced technologies that engineered many of the high-maintenance components out of the equipment, and improved overall quality and reliability. This modernization of building equipment, according to Mr. Bratta, justified a full review of Postal Service building maintenance needs.

In June 2012, the Postal Service created a Review Team composed of 14 current and retired maintenance professionals. Team members, according to Mr.

¹ Management was not, however, required to employ this number of full-time employees. It could, for example, plan to have some employees perform needed work on overtime

² For simplicity, I will sometimes use "MS-1" to refer to both the MS-1 itself and its associated Maintenance Management Orders.

Bratta, had substantial maintenance experience and strong educational backgrounds. The group, under Mr. Bratta's leadership, utilized the tools and processes of a management technique known as Lean Six Sigma to provide structure and objectivity. Standardized survey sheets were developed so that there would be consistency among the data collected and reviewed by team members for various facilities. The Review Team's goal, as stated in its August 2015 Final Report³, was "to identify and eliminate obsolete procedures, update maintenance documentation, implement efficient maintenance practices, and accurately work load LDC 37 [the building maintenance function] to ensure the proper maintenance of USPS building equipment and systems."

According to the Review Team's report, it conducted "desk audits" of 50 postal facilities, which varied by geography, size, and type. Postal Service databases were used to collect information on each audited facility – inventory; preventive, corrective and operational maintenance performed; maintenance costs; and staffing.

The Review Team followed up the desk audits with on-site reviews at 70 postal facilities. These reviews were used to validate information from the desk audits, collect additional information, review building maintenance equipment, and meet with maintenance managers and supervisors, as well as with BEMs and MMs who were willing to do so.

According to the Review Team's Final Report, the desk audits and on-site reviews, which took place over the 18 months following its June 2012 composition, showed the existence of inaccurate and outdated building inventories, overstated days of equipment operation, preventive maintenance work hour frequencies and work hours per frequency that did not match the MS-1 standard criteria, fewer hours needed to perform space adjustments than had been allocated, and a failure of existing MS-1 procedures to quantify accurately the required building staffing.

³ This report was entitled, "Recommended Changes to the MS-1: Operation and Maintenance of Real Property (TL-4, November 30, 1986)".

The Review Team concluded:

Analysis of the data collected during the desk audits and on-site visits validates the MS-1 is outdated. . . The current (10%) allocation for Miscellaneous Work Hours is not warranted, and will be reduced to 2% . . .

Building equipment and building system technology have evolved and improved since 1986; however, the MS-1 building operation and maintenance staffing requirements have not changed in over 28 years. Existing requirements are outdated and do not reflect modern building technology. Leveraging technology and modernizing the current MS-1 criteria provides the USPS a significant opportunity to optimize equipment performance and increase building equipment life. Financially, this project reduces facility-operating costs, lowers labor costs, reduces equipment life-cycle costs, preserves Postal Service infrastructure, and reduces energy costs.

Mr. Bratta confirmed the findings and conclusions of the Review Team. He also testified that in addition to the Review Team's study of Postal Service facilities subject to MS-1, the Review Team visited and collected information on other buildings. Among these were buildings overseen by the USPS Facilities group, those managed by the General Services Administration (GSA), and those operated by private sector employers, including United Parcel Service (UPS). Based on these observations, Mr. Bratta concluded:

We provided many more work hours per square foot than outside industry did. The Postal Service spent a lot more money maintaining our facilities than was maintained in outside industry.

The APWU was invited to participate in the maintenance review process, but did so only in a limited fashion. According to APWU Assistant Maintenance

Craft Director Idowu Balogun, he accompanied the Review Team on one of its on-site visits. He was told that his role was as an observer, that he should not speak to any employees, and that if he had any problems, they should be raised in the Article 19 process. So, he testified, “I didn’t feel comfortable or part of the team at all, so that was the last and only [on-site visit] that I went to”.⁴

On February 26, 2014, the Postal Service notified APWU that it proposed to revise the MS-1 and the MMO-074-00. The notification was accompanied by the documents required by Article 19, and was followed by the requisite Article 19 meetings. (The Union does not allege any violations of the procedural requirements of Article 19.) On September 3, 2015, the Postal Service issued its final revision of the MS-1 and the MMO 074-00. On May 7, 2014, and June 9, 2016, the Union filed appeals to arbitration.⁵ Fifteen-Day Statements were timely filed, and the matter is now ready for decision.

2. The Revised MS-1

The revised MS-1 differs from the existing MS-1 in several respects: (1) Time and frequency standards for preventative maintenance are altered; (2) Local management discretion to modify preventative maintenance times and frequencies is increased; (3) Time allotments are reduced for space allocation and miscellaneous maintenance; (4) Stations and branches of a plant operation, which had been maintained by Building Maintenance as part of the plant installation, were removed from Building Maintenance and transferred to the Field Maintenance Organization.

⁴ Mr. Balogun also testified that he did not have the opportunity to review the data on which the Review Team based its conclusions. “They told me that if I want to come to the office that there is tons and tons of handwritten paper. If I remember correctly, I think they sent me some pages, but it doesn’t make sense to me what it looks like. But it’s just, you know, different – people doing different tasks. I just saw them like this on the paper, and nobody mentioned to me what they were actually doing. So, at the end of the day, you know, I left there with the same, you know, notion of an observer.”

⁵ There were two appeals to arbitration because the Postal Service issued two Article 19 notices, one for the revised MS-1, one for the revised MMO- 074-00. The two appeals were consolidated for the purposes of the submission of 15- Day Statements and hearing.

Time and Frequency Standards for Preventative Maintenance

Some maintenance tasks were eliminated by the MS-1. Among these were both stationary and traveling operating routes to inspect high pressure boilers, HVAC systems, air handlers, and fans.⁶ Others were changed to remove ranges and replace them with single time allowances. These included air compressors and centrifugal pumps. Single time allotments were reduced for tasks such as roll type filters and electric heaters. The frequencies for a number of preventative maintenance tasks were altered to lower frequencies. Some time allowances and frequencies remained the same; none were increased.⁷

Mr. Bratta defended the reasonableness of the changes in the MS-1 treatment of preventative maintenance on several grounds. Initially, he pointed out that the MS-1 had not been revised since 1986, approximately 30 years ago. Next, he asserted that Postal Service buildings and equipment have undergone significant modernization in that time, and now include technologies that eliminate or drastically reduce the need for periodic inspections to confirm machine functioning:

If you think about the technological changes that has happened in the last 20 years, you can look around in any building. You look at the lighting. We don't use fluorescent lights. We moved into more efficient LED lighting. We look at the windows. The windows are thermal paned. We look at thermostats. We used to use Johnson Control thermostats that required a vacuum

⁶ A stationary route is one on which the BEM or Maintenance Mechanic inspects equipment to be sure it is operating properly. An example would be a route on which a Maintenance Mechanic inspects the high pressure boiler of a facility. A traveling route is one on which the BEM or Maintenance Mechanic travels throughout a facility to inspect multiples of the same type of equipment. For example, a BEM may travel throughout a facility and inspect all the air handlers twice a day.

⁷ Postal Service calculations showed that despite the elimination of the range of time allowances for maintenance of air handlers, which had been from 2.00 hours to 4.75 hours, and the replacement of that range by a single time allowance of 2.75 hours, total work hours nationally to perform this task were expected to increase from 25,402 hours to 27,627 hours. Similarly, the elimination of the range of time allowances for coils, preheat, reheat, etc., and the replacement of that range by a single time allowance lower than the highest allowance in the pre-existing range, was estimated by Postal Service calculations to result in an increase in work hours from 6,712 to 8,229,

system. No longer do we do that.

Now we use digital controls. We have filters that are automatic roll filters instead of manual changing filters. We have set points and – and readings that come from our HVAC equipment that includes rooftop chillers, central plant chillers and boilers that project and send readings and information to a central control point. So there has been a tremendous amount of improvements in the building equipment and the building infrastructure.

When asked the extent to which Postal Service buildings and equipment had been modernized since 1986, Mr. Bratta responded that there has not been a blanket modernization, but that equipment has been replaced on a regular basis. Asked what percentage of equipment is replaced annually, Mr. Bratta stated:

I can't speak with precision on a percentage. . . [M]y personal gut feeling [is that the] Postal Service spends a tremendous amount of money on facility replacement projects that are capital throughout the year each and every year. . . That's primarily replacing building-side equipment.

Among the aspects of technological change to which Mr. Bratta assigned great weight in the reduction of preventative maintenance workhours was the advent of Building Automation Systems (BAS). According to Mr. Bratta, BAS are present in 95% of Postal Service plants. They eliminate the need for regular inspection of building machinery by substituting electronic reporting systems that monitor equipment performance, provide information to a central location, and issue alerts if a problem is detected.

In discussing the reliability of BAS, Mr. Bratta compared them to automobile gas gauges, and testified that, just as the gas gauge on a car, the BAS system provides adequate and reliable information. When asked if he was

confident that the BAS system was working optimally in all Postal Service buildings in which it was in place, Mr. Bratta responded:

I can't speak with precision on that. I haven't been at every place, and I'm not sure what the status is. . . If it isn't working, then it's the responsibility of the site to ensure that it's either working or that we workload the additional work on their staffing package.

Mr. Bratta also testified that even when the availability of a BAS system results in the elimination of inspection routes, regular preventative maintenance continues, and is capable of dealing with any problems that may not have been reported by the BAS system.

The testimony of three Union witnesses (Scott Nowaczek, Ken Allen, and Charles Siebert) who are Building Equipment Mechanics and members of a BEM Action Committee set up by the Union in 2012 to study the Postal Service's proposed revision of the MS-1, differed from that of Mr. Bratta on several points. Initially, each testified that the BAS were unreliable, showing equipment to be functioning at times when it was in fact not functioning. According to Mr. Nowaczek, the BAS at the Greenville, SC plant, where he works, had been inoperative at one point for 3-4 months before it was repaired, was not functioning at the time of his testimony, and had not been functioning for the previous 8 months.⁸ Mr. Siebert and Mr. Nowaczek also testified that even when the BAS is functioning properly, it is not a complete substitute for regular physical examination.⁹

⁸ The Postal Service conducted an investigation into the functioning of the Greenville BAS over the period from June 2, 2015, through June 5, 2015, by a 4-person team, which included Mr. Nowaczek and Mr. Bratta... According to the investigative report, after two elements of the BAS were replaced, the system was found to be fully functional, but not fully utilized. Local BEMs asserted a lack of training, and management committed to resolving the training deficiency.

⁹ According to Mr. Siebert:

[W]e detect a lot of problems through our – the senses, sight, sound, hearing, smell. . . .
[O]ne time, we walked – we were doing our walking route, and we walked inside a

Additionally, Mr. Nowaczek testified that several aspects of building modernization that Mr. Bratta stated were present in “any” Postal Service building were not present in Greenville – among them that there was no LED lighting, no automatic roll filters, thermostats that required preventative maintenance, and the same windows that were installed when the plant was built.

Each of the Union witnesses also challenged the conclusions of the Postal Service Review Team regarding the adequacy of some of the time allowances for preventative maintenance tasks. Both Mr. Nowaczek and Mr. Siebert testified that 2.75 hours was insufficient for preventative maintenance on air handlers. According to Mr. Nowaczek, 5.50 hours would be required; according to Mr. Siebert, 12-15 hours would be necessary. Mr. Allen testified that the 10 hour allowance for preventative maintenance on boilers was far from adequate for the large boilers at the Cardiss Collins installation in Chicago, which require an average of 4 months of work by three mechanics working full time.

Some of the reductions in time allowances for preventative maintenance were influenced or based upon the Review Team’s finding that the maintenance in question was not being performed. For example, preventative maintenance on controls and control systems for heating and air conditioning work stations was eliminated with the comment that, “Based on site visits, this work was not being performed”. Similarly, preventative maintenance on outside lighting was eliminated with the comment that “Surveys and site visits confirmed the vast majority of sites do not perform this as a preventative maintenance function.

penthouse. And penthouses are maybe 50 feet wide and 300 feet long. And we walked in a door there near the middle of the penthouse, and the first thing that hit me was, I smelled something burning, and so my partner and I, we split up. He went one way, I went the other. It turned out one of the sheaves, which is -- it’s -- it’s a pulley for a belt -- had shifted on the shaft, and the sheave was rubbing against the metal framework. The friction between the two was so great that it caused the belt to start to -- to smolder and burn, and that’s what was giving off the burning smell. And that’s something that you would never pick up with the BAS system. And if that had gone on for a long period of time, maybe the course of a week or whatever, it would have, you know, absolutely cut through that framework and -- and we’d have a catastrophic failure.

Sites run outside lights to failure.”

Union witnesses testified, however, that the reason the cited work was not being performed was not that it was unneeded, but that many facilities were understaffed and, as a result had to bypass some maintenance work.¹⁰ Review Team members, who observed on their site visits that some preventative maintenance work was not being performed, and who were unaware of the understaffing, might erroneously conclude that the reason that the work was not being performed was that it was considered unimportant. Hence, they might suggest that it was work that could be (and was) eliminated from guides for preventative maintenance work.

Mr. Bratta, in response, testified that among the items provided to Review Team members who did on-site visits were the data collected in the desk audits related to staffing. This included the number of Building Maintenance positions that were vacant. As a result, Mr. Bratta concluded that unawareness of understaffing could not have influenced a reviewer’s conclusions concerning the reasons why certain preventative maintenance work was not being performed.

Local Management Discretion

Mr. Bratta’s response to the assertions of inadequate time allowances for various preventative maintenance functions was that the revised time allowances were not intended to be rigid standards, but only baselines from which local management could make necessary adjustments. Indeed, he pointed out, the new MMO explicitly states that:

The PM requirements and tasks in Attachment 2 [to the May 20, 2016 MMO] provide the minimum required PM

¹⁰ In support of its witnesses testimony that their plants were understaffed, the Union introduced an October 6, 2015, e-mail from Mr. Bratta to all Area Maintenance Managers directing that no Building Equipment Mechanic or Maintenance Mechanic could be hired without Headquarters approval.

checks and frequencies which should be modified as necessary based on manufacturer's recommendations, local conditions, usage, or local ordinances.

Moreover, Mr. Bratta noted, Attachment 2 explicitly refers to local management's ability to adjust times and frequencies as necessary and appropriate.

The value of these time allowances as a foundation or baseline, according to Mr. Bratta, is that for some tasks the times will be adequate for the facility's needs, while in others they will serve as a starting point for local management to adjust the time allowances to their circumstances. The Postal Service fully anticipated that there would be variation from the stated allowances. Indeed, Mr. Bratta testified, all facilities would require some customization.

Mr. Bratta further testified that while management was allowed to customize preventative maintenance time allowances under the prior MS-1, he did not believe that they were encouraged to do so. Under the revised MS-1, however, customization is very much encouraged. The new MMO (quoted above) states that minimum required preventative maintenance checks and frequencies should be modified as necessary. Additionally, the Postal Service has made presentations to all maintenance managers, in which the managers were told "You have to customize it based on your equipment and the use in your facility". Furthermore, Mr. Bratta testified, local managers are fully capable of customizing as appropriate for their facility: "They are the responsible person for the operation of that facility . . . They are the best suited because they know the facility."¹¹

Finally, Mr. Bratta testified that as of the date of his testimony (April 26, 2017), it appeared that local managers were making use of their ability to customize as part of the process of creating staffing packages.¹² "From the staffing packages we've seen, we've seen numerous pages of local customization." This

¹¹ According to Mr. Bratta, local management's ability to vary from MS-1 standards is subject to validation by a team of subject matter experts at Postal Service Headquarters, as well as to review and approval at the Area level.

¹² Staffing packages must be reviewed and updated at least annually or at any time there is a significant change at the facility,

was particularly true in the staffing package for the Phoenix (AZ) Processing & Distribution Center; that package contained 95 pages of additional customization – 51 pages for supplemental maintenance requirements, 44 pages for greater times or frequencies than provided in the baseline.

Space Adjustment, Corrective Maintenance, and Miscellaneous

The 1986 MS-1 provided for a space adjustment allowance of 5 work hours for each 1000 square feet, a corrective maintenance allowance of 8 hours per 1000 square feet, and a miscellaneous allowance of 10% of all work hours for preventative maintenance, corrective maintenance, and space adjustments.

In the revised MS-1, the space adjustment allowance was eliminated, and the 10% allocation for miscellaneous work was reduced to 2%. The corrective maintenance allowance of 8 hours per 1000 square feet was left undisturbed, albeit now called a “work space adjustment”.

Mr. Bratta’s testimony supported these changes. He testified that during the on-site visits that he participated in as the chief of the Review Team, he did not see space adjustment work being performed. He attributed this to the fact that “our buildings are mature. . . [T]hey don’t continue to change to the extent that building equipment maintenance needs to be involved in that.” Similarly, with respect to the miscellaneous category, Mr. Bratta testified that “One of the things that we found in our review is that there wasn’t a lot of it happening.” The Postal Service initially eliminated the 10% miscellaneous allowance, but after Union complaints during the Article 19 process, the Postal Service retained a 2% miscellaneous allocation.

The testimony of the Union’s witnesses was quite different from that of Mr. Bratta. According to Scott Nemczk, BEMs at the Greenville plant do space adjustments a couple times each month. Sometimes they move machinery, at other times they build offices. (“Just about every time a new manager comes in,

we have to move the furniture because they want it done their way or they want to put something on their spot.”) Mr. Nemczk testified that he had done approximately 500 hours of space adjustment work in the last year, and that the other BEMs at Greenville also did space adjustments. BEM Charles Siebert, who works at the Margaret Sellers facility in San Diego, testified that space adjustments were common at that facility, although the amount varies by year. This year, according to Mr. Siebert, they did several hundred hours of space adjustments; in 2012, when they did the AMP consolidated facility, they probably had thousands of hours of space adjustments.

Mr. Bratta’s response to this testimony was similar to his response to Union witnesses’ testimony that the revised time allowances for preventative maintenance were insufficient for the work that was needed – local management is free to request additional hours when doing so is justified.

Stations and Branches

Under the previous MS-1 and MMO 074-00, the Building Maintenance function was responsible for maintaining the stations and branches included in an installation with a Processing and Distribution Center.¹³ Thus, BMEs and Maintenance Mechanics performed maintenance work in stations and branches pursuant to the policies of the MS-1. In 2015, at the conclusion of its review of the MS-1, the Postal Service transferred the maintenance of stations and branches included in a P&DC installation from Building Maintenance to the Field Maintenance Organization (FMO), which is responsible for the maintenance of associate offices and post offices.

¹³ Article 38.2.B defines an installation as a main post office, airport mail center or facility, terminal, bulk mail center, processing and distribution center or facility, Maintenance Support and Repair Facility or any similar organizational unit under the direction of one postal official, together with all stations, branches and other subordinate units.

The maintenance of associate offices and branch offices under the FMO is not controlled by the MS-1, but by a different set of handbooks and manuals. Additionally, the employees who perform that work, albeit members of the bargaining unit, are not BMEs and Maintenance Mechanics, but Area Maintenance Technicians and Area Maintenance Specialists. Due to differences between Building Maintenance and the Field Maintenance Organization in staffing policies, the amount of work gained by the FMO members of the bargaining unit as a result of the transfer of stations and branches to the FMO would be less than the amount of work lost by Building Maintenance members of the bargaining unit.

According to Mr. Bratta, the prior MS-1 assignment of building maintenance work in the stations and branches of a P&DC to Building Maintenance, the same organization that maintains the P&DC, was based on the Article 38 definition of installation, which includes stations and branches within the P&DC installation because they report to the postmaster in charge of the P&DC. The Review Team concluded, however, that a facility's maintenance needs are a function of its size and its equipment, not the management hierarchy to which the facility reports.¹⁴ Since most stations and branches are more the size of associate offices than of plants, it is reasonable to place them, for maintenance purposes, under the jurisdiction and policies of the FMO, which deals with associate offices, rather than with Building Maintenance, which deals mainly with plants.

The Union's evidentiary response was two-fold: (1) It is undisputed that the gain in FMO work as a result of the proposed change will be less than the loss of work to Building Maintenance employees. This is due at least in part to the fact that, according to APWU Maintenance Craft Director Steve Raymer, the FMO organization encourages the subcontracting of bargaining unit work.¹⁵ (2) A July

¹⁴ Mr. Bratta testified ". . . [A] plant [where] you have large facilities, large compressors, requires a more substantive oversight as opposed to a facility that is 8,000 square feet that uses a boiler about the size of a large home. . . ."

¹⁵ According to Mr. Bratta, the need for fewer building maintenance employees in FMO-maintained buildings is due to the smaller size of such buildings and the less complex machinery used there. See n.14.

2016 report of the Postal Service Inspector General's Office criticized the maintenance of Postal Service retail facilities maintained by FMO in the Capital Metro Area.¹⁶

III. DISCUSSION

A. Do the Revisions to the MS-1 Handbook and Related MMOs Satisfy the Article 19 Test of Being "Fair, Reasonable, and Equitable"?

1. The Interaction Between Article 19 and Article 3 Management Rights

Article 19 provides in relevant part:

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. . .

Article 3 provides, also in relevant part:

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

¹⁶ The report stated that it was the first in a series of audits addressing retail facilities nation-wide. No other reports were introduced into evidence.

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted . . .

According to Arbitrator Garrett:

Article XIX represents. . . an effort to achieve reasonable stability in the various bargaining relationships, while at the same time recognizing the need for Management to have reasonable flexibility for the proper exercise of its essential functions as spelled out in Article III.¹⁷

Similarly, Arbitrator Mittenthal held that application of the “fair, reasonable, and equitable” standard of Article XIX must give due deference to management’s Article III need and obligation to run the enterprise successfully. He stated:

Any attempt to evaluate this argument [by the APWU on ‘fair, reasonable and equitable’] must begin with Article 3, Management Rights. It provides that Management has the right ‘to direct the employees. . . in the performance of official duties’, ‘to . . . assign . . .

¹⁷ Case No. AC-NAT-11991 (1978).

employees,' 'to maintain the efficiency of the operations . . .', and 'to determine the methods, means. . . by which such operations are to be conducted.' These rights are, of course, subject to other provisions of the National Agreement. But their presence in Article 3 serves to emphasize the parties' acceptance of the customary management functions which are necessary to the successful conduct of any enterprise.¹⁸

Moreover, Arbitrator Mittenthal made it clear in this same case that application of the "fair, reasonable, and equitable" standard created no bias in favor of the *status quo*. He stated:

Surely, Management cannot be deemed bound by its traditional 'method' of rotation merely because it followed that method for some years. If the managerial initiative contemplated by Article 3 is to have any meaning, it must allow for change. New 'methods', new ways of doing things, are the lifeblood of any business.¹⁹

Finally, as the Union points out, Arbitrator Das has stated:

The Postal Service is entitled to change its policies, subject to its contractual obligations. But if it seeks to change long-standing provisions that on their face afford considerable protection to the bargaining unit, it needs at least to provide a convincing explanation of why it determined such a change to be necessary, if it is to satisfy Article 19's requirement that the change be fair, reasonable, and equitable.

With these general considerations as a background, I turn to the Union's assertion that the Postal Service changes to the MS-1 and associated MMOs were not "fair, reasonable, and equitable".

¹⁸ Case No. H1C-NA-C-49 (1983).

¹⁹ Ibid

2. Do the Postal Service Revisions to the MS-1 Violate Article 19 If They Were Motivated By a Desire to Reduce Labor Costs?

A theme that runs throughout the Union's presentation is that the Postal Service revisions to the MS-1 are not fair, reasonable, and equitable because the purpose of those revisions was not to better align maintenance needs with staffing, but rather to reduce staffing in order to cut labor costs. In support of its assertion, the Union points to Mr. Bratta's testimony that the Postal Service anticipated that labor cost reduction would result from the BAS elimination of unnecessary preventative maintenance inspections, the reduction in the space adjustment allowance, and the shifting of maintenance work in stations and branches from Building Management to FMO.

Proving that the Postal Service hoped and anticipated labor cost cuts to flow from the MS-1 revisions does not, however, demonstrate that the MS-1 revisions were not fair, reasonable, and equitable. Cutting labor costs, however inconsistent it may be with Union interests, is a legitimate management goal, and management actions taken for that purpose do not necessarily violate Article 19. The relevant question for Article 19 purposes is whether the actions which management takes to bring about labor cost reductions have effects that, even in light of management's interest in reducing labor costs, are not fair, reasonable, and equitable. If so, those actions violate Article 19; if not, there is no violation of Article 19, however distasteful to the Union may be management's goal of reducing labor costs.

3. Revisions to Preventative Maintenance Time Allotments and Frequencies

The MS-1 changes in preventative maintenance workhours and frequencies were based on the findings of the Postal Service Review Team and the views of Dominic Bratta, the Review Team's director. According to the Review Team:

Building equipment and building system technology have evolved and improved since 1986; however, the MS-1 building operation and maintenance staffing requirements have not changed in over 28 years. Existing requirements are outdated and do not reflect modern building technology.

Similarly, Mr. Bratta testified that Postal Service facilities and equipment had been significantly modernized in recent years:

If you think about the technological changes that has happened in the last 20 years, you can look around in any building. You look at the lighting. We don't use fluorescent lights. We moved into more efficient LED lighting. We look at the windows. The windows are thermal paned. We look at thermostats. We used to use Johnson Control thermostats that required a vacuum system. No longer do we do that.

Now we use digital controls. We have filters that are automatic roll filters instead of manual changing filters. . . So there has been a tremendous amount of improvements in the building equipment and the building infrastructure.

Among the technological changes to which Mr. Bratta assigned great weight in reducing the need for labor-intensive investigation of operating machinery was the Building Automation System, which he testified was present in 95% of Postal Service plants. According to Mr. Bratta, BAS capacity to monitor the functioning of building equipment, particularly the HVAC system, and to electronically report and signal malfunctions, rendered essentially obsolete the regular physical inspections carried out by maintenance personnel. As a result, the same level of maintenance can be assured with far fewer maintenance work hours than were charged under the 1986 MS-1.

Mr. Bratta, in support of his view that existing maintenance hours could be reduced with no reduction in the level of maintenance, relied upon his observations on visiting non-Postal Service facilities. He stated:

We provided many more work hours per square foot than outside industry did. The Postal Service spent a lot more money maintaining our facilities than was maintained in outside industry.

The Union's evidence to the contrary consisted primarily of the testimony of Building Equipment Mechanics Scott Nowaczek, Ken Allen, and Charles Siebert. Each of them testified that the Building Automation Systems lauded by Mr. Bratta were not reliable, sometimes showing equipment to be functioning at times it was not. According to Mr. Nowaczek, the BAS at the Greenville, S.C. plant had been non-functional for months at a time.²⁰ Mr. Nowaczek also testified that many of the improvements in building equipment and infrastructure asserted by Mr. Bratta to be present in "any" Postal Service building were not present at the Greenville plant – no LED lighting, no automatic roll filters, no new windows, and new thermostats that malfunctioned as did older thermostats.

²⁰ This testimony was challenged by the Postal Service, which asserted that the BAS had been fully functional during most of the period cited by Mr. Nowaczek, but had not been fully utilized by the BEMs at the Greenville plant. See p. 9, n. 8.

Union witnesses also challenged the adequacy of the time allowance for certain preventative maintenance tasks – among them the 2.75 hours allowed for preventative maintenance on air handlers and the 10 hour allowance for preventative maintenance on boilers, citing in the latter instance the large boilers at the Cardiss Collins facility in Chicago which, according to BEM Kenneth Allen, require an average of four months of work by three mechanics working full time.

Although the Union relies on the testimony of its witnesses to challenge specific revisions in preventative maintenance time allowances and frequencies, its central assertion is that the arguments put forward by the Postal Service to justify revising preventative maintenance times and frequencies are not supported by verifiable evidence in the record. In lieu of such evidence, the Union contends, the Postal Service relies on unsupported claims, broad generalizations, and anecdotes that have little or nothing to do with the maintenance of Postal Service buildings and machinery.

For example, the Union points out, a core assertion of the Postal Service is that the modernization of postal facilities and the dramatic improvements in building equipment technology have vastly reduced the need for the type of preventative maintenance that was performed in 1986 when the MS-1 time allowances and frequencies were last revised. The Union asserts, however, that the Postal Service backs up its contention solely by pointing to general technological advances in daily life.²¹ It did not, however, present empirical, verifiable evidence of wide-spread Postal Service modernization of facilities and equipment. Indeed, Mr. Bratta, when asked, was unable to describe what specific changes and advancements were uniform throughout postal facilities. He testified that postal equipment is replaced regularly with more modern

²¹ Mr. Bratta testified:

When I was young and I bought my first car, we used to change the spark plugs and do a tune-up every 12,000 miles. Today when you buy a car, it's primarily 100,000 miles before you need to address those initiatives.

equipment, but could not support that assertion with data. His response to the question of what percentage of building equipment was replaced annually was, as previously pointed out:

I can't speak with precision on a percentage. . . [M]y personal gut feeling [is that the] Postal Service spends a tremendous amount of money on facility replacement projects that are capital throughout the year each and every year. . . That's primarily replacing building side equipment.

When asked about the reliability of Building Automation Systems, which the Postal Service asserted had greatly diminished the need for regular, time-consuming physical inspection of much building machinery, Mr. Bratta suggested that the BAS was as reliable as an automobile fuel gauge in avoiding the need for physical inspection of the level of gasoline in a fuel tank. It is apparent, however, that an automobile fuel tank is not comparable to the more sizeable and complex equipment housed in Postal Service Processing and Distribution Centers. Hence, the reliability of a performance gauge in the former proves little about the reliability of a similar gauge on the latter.

When pressed concerning his confidence concerning the reliability of the BAS in all Postal Service buildings in which it was in place, Mr. Bratta responded:

I can't speak with precision on that. I haven't been at every place, and I'm not sure what the status is. . .

Nor was there data in the Review Team Report concerning the functional reliability of the BAS in Postal Service buildings. That Report states:

One of the most significant technological advances in building systems is 'intelligent hardware' that reports equipment condition and operating status to a central

monitoring system.²² This technology is currently used in many USPS building systems and provides the ability to remotely monitor building equipment or performance.

The Report, like Mr. Bratta's testimony, lauds the BAS, but provides no verifiable data concerning the buildings in which a BAS has been installed or its functional reliability in those buildings. Nor is this only failure of the Report to provide verifiable empirical data in support of its conclusions. Perhaps the core conclusion set out in the Report is that "Analysis of the data collected during the desk audits and the on-site visits validates the MS-1 is outdated and cannot fulfill the original objectives". The Report does not however, cite the data collected, or how to obtain access those data. Nor does it describe what analysis was performed on those data, or how that analysis demonstrates that "the MS-1 is outdated and cannot fulfill its original objectives".

Finally, Mr. Bratta testified that the reasonableness of the MS-1 changes is demonstrated by a comparison of Postal Service building maintenance costs to private sector maintenance costs. He stated:

We provided many more work hours per square foot than outside industry did. The Postal Service spent a lot more money maintaining our facilities than was maintained in outside industry.

That testimony, too, is both vague and unsupported by data. What were the work hours per square foot in "outside industry" (not defined) and in the Postal Service? What were the costs of maintaining Postal Service facilities compared to comparable facilities in "outside industry"?

In sum, the Postal Service has failed to produce verifiable empirical evidence that the changes in preventative maintenance times and frequencies in

²² "Intelligent hardware" appears to be another name for a Building Automation System. [Footnote added.]

the MS-1 were sufficiently substantial and reliable to justify the staffing cuts that will follow from those changes, and so were “fair, reasonable, and equitable”. Nor has the testimony of the Union’s witnesses been persuasive to the contrary. Even if the testimony of the three BEM witnesses is viewed as entirely credible, it is insufficiently generalizable, powerful, or data-based to justify a conclusion that the revised preventative maintenance times and frequencies were not “fair, reasonable, and equitable”. The most that can be said on the present state of the record is that neither party has proven its case. The Postal Service has not proven that the revisions in preventative maintenance times and frequencies are fair, reasonable, and equitable; the Union has not proven otherwise.

In a previous case in which the Postal Service sought to change estimated times for preventative maintenance on mail processing equipment,²³ Arbitrator Das found, as I have here, that there was insufficient evidence to verify or even gauge the accuracy of the Postal Service’s claimed justifications for the changes. He came to the same conclusion with respect to the Union’s challenge to estimated times that had not been changed. Accordingly, he directed the parties to jointly validate all estimated times at issue and, if that did not lead to agreement, to present their competing observations in arbitration

I here adopt the substance of Arbitrator Das’ approach, though not its exact terms. Because the Postal Service Review Team carried out extensive research on appropriate preventative maintenance times and frequencies, I shall not direct the parties to jointly validate estimated times, but shall direct the Postal Service to provide the Union with all data and data analysis collected by the Review Team, including Mr. Bratta, relating to preventative maintenance times and frequencies. (If the parties wish to jointly validate estimated times, they are encouraged to do so.) If this exchange of information does not lead to agreement, either party may request the Arbitrator to reopen the hearing, which I shall retain

²³ Case Nos. Q98C-4Q-C 00183263 and Q98C-4Q-C 01002200 (2005)

jurisdiction to do. In the event additional proceedings before the Arbitrator are necessary, neither party may introduce evidence in those proceedings that has not previously been presented in timely fashion to the other party.

In directing the Postal Service to provide the Union with all data and data analysis collected by the Review Team, I do not hold or suggest that the burden of proof is on the Postal Service to demonstrate that the proposed changes in the MS-1 relating to preventative maintenance time allowances and frequencies are fair, reasonable, and equitable. I do, however, hold that the Postal Service, as the party that seeks to change the status quo by revising the existing MS-1, has the burden of coming forward with evidence that would on its face warrant a finding that those revisions are fair, reasonable, and equitable.²⁴ I reach this conclusion not only because it is the Postal Service that seeks to change the MS-1, but also because, as a result of its MS-1 review, the Postal Service has in its possession the evidence that it asserts warrant the proposed revisions in the MS-1.

If, in a subsequent arbitration hearing, the Postal Service fails to present verifiable evidence that would, on its face, warrant a finding that the proposed revisions in the MS-1 are fair, reasonable, and equitable, it cannot prevail. If, however, it does so, the Union must then demonstrate, by evidence and argument, why the Postal Service's position should not be accepted.

The ultimate burden of proof is neither on the Union nor on the Postal Service. As Arbitrator Das has noted²⁵, the "fair, reasonable, and equitable" test is ambiguous. It will often be far from clear whether the challenged change was "fair, reasonable, and equitable". Under these circumstances, placing the burden of proof on one party may have the practical effect of making it extremely unlikely that party will prevail. For, in order to do so, that party must present evidence strong enough to overcome all ambiguity as to the whether the challenged change is "fair, reasonable, and equitable". I do not believe that the outcome of a dispute as important as that presented here should turn on a

²⁴ In legal terms, the burden is on the Postal Service to present a prima facie case as to why it should prevail.

²⁵ Case No. HOC-NA-C 19007 (2002).

procedural decision with such a significant practical effect. Accordingly, rather than assign the burden of proof to either party, I shall weigh the competing evidence and arguments and decide which should prevail.²⁶

One further point should be made clear. Although I do not here direct the Postal Service to rescind the changes in the MS-1 and associated MMOs that relate to preventative maintenance times and frequencies, that should not be taken as holding that those changes are here approved. If this matter returns to arbitration, and the changes are found not to be fair, reasonable, and equitable, the Postal Service will be responsible for any make whole remedy that is appropriate.

4. Local Management Customization of Preventative Maintenance Time Allotments and Frequencies

In asserting that the changes in preventative time allotments and frequencies were fair, reasonable, and equitable, the Postal Service relied not only upon its evidence of facility and equipment modernization, but also upon a change in the manner in which the allotted times and frequencies were to be implemented by local management. According to Mr. Bratta, the time allowances were not intended to be rigid standards, but rather baselines from which local management would be expected to make necessary adjustments, predicated on its knowledge of local equipment, usage, climactic conditions, and manufacturer's recommendations related to that equipment. The result of such local customization was expected to be a better fit between local maintenance needs and maintenance staffing, leading to unnecessary maintenance tasks being reduced or eliminated in those plants in which modernized equipment made

²⁶ One might ask why, if the Postal Service has not here met its initial burden of coming forward with evidence that, on its face, warrants a finding that the proposed revisions in the MS-1 are fair, reasonable, and equitable, I do not simply direct the Postal Service to rescind those changes. Although such a ruling might be appropriate in some circumstances, it is my judgment that the significance of the proposed changes in the MS-1 is too great, and the Postal Service has invested too much time and resources in an effort to find a sound answer to the preventative maintenance issues for it not to have the opportunity to put forward the results of its research so that the Union – and the Arbitrator if necessary – may determine whether, in light of those results, the changes it proposes in the MS-1 are fair, reasonable, and equitable.

such changes cost-effective. The result was expected to be improved maintenance at lower costs resulting from reductions in unnecessary staffing.

Mr. Bratta also testified that while management had been allowed to customize preventative time allowances and frequencies under the prior MS-1, he did not believe such customization had been encouraged. The new MMO, however, explicitly states that times and frequencies should be modified as necessary. Further, the Postal Service has made presentations to all maintenance managers in which they were told that they were expected to customize based on their equipment and its usage.

The Union challenges the Postal Service assertion that increased local management discretion to vary from MS-1 standards in assigning preventative maintenance times and frequencies will result in staffing packages more accurately attuned to local maintenance needs. Initially, the Union contends that increased local management discretion to vary from the MS-1 standards does not actually exist, and that the assertion it does so is merely a post-hoc rationalization created by the Postal Service to encourage the Arbitrator to uphold the revised preventative maintenance times and frequencies on the basis that, even if inexact, local management had the discretion to modify them. In support of its argument that local management discretion is fictitious, the Union states that there is no evidence that local managers know they have this discretion. Neither the MS-1, nor the forms on which local management lists building maintenance equipment advise managers that they must make modifications because the time standards are only starting points, or that omitted standards may be reinserted by local management. To the contrary, these forms are the same as they were under the prior MS-1. Finally, there is no guidance provided to local managers on how or to what they should adjust the MS-1 time and frequency standards.

Despite the Union's arguments, I am not persuaded that increased local management discretion to vary from the MS-1 standards does not actually exist, and that the assertion it does so is merely a post-hoc rationalization created by the Postal Service for the Arbitrator's benefit. Mr. Bratta testified that the Postal

Service had made presentations to all maintenance managers in area meetings in which they were told “You have to customize . . . based on your equipment and the use in your facility”. He also testified that initial staffing packages received by the Postal Service from local managers contained numerous pages of local customization, demonstrating that local managers were taking advantage of their ability to customize. One such staffing package, received from the Phoenix P&DC, which was introduced into evidence, showed 95 pages of customization. Finally, an Attachment to the May 20, 2016 draft MMO, contained numerous references to the necessity for the submission of documentation to obtain local variances. This evidence, albeit not overwhelming in demonstrating Postal Service communication to local managers of their increased discretion to vary from MS-1 preventative maintenance times and frequencies, is sufficient to persuade me that the Postal Service actually sought to increase such discretion, and to reject the Union’s contention that increased local management discretion is a pure fiction.

Alternatively, the Union argues that an actual grant of increased discretion to local management to customize MS-1 time and frequency standards would be neither fair, reasonable, nor equitable. It asserts that there is no evidence that local managers are capable of determining the appropriate work hours for preventative maintenance tasks that in the past had been set by Postal Service headquarters staff. To the contrary, the Union points out that the Review Team Report criticized local managers for their poor record-keeping and assessments under the prior MS-1. There is no reason to suppose, the Union argues, that local managers will be more competent in exercising even greater discretion under the revised MS-1. Nor, the Union states, is there evidence that local managers have been trained in determining appropriate preventative maintenance work hours.

These arguments are not persuasive. To be sure, the Review Team Report was critical of a number of failures by local management to carry out its responsibilities under the prior MS-1, but none of those criticisms dealt with local management ability to determine, on the basis of local conditions, what should be the appropriate variances from MS-1 preventative maintenance times and

frequencies. Indeed, as Mr. Bratta testified, local managers are the logical ones to carry out local customization because they know the facility and are responsible for its operation. Furthermore, it is not clear that local managers, working with their staff, need training in order to be capable of determining the amount of time necessary to provide an appropriate level of preventative maintenance on building equipment in their own facility. If the equipment has been in the facility for some time, they have experience with it; if it is recently acquired machinery, they can turn to the manufacturer's maintenance manual for advice. In brief, the absence of evidence that local managers have been trained in determining appropriate preventative maintenance work hours is insufficient to persuade me that local management is incapable of making such determinations.

The Union's final and all-encompassing challenge to the Postal Service proposal to place greater discretion in the hands of local management to determine preventative maintenance time standards is that doing so would provide unbounded opportunity for local management to allow subjective concerns like budget or personality to guide staffing, rather than objective standards of necessary preventative maintenance. Without guidance, training, or experience, the Union asserts, the competence and genuineness of preventative maintenance time standards set by local managers will be in doubt. This, according to the Union, is sure to lead to disputes between the parties; instead of the one national standard under the prior MS-1, the Postal Service will have varied ones that will lend themselves to frequent local grievances.

The central thrust of this challenge, apart from its assertion, rejected above, that local managers are incompetent to exercise the discretion that the Postal Service would invest in them, is that a partial decentralization of decision-making authority with respect to preventative maintenance ought not be allowed because it may be abused, and that suspicions of such abuse will lead to numerous local disputes which will be difficult to resolve. "Watering down time standards used for staffing, and leaving their final measure to local management

discretion is not fair, reasonable, or equitable”²⁷

The problem with this argument is that in seeking to constrain the Postal Service from deciding the extent to which managerial decision-making authority should be centralized or decentralized, the Union would deprive Postal Service management of a core element of the management of the enterprise. Organizations constantly struggle with the issue of centralized versus decentralized decision-making. Some opt for more centralized, some for less centralized, and some go back and forth on the issue. They do so because of different management views concerning the most satisfactory structure for successfully managing the enterprise. To deprive the Postal Service of the freedom to reach the conclusion it deems appropriate with regard to the distribution of preventative maintenance decision-making, even if that conclusion embodies certain risks, as the Union contends it does here, would thus run afoul of the accepted principle that Article 19 does not interfere with the Postal Service’s Article 3 right to exercise the customary management functions which are necessary to the successful conduct of any enterprise.²⁸

The Union asserts that the scope of Postal Service Article 3 rights to be weighed against the Union’s Article 19 protections is limited in this case by Arbitrator Das’ decisions in Case No. HOC-NA-C 19007 (2002) and Case No. Q98C-4Q-C 02013900 (2006), in which he stated that “if the Postal Service seeks to change long-standing provisions that on their face afford considerable protection to the bargaining unit, it must provide a convincing explanation of why it determined such a change to be necessary, if it is to satisfy Article 19's requirement that the change be fair, reasonable, and equitable.” In the first of the cited cases, the Postal Service sought to change Administrative Support Manual limitations on its freedom to contract out maintenance work, limitations described by Arbitrator Das as providing significant protection to the bargaining unit. In the second case, the Postal Service sought to eliminate MS-47 mandated

²⁷ Union brief, page 62.

²⁸ See Case No. H1C-NA-C-49 (1983) (Mittenthal).

frequencies for certain maintenance work, as well as staffing protections. Inasmuch as the Union had sought and obtained both mandated frequencies and staffing levels in negotiations with the Postal Service, Arbitrator Das viewed those provisions also as affording protection to the bargaining unit, hence requiring the Postal Service to provide “a convincing explanation” of why it determined the change to be necessary. In the instant case, the preventative maintenance time and frequency standards in the prior MS-1 were not intended to afford protection to the bargaining unit, but rather to assure adequate preventative maintenance services for Postal Service equipment. Accordingly, the decisions relied upon by the Union are not applicable here.

For all these reasons, I reject the argument that the Postal Service violated Article 19 by increasing the discretion of local management to customize MS-1 preventative maintenance times and frequencies.²⁹

5. Reduction in allowances for space adjustment and miscellaneous work

The Postal Service position is, as Mr. Bratta testified, that the reduction in the combined space adjustment/corrective maintenance category from 13 hours per thousand square feet to 5 hours per thousand square feet, essentially eliminating the prior 8 hour per thousand square feet space adjustment allowance, was predicated on the fact that during his site visits he saw no space adjustment work being performed. He also saw little miscellaneous work performed, leading originally to an elimination of the miscellaneous work

²⁹ This conclusion is not inconsistent with the result reached by Arbitrator Gamser in Case No. A8-NA-0375 (1981), in which he held that the Postal Service violated Article 19 by allowing local management to vary from cleaning frequencies set out in MS -47. The discretion vested in local management in that case included lowering frequencies at will. In the instant case, however, local management is not authorized to reduce the minimum times or frequencies established by MS-1. To the contrary, the new MMO states that “The PM requirements and tasks in Attachment 2 [a compilation of all preventative maintenance tasks] provide the minimum required PM frequencies which should be modified as necessary based on manufacturer’s recommendations, local conditions, usage, or local ordinances.” (Emphasis supplied.) Hence, the revised MS-1, different from MS-47, does not allow local management to lower preventative maintenance frequencies below the nationally determined minimums.

category, restored to 2% after the Union complained of the elimination.

The Union's challenges to these changes are two-fold. Initially, the Union witnesses testified that space adjustments were common at the plants at which they were employed. Moreover, the Union pointed out that none of the Postal Service justifications for reducing the space adjustment or miscellaneous allowances were supported by data. For example, the Review Team's Report states that, based on its review of field sites and various Postal Service forms, "the Postal Service has determined that the current (10%) allocation for Miscellaneous Work Hours is not warranted and will be reduced to 2%". The Report does not, however, provide the data on which it determined that the appropriate allocation should be 2%, rather than 10%. Furthermore, Mr. Bratta testified that the Review Team originally cut the Miscellaneous Work allocation to 0%, restoring it to 2% only after the Union protested its total elimination. The Postal Service's effort to respond to Union concerns is praiseworthy, but does little to generate confidence that the original elimination of the Miscellaneous Work Allocation, much less the revised 2% allocation, was based, as the Report states, upon the Review Team's analysis of data it had collected.

The Union asserts that the Review Team, during its 18-month life, must have collected such data, and its failure to provide such data, relying instead on Mr. Bratta's observations, should lead the Arbitrator to restore the reduced or eliminated allowances on the ground that the Postal Service has not shown the changes to be fair, reasonable, and equitable.

I shall deal with these challenges as I did with the Union's challenges to the changes in the preventative maintenance time allowances and frequencies. The Postal Service has not proven that the changes in the space adjustment and miscellaneous work categories were fair, reasonable, and equitable. Nor has the Union proven the contrary. Accordingly, I shall direct the Postal Service, as the party with the burden of coming forward, to provide the Union with all data and data analysis collected by the Review Team, including Mr. Bratta, relating to the

appropriate allowances for space adjustment and miscellaneous work. (If the parties wish to jointly validate appropriate allowances, they are encouraged to do so.) If this exchange of information does not lead to agreement, either party may request the Arbitrator to reopen the hearing, which I shall retain jurisdiction to do. In the event additional proceedings before the Arbitrator are necessary, neither party may introduce evidence in those proceedings that has not previously been presented in timely fashion to the other party.

If the Postal Service fails to present verifiable evidence that would, at least on its face, warrant a finding that the proposed revisions in the space adjustment and miscellaneous work allowances are fair, reasonable, and equitable, it cannot prevail. If, however, it does so, the Union must then demonstrate, by evidence and argument, why the Postal Service's position should not be accepted. No burden of proof will be placed on either party.

As stated previously with respect to preventative maintenance times and frequencies, my unwillingness in these proceedings to direct the Postal Service to rescind the changes in the MS-1 and associated MMOs that relate to allowances for space adjustment and miscellaneous work should not be taken as holding that those changes are approved. If this matter returns to arbitration, and the changes are found not to be fair, reasonable, and equitable, the Postal Service will be responsible for any make whole remedy that is appropriate.

6. Transferring Maintenance Work in Stations and Branches from Building Maintenance to the Facility Maintenance Organization (FMO)

The Postal Service defends this change on the ground that most stations and branches are more the size of associate offices than plants, and so have maintenance needs more in common with associate offices than with plants. Accordingly, it makes more sense to place stations and branches under the jurisdiction and policies of FMO, which deals with associate offices, than under

the jurisdiction and policies of Building Maintenance, which deals primarily with larger plant facilities.

The Union does not take issue with the Postal Service's reasoning. It does, however point out that transferring maintenance work in stations and branches from Building Maintenance to FMO will result in a reduction in the number of employees engaged in building maintenance work in the plants without a corresponding increase in the number of employees doing maintenance work in stations and branches. The Union goes on to argue that in view of the loss of jobs in Building Maintenance, the Postal Service's reasons in support of transferring work from Building Maintenance to FMO cannot be regarded as fair, reasonable, and equitable.

Initially, the Union asserts, relying on a 2016 report of the Postal Service Inspector General's Office criticizing the maintenance of Postal Service retail facilities maintained by FMO in the Capital Metro Area, that the level of building maintenance in existing stations and branches, which are maintained by FMO, is poor. Accordingly, it is likely that shifting to FMO the maintenance of stations and branches currently maintained by Building Maintenance will lead to the degradation of those stations and branches as well, threatening the safety and health of bargaining unit employees currently employed there under Building Maintenance.

This argument is not persuasive. One Inspector General's report criticizing building maintenance in retail facilities in one Postal Service area is far from sufficient on which to base a conclusion that building maintenance in all stations and branches maintained by FMO is sufficiently likely to be hazardous to the health and safety of bargaining unit employees that requiring them to work there would not be fair, reasonable, and equitable. The evidence is simply too thin to warrant such a conclusion.

The Union's next argument is that the existing practice of having building maintenance work in stations and branches that are part of a plant installation

performed under the direction of Building Maintenance is too long-standing to allow the Postal Service to alter that practice without bargaining. It states:

A change of this magnitude cannot be accomplished by revising a handbook. For over forty years, Building Maintenance has performed preventative maintenance in its installations' stations and branches and now, without bargaining the decision to restructure and reduce the size of the bargaining unit, that work is being stripped away and is not even recaptured by another part of the bargaining unit. This kind of fundamental change to the bargaining unit requires bargaining, not merely meetings to explain handbook changes that the Postal Service can unilaterally implement. It certainly requires, as Arbitrator Das noted in rejecting an effort by the Postal Service to expand its subcontracting rights through a handbook change, evidence that its change is the most narrowly-tailored way to address a compelling need.³⁰

The Union's assertion that the transfer of building maintenance work in the stations and branches of a plant installation from Building Maintenance to FMO is of such fundamental importance to the bargaining unit that it must be bargained with the Union, rather than altered by a handbook change, is without merit. Initially, the Union exaggerates the effect that a change in maintenance responsibility for stations and branches will have on the bargaining unit. At most, some of the BEMs and Maintenance Mechanics who presently work in stations and branches will be excessed; others will continue to work in the same jobs, albeit under the jurisdiction of FMO, rather than Building Maintenance. Since FMO maintenance employees are in the same bargaining unit as are Building Maintenance employees, the work in question will not be lost to the bargaining unit, but will continue as bargaining unit work.³¹

³⁰ Brief, page 66.

³¹ It is the fact that the work in question will not be contracted out to a different Employer as a result of the

A restructuring of this nature, in which work is transferred from one Postal Service group to another, both in the same APWU bargaining unit, can hardly be described as a fundamental change requiring bargaining between the Postal Service and the Union. Rather, it would appear to be precisely the type of change to be addressed under Article 19. Arbitrator Garrett pointed out many years ago that Article 19 grew out of the parties' recognition that they could not negotiate every important issue at the national level. The Article 19 procedure was intended to allow management to direct the affairs of the Postal Service in matters not resolved by the National Agreement, as long as its action were fair, reasonable, and equitable. That is precisely the issue here in which the Postal Service has revised a Handbook on an issue not treated by the National Agreement. The Postal Service is not required to negotiate before revising such a handbook; it need only refrain from acting in a manner which is not fair, reasonable, and equitable.³²

In sum, I conclude that despite the Union's arguments to the contrary, the reasons advanced by the Postal Service for the transfer of stations and branches associated with a plant installation from Building Management to FMO demonstrate that the transfer was fair, reasonable, and equitable.³³

transfer of that work to FMO that distinguishes the instant case from Arbitrator Das' decision in Case No. HOC-NA-C 19007 (2002), relied on by the Union. Even if, as the Union asserts, the Postal Service has greater freedom to contract out bargaining unit work performed under FMO than such work performed under Building Maintenance, such contracting out would be at most an indirect result of the change in the MS-1 to transfer stations and branches to FMO. Hence, it would not fall under Article 19, which deals only with handbooks that directly relate to wages, hours, and working conditions.

³² Case No. AC-NAT-11991 (1978).

³³ In the course of the arbitration hearing, the Union expressed concern about the effect on employees' Article 38 rights of the shift in responsibility for the maintenance of stations and branches from Building Maintenance to FMO. In doing so, it focused on the continued ability of custodians' or BEMs to bid between a plant and stations and branches affiliated with that plant if employees working in the stations and branches were working under FMO and those in the plant were working under Building Maintenance. It also expressed concern about the application of Promotion Eligibility Registers in that situation. On the final day of hearing, Postal Service counsel, in an effort to allay Union concerns, read the following statement into the record:

The changes to the MS-1 and related MMOs that are the subject of this case do not change the definition of installation or the structure of bid clusters under [Article] 38. The Postal Service's administration and interpretation of Article 38, therefore, will not change as a result of the decision of the

B. Do the Postal Service Revisions to the MS-1 Violate Article 34?

1. Introduction

Article 34, “Work and/or Time Standards” has been in the National Agreement since the 1971 inception of collective bargaining between APWU and the Postal Service. There has been no substantive change in Article 34 during that time.

Article 34 provides that “any work measurement systems or time or work standards shall be fair, reasonable, and equitable”. This is the same substantive standard applied by Article 19 to a broader range of Postal Service actions. The procedural obligations imposed by Article 34 on the Postal Service when it seeks to make or change work or time standards are considerably more onerous than those imposed by Article 19. To cite but a few of the Article 34 procedural requirements placed on the Postal Service, it must:

- Keep the Union informed during the making of time or work studies which are to be used to make or change work or time standards;
- Allow the Union to enter postal installations to observe such studies;
- Conduct a test of proposed standards in one or more installations, advising the Union at least 15 days in advance of any such test;
- Notify the Union at least 30 days in advance if it intends to convert the test to live implementation in the test cities, and meet with the Union no later than 10 days after such notice to discuss with the Union any differences concerning the proposed standards.;
- Allow the Union to make time or work studies in the test cities, and

arbitrator in this matter.

The Union did not respond to this statement, nor did it assert any claim based on Article 38. Accordingly, this Decision should not be viewed as expressing any opinion on the applicability of Article 38 to the transfer of maintenance responsibility for stations and branches from Building Maintenance to FMO. Nor do I express any view on the effect of that transfer on the Article 38 rights of employees or the Union.

refrain from implementation in the test cities for 90 days;

- Allow the Union to examine relevant available technical information, including final data worksheets used by the Postal Service in establishing the standards. (The Union, in return, must allow the Employer to examine relevant available technical information, including final data worksheets, relied upon by the Union.)
- Participate in “priority arbitration” if the Union files a grievance challenging the standards;
- Refrain from implementing the standards beyond the test cities until the arbitrator’s award is issued

2. Contentions of the Parties

The Postal Service position is that Article 34 deals only with work and time standards that apply to individual employees and to which they may be held individually accountable by means of discipline or by affecting their pay. It finds support for this position in the text of Article 34 and asks, rhetorically:

Why does Article 34, somewhat uniquely, have these onerous and complex procedures in place? Probably because the parties understood that this article was dealing with time and work standards that would have a direct and significant bearing on each individual employee to whom the standards would apply. They would measure and serve as a basis to judge the acceptability of the employee’s effort and productivity every day.³⁴

The Postal Service cites, as an example of “direct and significant” impact of time and work standards on employees, Case No. H1C-NA-C-70 (Bloch 1986), the only Article 34 arbitration decision involving APWU and the Postal

³⁴ Brief, p. 44

Service in the almost 50 years since Article 34 was agreed to. In that case, the Postal Service utilized the Article 34 procedures in conducting studies to test and implement a new proposed work and time standard for letter-sorting machine (LSM) operators. Those operators who did not meet these standards would be subject to discipline. There was no dispute about the applicability of Article 34; the sole issue submitted to the arbitrator was whether the Postal Service's proposed new time and work standards met the Article 34 requirement of being "fair, reasonable, and equitable".

According to the Postal Service, a dispute about the reasonableness of proposed work and time standards applicable to individual employees who would be subject to discipline if they did not meet those standards is exactly the type of dispute for which Article 34 was intended. In the instant case, however, the Postal Service's proposed revisions to preventative work hour time and frequency allowances do not apply to individual employees, nor are they enforceable by disciplinary sanctions against individual employees. They serve solely as guidance to local management in determining staffing needs, and even in that context are not binding on local management, which may seek variances from MS-1 standards.

In sum, the Postal Service contends that a logical reading of Article 34, combined with the lack of any efforts by the Union in any case prior to now to seek arbitral enforcement of time and work standards other than those in which the Union asserted that the standards were enforceable against individual employees leads to the conclusion that Article 34 does not apply to the instant dispute about time and work standards that are aimed solely at providing guidance to local managers in developing staffing packages for maintenance personnel.³⁵

³⁵ In further support of its interpretation of Article 34, the Postal Service points out that the only Article 34 arbitration decisions involving other Postal Service unions deal with work and time standards that apply to individual employees and to which they may be held individually accountable by means of discipline or by affecting their pay.. See Case No. NB-NAT-3233 (Garrett 1975); Case No. NB-NAT-6462 (Garrett 1976); Case Nos. NB-S-4334 et al (Garrett 1978).

The Union, in response, contends that the Postal Service arguments concerning the applicability of Article 34 to the instant case ignore the impact on employees of the revised MS-1 time standards. These revised time standards, the Union asserts, can be expected to lead to a reduction in the number of building maintenance employees and the excessing of some of those employees. In light of that impact, the fairness of the revised MS-1 time standards is as important to individual employees, if not more so, than the fairness of disciplinary sanctions for not meeting a work speed standard which the Postal Service concedes is governed by Article 34.³⁶

The Union also argues that the paucity of arbitration decisions in cases in which it relied on Article 34 to challenge staffing time standards should not be taken as indicating that it has not previously viewed Article 34 as relevant to staffing time standards. To the contrary, the lack of arbitrated disputes on this issue may be more a factor of the frequency with which the parties have used Article 34 or similar procedures in coming to agreement on time standards to be used for staffing purposes than on a Union view that Article 34 was inapplicable to staffing time standards. Indeed, Union Maintenance Craft Director Steve Raymer testified that subsequent to the remand of an Article 19 dispute³⁷ involving time standards for preventative maintenance of mail processing equipment, he, together with Postal Service managers Patrick Devine and Terry LeFevre, timed maintenance employees performing various tasks, and based on those efforts developed time standards for the work in question. According to Mr. Raymer, both he, Mr. Devine and Mr. LeFevre

³⁶ According to the Union, the direct tie between time standards and employment is one that Arbitrator Das noted can bring a time standard under Article 34. Thus, in Case No. Q94T-4Q-C 98099959 (2009), Arbitrator Das, in holding that Estimated Repair Times (ERTs) for vehicle maintenance tasks were not subject to Article 34, pointed out that there was no convincing evidentiary support for the Union's assertion that ERTs were used for staffing purposes. The Union intimates that in so stating Arbitrator Das suggested that if the ERTs were used for staffing purposes, they would be subject to Article 34. I disagree. Arbitrator Das is far too experienced to express his view on a matter as important as whether time standards used for staffing purposes fall within Article 34 without providing a full explanation for that view. The more realistic way to interpret Arbitrator Das' statement is that he was simply pointing out that one issue he did not have to deal with was whether Article 34 would apply if the ERTs were used for staffing purposes.

³⁷ Case Nos. Q98C-4Q-C 001832263 and Q98C-4Q-C 01002200 (2005)

considered that to be an Article 34 study.³⁸

The Union concludes, also in challenging the Postal Service argument that its prior failure to file Article 34 disputes over staffing changes demonstrates its long time acceptance of the inapplicability of Article 34 to staffing disputes:

Because those standards in the MS-1 have not undergone substantial and consequential changes for at least thirty years, the APWU can hardly be faulted for not filing Article 34 disputes over them. Now, however, with the changes the Postal Service wants to make to the time standards, a joint review of the time standards is warranted. Article 34 provides an appropriate vehicle for that review.

3. Discussion

Although Article 34 is silent with respect to its applicability to the instant dispute, each party has a legitimate argument in favor of its preferred interpretation. It is undoubtedly true, as the Postal Service argues, that the extent and complexity of the limitations imposed by Article 34 when it proposes to enact or change time standards are not common in the Agreement. As a result, a good argument can be made that these limitations apply only when the time standards in question will have a direct impact on employees, as would be the case if their pay were a function of the time standards, or if they were subject to discipline for inadequate performance as measured by those standards. On the other hand, as the Union points out, it is likely that the revised MS-1 standards will lead to a reduction in the number of building maintenance employees, and the consequent excessing of some of those employees. Hence, the Union argues that even if Article 34 is to be limited to those situations in which proposed work or time standards would have a direct and substantial impact on employees, that is the case here.

³⁸ Mr. LeFevre testified that neither he nor anyone else considered this to be an Article 34 time study. Indeed, Mr. LeFevre testified that in his entire career at the Postal Service, dating back to 1979 (in labor relations since 1998), he was unaware of any Article 34 task, discussion, or joint effort.

Ultimately, stronger evidence of the proper interpretation of Article 34 in the circumstances of this case than is contained in either of the foregoing arguments can be found in the use, and non-use, of Article 34 in the years following its initial appearance in the 1971 Agreement. It is undisputed that subsequent to 1971, there is no history of a union effort – by APWU or any other Postal Union - to apply Article 34 to a time or work standard that was not viewed by the Union as being used to determine pay or to be enforceable by discipline. Indeed, the only cases in which APWU has ever, prior to the instant case, instituted arbitration proceedings based on Article 34 were that referred to on page 43 (Case No. H1C-NA-C-70 (Bloch 1986), in which time and work standards could concededly be used as a basis for discipline, and another in which APWU asserted that the challenged time standards were enforceable by discipline, Arbitrator Das finding they were not so enforceable.³⁹

Nor am I persuaded by the Union's argument that the absence of evidence that it has previously challenged time or work standards on grounds other than that they were directly related to pay or discipline is a function of the parties' success in resolving such matters without resort to arbitration. Undoubtedly, that has been the case in some disputes, but not all. And, when the Union has gone to arbitration in cases in which the impact of the time study was arguably to reduce the number of employees, it has not previously invoked Article 34 in support of its contention that the changes were not "fair, reasonable, and equitable", but solely Article 19. In Case Nos. Q98C-4Q-C 00183263 and Q98C-4Q-C 01002200 (Das 2005), for example, in which the Union challenged revisions in estimated time requirements for preventative maintenance of mail processing equipment, the Arbitrator noted that "A Union witness pointed out that the estimated times are significant because they are used directly to calculate the necessary maintenance staffing for a particular facility . . . The Union witness asserted. . . that these [revisions] have reduced the number of hours associated with preventative maintenance by hundreds of hours per machine." That is almost precisely the argument the Union makes here in support of its position

³⁹ Case No. Q94T -4Q-C-98099959 (Das 2009)

that Article 34 applies, yet the Union did not make that argument in 2005. Nor did it do so in Case No. Q98C-4Q-C 02013900 (Das 2006), in which the Postal Service had revised MS-47 cleaning frequencies in a manner that reduced employment. There, too, the Union relied solely on Article 19 in asserting that the changes were not “fair, reasonable, and equitable”, not Article 34.

In sum, I am persuaded that in view of the ambiguity of Article 34 on the question here presented, and the fact that each party presents a reasonable – but not compelling – argument supporting its interpretation of Article 34, the most compelling evidence of proper interpretation is to be found in the history of the circumstances in which APWU and other Postal unions invoked Article 34, particularly in the 1970s when those who negotiated and ratified Article 34 were still active in Union affairs. There was no effort at that time to apply Article 34 to time and work standards that would have an effect on staffing, but solely to those time and work standards that affected individual employee pay or were enforceable by discipline.⁴⁰ That history argues strongly in favor of interpreting Article 34 solely to those time and work standards that affect individual employee pay or were enforceable by discipline, and I shall do so. As Mr. Justice Oliver Wendell Holmes stated many years ago, “A page of history is worth a volume of logic”.⁴¹

For the foregoing reasons, I conclude that the Postal Service revision of the MS-1 did not violate Article 34.

⁴⁰ See cases cited in n. 35, page 44.

⁴¹ New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921)

IV. AWARD

1. The Postal Service revision of the MS-1 Handbook did not violate Article 34.
2. The Postal Service revision of the MS-1 Handbook did not violate Article 19 in providing increased discretion to local management to customize MS-1 preventative maintenance times and frequencies.
3. The Postal Service revision of the MS-1 Handbook did not violate Article 19 in transferring building maintenance work in stations and branches from Building Maintenance to the Field Maintenance Organization.
4. The issues of whether the revisions to the MS-1 dealing with (a) preventative maintenance time allowances and frequencies, and (b) space adjustments and miscellaneous work time allowances, violated Article 19 are remanded to the parties. As part of that remand, I shall direct the Postal Service to provide the Union with all data and data analysis collected by the Review Team, including Mr. Bratta, relating to appropriate allowances for (a) preventative maintenance time and frequencies; (b) space adjustment and miscellaneous work time. (If the parties wish to jointly validate appropriate allowances, they are encouraged to do so.) If this exchange of information does not lead to agreement, either party may request the Arbitrator to reopen the hearing, which I shall retain jurisdiction to do. In the event additional proceedings before the Arbitrator are necessary, neither party may introduce evidence in those proceedings that has not previously been provided in a timely fashion to the other party.

If, in a subsequent arbitration hearing, the Postal Service fails to present verifiable evidence that would on its face warrant a finding that the proposed revisions in (a) preventative maintenance time

allowances and frequencies; (b) space adjustment and miscellaneous work allowances are fair, reasonable, and equitable, it cannot prevail with respect to those proposed revisions. If, however, it does so, the Union must then demonstrate, by evidence and argument, why the Postal Service's position should not be accepted. No burden of proof will be placed on either party.

5. I shall retain jurisdiction of this matter to resolve any issues with respect to the remand here ordered and/or further proceedings arising out of the instant Award or the remand.



Stephen B. Goldberg
Arbitrator

September 13, 2017