

BEFORE THE INTEREST ARBITRATION PANEL

In the Matter of:

UNITED STATES POSTAL SERVICE)	
)	
Employer)	
)	
-and-)	2018 National Agreement
)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO)	
)	
Union)	

INTEREST ARBITRATION DECISION AND AWARD
Effective Date: March 10, 2020

INTEREST ARBITRATION PANEL

STEPHEN B. GOLDBERG, Neutral Chair
ROBERT A. DUFEK, USPS Member
PHILLIP TABBITA, APWU Member

Appearances:

United States Postal Service

Kevin B. Rachel
Lead Advocate

Katherine S. Attridge
Manager, Collective Bargaining and
Arbitration

Erin E. Lynch
Chief Counsel, Labor Law

Brian M. Reimer
Senior Litigation Counsel, Labor Law

Terence F. Flynn
Kelly Ann Taddonio
Lucy R. Coolidge
Counsel, Labor Law

American Postal Workers Union, AFL-CIO

MURPHY ANDERSON, PLLC

Melinda K. Holmes
Jason Veny
Arlus J. Stephens
Jeremiah Fugit
Adam Breihan
Caleb Jackson

I. INTRODUCTION

This Interest Arbitration Panel was convened pursuant to 39 U.S.C. Section 1207(c) of the Postal Reorganization Act of 1970 (PRA) to resolve an impasse over the terms of the next National Agreement between the United States Postal Service (Postal Service) and the American Postal Workers Union, AFL-CIO (APWU or Union). In reaching its decision, the Panel has carefully considered the arguments and evidence submitted by the parties, relevant statutory provisions and their legislative history, past interest arbitration awards, and postal labor negotiations history. The Panel appreciates the vigorous and constructive role undertaken by each of the parties as they advanced their respective positions.

II. BACKGROUND

The 2015 National Agreement between the Postal Service and APWU expired on September 20, 2018. Despite extensive negotiations and mediation under 39 U.S.C. § 1207(b), the parties were unable to agree on terms for a new National Agreement. This Panel was established to resolve their impasse, which includes issues of compensation, benefits, and working conditions. The Chairman of the Panel was mutually selected by the parties, who also designated their own members of the Panel. APWU appointed Phillip Tabbita, APWU Manager, Negotiations Support and Special Projects, and the Postal Service appointed Robert A. Dufek, Postal Service Manager, Labor Relations Strategies.

In lieu of pre-hearing briefs, the parties presented lengthy and informative opening statements and exhibits on September 4, 2019, setting forth what each viewed as the important issues in dispute, as well as how the Panel should decide those issues. Between September 4 and November 15, 2019, the Panel held thirteen days of hearing in Washington, D.C., during which both sides presented

numerous witnesses and exhibits. The transcript of hearing testimony is over 2,500 pages long, and is supplemented by written testimony, attorney presentations, and over 240 exhibits. Post-hearing briefs were filed on December 16, 2019.

III. THE POSTAL REORGANIZATION ACT (PRA)

The PRA requires that the compensation and benefits of Postal Service employees shall be comparable to those paid in the private sector. Title 39 U.S.C. § 101(c) provides:

As an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States.

Similarly, 39 U.S.C. § 1003(a) provides in part:

It shall be the policy of the Postal Service to maintain compensation and benefits for all officers and employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy....

The comparability mandate is augmented in Section 101(c) by the following:

[The Postal Service] shall place particular emphasis upon opportunities for career advancements of all officers and employees and the achievement of worthwhile and satisfying careers in the service of the United States.

IV. POSITIONS OF THE PARTIES: COMPENSATION AND BENEFITS

A. Union Proposals: Supporting Evidence and Argument

The Union asserts that its economic proposals meet the concerns of its bargaining unit and are compelled by the Postal Service's statutory mandate. That mandate, according to the Union, includes but is not limited to providing wages and benefits comparable to those in the private sector. PRA Section 101(c) also requires the Postal Service to place "particular emphasis upon opportunities for career advancement . . . and the achievement of worthwhile and satisfying careers. . ." Taken as a whole, the Union asserts, the PRA requires the Postal Service to act as a "good

employer,” capable of attracting and retaining a diverse and skilled workforce, to the long-term benefit of the Postal Service and the public.

Summary of Principal Union Economic Proposals

The Union’s economic proposals include: (1) a general wage increase for career employees averaging approximately 3% per year over the term of a four year contract; (2) maintaining the existing COLA formula and structure; (3) increasing the Postal Service contribution to employee health insurance premiums; and (4) merging the two existing career employee pay scales by adding steps at the top of the pay scale for employees hired after May 23, 2011, to ultimately reach the top pay rates for employees hired before May 23, 2011. The Union also made economic proposals on uniforms and PSE compensation and career opportunities.

General Wage Increase

In support of its proposal for a 3% annual wage increase, the Union offered evidence showing private sector wage growth at similar rates. This evidence included Congressional Budget Office forecasts of the Employment Cost Index-Wages, as well as reported annual wage increases at private sector employers described by the Union as similar to the Postal Service - large networked companies in the telecommunication, airline, and electric utility industries, at which the employees are union represented. A comparison of wages at more than a dozen of these companies with the wages paid by the Postal Service for comparable work showed postal wages lower by 20 to 25%.

The Union also pointed to the complexity of bargaining unit jobs compared to the less complex jobs at lower wages in the private sector relied upon by the Postal Service to show that bargaining unit employees are the beneficiaries of a “wage premium.” Initially, the Union presented the testimony of bargaining unit employees from across the country describing their work and duties. Their testimony showed that

postal workers view themselves as public servants committed to the Postal Service and its mission. They described postal work as deadline-driven and time-sensitive. They also testified that the firm-specific skills and knowledge necessary for their jobs came from on-the-job experience and training, often across different postal jobs. A Union-commissioned job analysis of two hundred postal workers confirmed the testimony of the bargaining unit witnesses concerning the complexity of bargaining unit work.

The Union also challenged the Postal Service's evidence of Glassdoor job reviews and entry-level job postings for companies such as FedEx, Amazon, and Pitney Bowes, which showed much lower wages than postal wages. The bare information on these entry-level job postings, the Union argued, could not be validated, gave only a hint about starting wages, and provided no meaningful information about benefits. They offered nothing, the Union contended, on which to accurately compare complete private sector wages and benefits, especially those for experienced workers in career jobs.

The Union offered a critique and comparability analysis to rebut the Postal Service's private sector comparability analysis. The Postal Service's comparability analysis, the Union asserted, purported to show what a postal clerk would make in the private sector based on the skill set needed for her/his postal job. The Union critiqued this analysis as relying too heavily on the "human capital theory" that wages are entirely based on the skills required by a job. The Union asserted that even though the Postal Service found a "postal premium," its analysis acknowledged that postal clerks are typically more skilled than the skill set scores assigned to them in the analysis.

The Union challenged the Postal Service's heavy reliance on O*NET data from the Department of Labor on the ground that the Postal Service failed to account for

errors in the data relating to the skills required of postal clerk jobs. The Union asserted that the evidence shows that bargaining unit jobs are complex, and the position descriptions relied on by O*NET to describe postal clerk job skills fall short of capturing all of the duties, skills, and knowledge regularly used by postal clerks. Ultimately, the Union contended, the Postal Service's analysis was unconvincing because of its flawed assumptions and its reliance on inaccurate skills data for postal clerk jobs.

The Union offered its own comparability analysis based on its interpretation of the PRA as requiring the Postal Service to be a "good employer." The Union quantified the statutory requirement that the Postal Service provide "career advancement" and "worthwhile and satisfying" public-service careers by using Current Population Survey (CPS) data to compare the private sector wage rates paid to white males, paid to unionized employees, and paid in a multi-indicator index. Workers with these attributes or at employers with these qualities, the Union claimed, are paid the kind of wages a private sector "good employer" pays. The Union asserted that, when looking at wages in this way and comparing postal wages to good employer-wages in the private sector, on average, postal workers realized no wage premium from working for the Postal Service, and some even realized a wage penalty. The Union concluded that its comparability analysis was more accurate than that relied upon by the Postal Service because it gave full consideration to all aspects of the PRA mandate, not solely those relating to wage and benefit comparisons.

The Union also questioned the Postal Service's reliance on the quit rates for career employees as proof of a postal premium. While the quit rate of 5.5% for postal career employees on the post-2011 wage scale is lower than the quit rate in the private sector (29.6%), it is vastly higher than the 0.2% quit rate for postal career employees on the pre-2011 career scale. Unfamiliarity and dissatisfaction with the nature of a

“new” job does not explain why career employees hired after 2011 quit vastly more often than do employees hired before 2011. For, the Union pointed out, new career employees work an average of two years as PSEs before converting to career. Hence, as a practical matter, they are not new employees, with a higher quit rate explained by that factor. Rather, the Union argued, dissatisfaction with pay, hours, and working conditions explain the increase in the quit rate for career employees hired after 2011.

Increase the Postal Service contribution to employee health insurance premiums

The Union proposed that the Postal Service contribution to employee health insurance premiums be increased one percent per year from the current 73% to 76% by 2022. In support of this proposal, the Union offered private sector employer surveys suggesting that employer contributions to premiums are currently averaging near what the Union proposed. The Union also pointed out that many other significant benefits are largely set by the federal government for all federal employees, including those employed by the Postal Service. They are not negotiable or arbitrable, hence should not be given special weight in the Panel’s consideration. Moreover, the Union contends, maintaining benefits is critical to the Postal Service satisfying its “good employer” obligation.

Retain existing COLA formula and structure

The Union urged the Panel to maintain the existing COLA formula and structure, rather than accept the Postal Service request to make COLA payments on a lump sum basis that would not become part of the wage structure. The Union pointed out that the 2016 Interest Arbitration Panel stated:

[T]he COLA provision . . . has been a part of the APWU Agreement since 1971. [To be sure], the Postal Service provided unrebutted evidence that COLA provisions are rare in private sector bargaining agreements today. . . In view of the 45-year history of COLAs in both voluntary and arbitrated contracts between the Postal Service and the APWU, I will not

disturb the COLA in the 2015 Agreement, other than . . . to update its base month. . . .

Precisely the same response, the Union asserts, should be given to the Postal Service efforts to substantially alter the COLA provision in the 2018 Agreement.

Merger of existing pay scales for career employees

The Union pointed out that the trend in the private sector is to merge two-tier pay systems by adding steps at the top of the lower tier that equal what the upper tier pays. The Union also pointed out that the other postal unions have top steps on their lower career scales that bring them up to the highest career rates. The NRLCA achieved this merging of the two rural carrier career scales in its 2019 Agreement with the Postal Service. Because most of the career APWU bargaining unit employees on the new career scale are at the lower steps of that scale, adding steps at the top of their scale would encourage long-term career employment at little or no cost to the Postal Service during the contract term.

Postal Support Employees

The Union characterizes Postal Support Employees as a vulnerable part of the bargaining unit, lacking in job security and retirement benefits. It pointed out that despite recent improvements in PSE benefits and terms of employment through the Workforce Benefit Fund settlement, the PSE quit rate has gone up every year since 2014, topping out at 32.5% in 2018. And, the Union pointed out, in every year since 2014, the PSE quit rate has exceeded the private sector quit rate. In order to improve the status of Postal Support Employees, the Union proposed that rather than continuing the existing contractual provision pursuant to which PSEs receive one percentage point more than the general career employee wage increase, PSEs should be paid the entry-level rate on the post-2011 career scale. The Union also proposed

an automatic conversion-to-career requirement, a term it urged would benefit both PSEs and the Postal Service by lowering the PSE quit rate.

The Union resisted the Postal Service's proposals to increase the number of PSEs in the Clerk Craft, and to reintroduce PSEs in the Maintenance and MVS Crafts. The Union also opposed the Postal Service's proposal to institute a third career pay scale with rates below the current lower career scale. For, according to the Union, such a change would provide little economic gain for those PSEs who achieve career status.

In sum, the Union pointed out, PSEs are the pipeline for career employment, and improved PSE wages, benefits, and opportunities for career advancement would reduce the PSE quit rate, make long-term postal employment more appealing, and so serve the interests of both PSEs and the Postal Service. The opposite approach, the Union asserted, would make it harder to attract and retain the kind of workforce on which the Postal Service depends.

B. Union Responses to Postal Service Arguments

Postal Service Financial Health

Much of the Postal Service opposition to the Union's economic demands was predicated on the financial difficulties faced by the Postal Service as a result of the growing use of electronic mail, and the corresponding shrinkage in the use of First Class Mail, for years the Postal Service's most profitable product. However, the Union points out that reduction in Postal Service revenues has not persuaded Congress to modify the PRA command that the wages and benefits of Postal Service employees be determined by comparability. This Panel, the Union argues, should not do what Congress has declined to do - modify the comparability standard to take account of Postal Service finances. The 2016 Interest Arbitration Panel, accepting the Union's

argument, held that it was not authorized to rely on the Postal Service's financial condition as grounds for denying Union wage and benefit demands warranted by the comparability standard. That holding, the Union insists, remains as sound today as it was in 2016.

The Union also points to the dramatic decrease in labor costs resulting from the 2010 National Agreement. The Postal Service's bargaining unit wage bill has stayed steady or dropped because, in part, of the 2011 wage scale. The Union also pointed to the fact that the current average career pay rate is almost identical in real terms to the pay rate in 1970. In aggregate, the Union points out, the wage improvements it seeks here would not lead to a major increase in the bargaining unit's total labor costs because of the significant impact of the 2010 National Agreement.

Contracts with Other Unions

The Union vigorously challenged the Postal Service position that the terms of the recent agreement between the National Rural Letter Carriers' Association (NRLCA) and the Postal Service should be given great weight by the Panel in determining the terms of the 2018 Agreement between the Postal Service and APWU. For the Panel to rely heavily on the terms of the NRLCA Agreement, the Union argues, would effectively relieve the Postal Service of its obligation to bargain contract terms with the Union, substituting for the terms of a contract bargained with APWU the previously bargained terms of an agreement with NRLCA. The Union also argued that giving substantial weight to the NRLCA Agreement would ignore the many factors that distinguish the two bargaining units. Most significantly, according to the Union, the rural carriers bargaining unit is substantially more homogenous than is the APWU bargaining unit, and the employees in the two units perform very different work.

In sum, the Union asserts that the PRA mandate of comparability should control the Panel's determination of the terms of the 2018 National Agreement. To the extent the Panel gives any weight to the NRLCA Agreement, only the terms of the contract should be considered, not the purported trade-offs made by NRLCA to obtain those terms. The Panel should not force concessions on the APWU as a basis for granting terms that are independently justified by comparability.

C. Postal Service Proposals: Supporting Evidence and Argument

Introduction: Basis of Postal Service Proposals

The Postal Service presented economic proposals based on its view that current wages and benefits of APWU-represented employees are in excess of those received by private sector employees performing similar work. The Postal Service also presented evidence of its weak financial condition. Its proposals, the Postal Service asserts, are firmly grounded in concepts of comparability, and are a reasonable response to its financial condition. Moreover, its proposals would reduce labor costs in a manner consistent with those the parties have agreed to in the past.

Summary of Postal Service Economic Proposals

The Postal Service proposed a two-year agreement containing a 1.3% lump sum payment in the first year and a wage reopener in year two. The Postal Service did not object to a continuation of COLA, but proposed that COLA payments be on a lump-sum basis that would not add to the wage structure. The Postal Service also proposed an additional salary structure for new career employees, with adjusted leave and health benefits, in order to approximate more closely its view of comparability. For reasons of both labor cost relief and operational flexibility, the Postal Service proposed to increase (or re-establish) the caps for PSE usage in each of the crafts. Finally, the

Postal Service proposed to reduce its contribution for health benefits premiums to equal those in the rest of the federal government.

Postal Service Financial Condition

In support of its proposals – and as a basis for rejecting the Union proposals – the Postal Service relied heavily on its deteriorating business and financial condition. Mail volume declines are accelerating, with a 31% decline since 2007. This decline includes the Postal Service’s most profitable product, First-Class Mail, as well as Marketing Mail. As a result of reduced mail volume, and a related drop in revenue, Postal Service evidence showed over a decade of billion-dollar losses.

The Postal Service further asserts that while package volume was previously considered a growth area, this growth is threatened by market conditions. Competition in the package delivery market is intense, and pricing flexibility is constrained by market forces.

Further, 67% of the Postal Service’s revenue (market-dominant products) is restricted by a price cap. These “market-dominant” products, including First-Class and Marketing Mail, are those which under the governing statute, the Postal Enhancement and Accountability Act, are considered to be ones for which the Postal Service has competitive advantages. The remaining 33% of revenue is associated with competitive products, such as Priority Mail and Packages, which do not have a price cap, but are constrained from a competitive perspective by market forces. As such, the Postal Service asserts, its ability to raise revenue through price increases is limited.

Moreover, the Postal Service contends, its ability to compete is hampered by its weak financial condition. It needs to invest in new facilities, equipment, technology, vehicles, and IT, but has been hampered in doing so because cash flow is consistently less than operating costs.

In short, the Postal Service contends that the business and financial challenges it faces are both economic and structural. Inasmuch as personnel costs account for nearly 80% of the Postal Service's total costs, the Postal Service contends that to remain viable, it must reduce personnel costs.

Wage and Benefit Comparability

Most of the Postal Service's case was dedicated to its contention that the wages and benefits of APWU-represented employees exceed the statutory comparability standard. The Postal Service utilized information from government data sources, including the Current Population Survey (CPS) from the Census Bureau and the Department of Labor's Occupational Information Network (O*NET). These sources, the Postal Service asserted, are uniquely useful and appropriate for postal wage comparison analyses because they provide specific information on the characteristics of postal employees and the postal clerk job.

From this analysis, the Postal Service presented evidence that postal clerks receive a wage premium compared to workers in the private sector with similar attributes, such as age, education, area of the country, general industry, and job tenure. The Postal Service's evidence also demonstrated that the wage premium not only continued, but grew, when the comparison was expanded using both CPS and O*NET data to workers in the private sector with both similar attributes (comparable workers) and jobs requiring similar skills (comparable levels of work). Because its analysis combines detailed data on both individuals and jobs, the Postal Service asserted that it was strong evidence of a substantial wage premium.

The Postal Service also presented evidence that employees in the private sector who perform the same work as postal clerks are paid less. Job postings from consolidators like Pitney Bowes and competitors like UPS and FedEx indicate that

their employees who process mail or conduct retail transactions are paid far less than postal clerks. This is further evidence, according to the Postal Service, of a wage premium.

The existence of a wage premium is further supported, in the Postal Service's view, by the quit rate data. Quit rates for career APWU employees are almost non-existent, with an overall quit rate for career employees of less than 2%. Even for new career hires (those on the post-2011 wage scale), the quit rate is less than 6%, compared to approximately 30% in the private sector. Although PSEs have a higher quit rate than new career employees, that is to be expected, according to the Postal Service, because the position is an entry level position in which quit rates are typically higher than average. Even if PSE quit rates were deemed inconclusive, quit rates for career employees support the conclusion of a wage premium.

The Postal Service asserted that the Union's criticisms of its wage regression analysis are off-target. The Postal Service's reliance on the CPS was consistent with the common usage of that database in wage analyses among labor economic researchers. While the Union criticized the job assessments for the clerk job in the O*NET database, the Postal Service highlighted the fact that those assessments are performed by neutral government analysts and should be regarded as more credible than the inherently biased opinions of employees. Moreover, the findings of a substantial wage premium based on these databases were augmented by a new hire study, which also showed, the Postal Service urged, a wage premium. As such, the Postal Service submitted that each of the databases and analyses it relied upon provides strong, reliable evidence of relative wage comparability and substantially point in the same direction to support a confident conclusion of a clerk wage premium.

The Union's comparability analysis, according to the Postal Service, is based on a convoluted reading of the PRA. The Union's comparison to the wages of bargaining unit employees with those of white male, union-organized employees in the private sector, for example, narrows the comparison to less than three percent of the private sector labor force. The Postal Service regards such a wage analysis as plainly not a comparison to the private sector of the economy as envisaged by the PRA. Similarly, the Union's multi-indicator measure of "good employer" status is a construct wholly of the Union's invention, lacking any basis in the PRA.

In response to the Union's COLA proposal, the Postal Service presented testimony, as well as data from studies and published articles, that while COLA provisions in the private sector were popular in the 1960s and 1970s as a form of inflation protection, they are now rare – and diminishing – in the private sector. Moreover, where COLA clauses continue to exist, they are less generous than the APWU COLA clause. Hence, the Postal Service contends, there is no private sector comparability case for continued inclusion of COLA in the APWU agreement. If COLA is to be retained – modified or unmodified – the Postal Service insists that its inclusion should weigh heavily in considering the remainder of the economic terms of the agreement.

In response to the Union's demand for an increased Postal Service contribution to the cost of employee health insurance premiums, the Postal Service asserts that employees currently receive a valuable benefit package, including health benefits, dental/vision insurance, flexible spending accounts, paid leave and holidays, life insurance, retirement, and retiree health benefits. This total benefit package, according to the Postal Service, exceeds what is available in the private sector. Under these circumstances, the Postal Service concludes, the Union's demand for an

increased Postal Service contribution to employee health insurance premiums is unwarranted.

Recent Contracts with Other Unions

The Postal Service asserts that the terms of its recent agreement with NRLCA, albeit not conclusive in determining the terms of the agreement between the Postal Service and APWU, should be given great weight by the Panel. The Panel followed precisely that course in determining the terms of the 2016 Agreement between the Postal Service and APWU, and there is no reason why it should not do the same in determining the terms of the 2018 Agreement between the same parties.

The deference paid by arbitrators to prior voluntary agreements is not limited to this Panel's 2016 Award. To cite but one example, after the Postal Service and APWU negotiated a 2010 Agreement which included major restructuring changes, interest arbitration awards were issued for the National Association of Letter Carriers (NALC) and the National Postal Mail Handlers Union (Mail Handlers Union) that included essentially the same wages and benefits, and comparable restructuring changes as were contained in the 2010 USPS–APWU Agreement. The fact that the basic bargaining pattern was sustained by the interest arbitrators across various bargaining units in the midst of such major changes demonstrates, in the Postal Service's view, the willingness of interest arbitrators, as well as negotiating parties, to adhere to the patterns established by prior agreements and awards.

The most recent NRLCA Agreement, ratified August 2019 by 86% of the voters, contained annual wage increases of 1.3%, 1.1%, and 1.0% during the three-year contract term. Further, COLA was rebased to April 2018, resulting in a period of time during which the COLA formula would be inactive.

The NRLCA Agreement also contains, in addition to the three annual wage increases, an additional 0.8% wage increase in the third year of the agreement. The Postal Service claimed that this additional 0.8% in the third year of the NRLCA Agreement followed a pattern established by the 2016-2019 agreement between the Postal Service and NALC, in which NALC received, in addition to annual wage increases in years 1-3 of the agreement, an additional 0.8% in the third year.

The Postal Service focuses not only on the similarity of the two agreements – an additional 0.8% increase in the third year – but on what it asserts was the quid pro quo for the additional 0.8%. According to the Postal Service, NALC paid for this increase by agreeing to an increased use of non-career employees by the Postal Service. Likewise, the Postal Service asserts, NRLCA paid for the 0.8% increase in the third year of its 2018 Agreement by agreeing to COLA rebasing, facilitation of the implementation of engineered standards, and elimination of costly mail counts, all of which were of substantial value to the Postal Service.

In each case, the Postal Service asserts, the trade-offs accepted by the union were deemed by the Postal Service to be equivalent or greater in value to it than the cost to it of the 0.8% increase. Accordingly, the Postal Service concludes, if this Panel chooses to award wage and benefit provisions to APWU similar to those in the recent NRLCA Agreement, including an additional 0.8% in the third year of the contract, maintaining the integrity of the pattern requires that the 0.8% increase be offset by an Award that requires APWU trade-offs that are of equivalent or greater value to the Postal Service than the cost to it of the additional 0.8%. Moreover, in light of the Postal Service's comparability evidence showing a wage premium, the Postal Service submits that surely there is no basis for awarding any further increase.

Other Issues

The Union's demands also included changes in PSE wages, benefits and working conditions, as well as the appropriate use of PSEs. The Postal Service responded with evidence on its need for the flexibility that PSEs provide in mail processing and retail operations, how this was consistent with the history of non-career utilization in the Postal Service, and the reasonableness of PSE wages, benefits and working conditions. Specifically, the Postal Service asserted that PSE wages are at or above private sector comparability based on its CPS and O*NET-based wage regression analysis and its new hire survey. The Postal Service also asserted that PSE benefits such as health benefits and postal and penalty overtime are significant and recently improved, and that PSEs enjoy many favorable working condition rights not previously available to non-career employees, such as a path to career employment and opting rights.

In responding to the Union demand for merging the two career employee wage scales, the Postal Service contended that preservation of the two-tier compensation structure, a feature of restructured CBAs in many industries, will contribute to continued labor cost savings for the Postal Service, and that in industries that have ostensibly eliminated the two-tier compensation structure, an alternative, low-cost structure has been implemented in its place. Moreover, while the Union relied on the fact that other postal unions have top steps in their lower career schedules that reach the higher career rates, the Postal Service asserted that only happened when a "proportional" COLA formula was adopted to lower COLA costs for employees on the new schedule.

The Postal Service also presented evidence in support of its proposal for a one-percentage point reduction in the employer contribution for health benefits premiums

based on comparability with the private sector. Its position, the Postal Service argued, is also consistent with employer health benefit contributions in the rest of the federal government, the Postal Service's contributions for non-bargaining employees, and those provided in the recent NRLCA Agreement.

V. DISCUSSION: ECONOMIC ISSUES¹

Shortly before the hearings in this matter began, the Postal Service reached a new collective bargaining agreement with the National Rural Letter Carriers' Association. That agreement, which was ratified by 86% of the voting rural carrier membership, is for a three-year term, from May 2018 through May 2021. It includes general wage increases of 1.3%, 1.1%, and 1.0%; a COLA rebased to April 2018; a 1% reduction in the Postal Service's contribution toward health benefit premiums bringing it to 72%; an MOU to facilitate adoption of engineered standards for the evaluated route compensation system; no mail counts during the term of the agreement; and an additional 0.8% general wage increase in the third year of the agreement.

What significance should this agreement have in our decision? We faced virtually the same issue in 2016 when, as now, the Postal Service and NRLCA reached an agreement shortly before APWU's interest arbitration proceedings began. I concluded in 2016 that "considerable weight" should be given to the 2016 NRLCA Agreement in determining the 2015 wage and benefit package for APWU-represented employees. I acknowledged at that time that the rural carriers are a smaller, more homogenous unit of employees doing different work from the APWU bargaining unit, but also noted that interest arbitrators "often look favorably at recent voluntary

¹ The Opinion that follows is that of the Chairman, informed by the advice and counsel of Panel members Robert A. Dufek and Phillip Tabbita.

agreements, especially with the same employer, as evidence of what the parties would have agreed to if their negotiations had been successful.” In light of these considerations, as well as other evidence and argument, I determined in 2016 to award similar compensation and benefits provisions to the APWU-represented employees as had been negotiated in the USPS-NRLCA Agreement.

On the core economic issues, I have determined, as I did in 2016, to award a contract duration, general wage increases, and health insurance contributions to APWU-represented employees similar to those agreed to in the NRLCA Agreement.

This determination should not be understood as rejecting the statutory comparability standard in favor of a slavish adherence to the terms of a contract negotiated between the Postal Service and a different union for a different bargaining unit. The comparability standard is applicable to all postal interest arbitrations and has been fully considered here in awarding similar wage and benefit increases to APWU as were contained in the NRLCA Agreement.

As for the evidence and argument put forth by the parties with respect to the Postal Service’s financial condition and the effect that should have on the Award, I shall be brief. This issue was discussed and resolved in this Panel’s 2016 Award and need not be discussed again. For the reasons stated in the 2016 Award, I do not view the Postal Service’s financial condition as calling for a modification or rejection of the statutory comparability standard.

Although contract duration and the health insurance contribution are relatively straightforward, a challenge remains concerning the appropriate general wage increase for the third year of the APWU Agreement. The NRLCA third year increase is structured in two parts – a 1% general wage increase and an additional 0.8% increase that the Postal Service asserts was “paid for” by concessions made by

NRLCA in its negotiations. Based on the NRLCA Agreement as well as other benefits and economic factors present in the APWU bargaining unit compensation, I conclude that a 1% general wage increase is appropriate in the third year of the APWU Agreement, and shall award such an increase.

I understand that some economic concessions made by NRLCA allowed it to improve its general increase by an additional 0.8%, but I lack the information necessary to determine what concessions would be appropriate to justify an additional 0.8% general wage increase to APWU in the third year of its agreement. The cost of bargaining concessions to the Union, and their value to the Postal Service, are often hotly contested matters, in which both financial and perceptual disagreements render agreement difficult, and third-party decision-making even more difficult. Accordingly, I am unwilling to award the additional 0.8% general increase in the third year of the contract.

However, in lieu of the 0.8% general wage increase received by NRLCA, and without attempting to assign economic value to the Union or cost to the Postal Service of this resolution, I will resolve certain disputed economic issues in the Union's favor: (1) I shall not award a COLA rebasing (beyond updating the year of the existing base month) or reformulation; and (2) I shall not award any increase in the number of PSEs, also sought by the Postal Service. The result is an economic package which is consistent with the basic general wage parameters in the NRLCA Agreement, without the imposition of arbitral trade-offs that are better made in negotiations.

VI. AWARD ON ECONOMIC ISSUES

A. Duration

The Postal Service proposed a two-year agreement, while APWU proposed four years. The recent agreement between the Postal Service and NRLCA is three

years. Given my decision to award similar terms in the economic aspects of the APWU Agreement to those in the NRLCA Agreement, a contract of three years is appropriate here. I also note that three-year agreements are common between these parties.

B. Career Wages

For the reasons discussed in Section V above, I award the following general wage increases:

- 1.3% effective November 24, 2018,
- 1.1% effective November 23, 2019, and
- 1.0% effective November 21, 2020.

The increases will be based on the basic salary in effect on September 20, 2018. Also, as mentioned in Section V, the COLA formula shall continue in its present form with a base month of July 2018 and with payments using CPI-W Index levels in January and July beginning in 2019 and through July 2021.

C. Merging the Two Career Wage Schedules

There remains the issue of whether additional steps should be added to the top of the post-2011 career schedule for APWU-represented employees. In the NRLCA Agreement, two new steps were added to the top of the rural carrier new career schedule, which brings their top step in line with the prior career schedule. Having the top step of both the prior and new career schedules the same is also consistent with the wage schedules in the NALC and Mail Handlers Agreements. The Postal Service asserted, however, that these three postal unions voluntarily accepted, or had an interest arbitrator impose, a proportional COLA formula when those top steps were added or kept.

APWU seeks to add steps to the new career schedule so that its top step will equal that of the prior career schedule. In order to bring the top step of the new APWU

career schedule in line with the prior APWU career schedule, four additional steps would need to be added to grade 8, five to grades 5, 6, and 7, and six to grades 3 and 4. (Grades 9-11 in the new career schedule never had their top steps below the prior schedule).

In support of its demand, APWU pointed to the history of two-tier wage schedules in the private sector, particularly how, in many cases, the top steps were ultimately restored. APWU also urged that adding steps to the new career schedule would encourage long-term career employment, particularly in the grade 8 MVS driver positions, in which hiring and retention is an issue for the Postal Service. The Postal Service countered by pointing out that when multiple wage tiers were merged at the top in the private sector, the parties typically adopted other cost-saving arrangements. Moreover, the Postal Service asserted that the merger of wage tiers sought by the Union was not justified by comparability, especially at the lower levels where the divergence from comparability is most pronounced.

Weighing these competing arguments, I have concluded that I should not award new steps that would bring the top of the APWU post-2011 career schedule fully to the level of the pre-2011 career schedule. However, some improvement in this area should be made. I therefore award two additional steps to the 2011 career schedule for grades 6-8, and one additional step to grade 5. I decline to award two steps to grade 5 or additional steps to the lower grades at this time based on considerations of comparability.

D. Postal Support Employees

The Union proposed, as it did in 2016, changing the PSE pay structure to align it with the entry level rates on the post-2011 career scale. I am not convinced, however, that it is necessary to make a structural change of that magnitude in order to increase

PSE wages. Instead, I shall maintain the existing general pattern for PSE compensation, as I did in 2016. PSEs will continue to receive the general wage increases applicable to career employees, plus an additional 1.0% increase effective the same dates as the general increases for career employees.

PSEs received cents-per-hour increases of varying amounts in the 2016 Award. Based on reasoning similar to that found in the 2016 Award, and also in view of the overall compensation package for PSEs in which benefits, while more limited than for career employees, have improved through the parties' negotiations and settlements since 2016, I grant an additional PSE per hour wage increase of \$0.20 to be applied in May, but only for the last two years of the contract (2020 and 2021).

APWU also proposed that PSEs be converted automatically to career after a set period of time, depending on the size of the facility in which they work. APWU used 125 work years as the separation point between larger and smaller installations, and two or three years of service as the measure of time for when PSEs would be converted. The Postal Service opposes any such conversions, claiming that they are inconsistent with both the flexibility and labor cost savings that PSEs are intended to provide.

I accept the Postal Service argument that all PSEs ought not be automatically converted to career status after a set amount of time working for the Postal Service. However, a PSE who is converted to career status does so after working an average of 1.9 years, and there is value to both the employees and the Postal Service in retaining PSEs who have substantial Postal Service experience. As I noted in 2016, a one-time conversion of long-service PSEs in larger facilities would thus appear to be in the interest of both the Postal Service and the PSEs. I therefore award another one-time conversion, similar to that awarded in 2016, for PSEs in 125 work-year offices

who have 2.5 years of service as of the date of this Award. The conversions shall be effective sixty days from the date of this Award, and those PSEs who are converted are not required to serve an additional probationary period.

E. Health Insurance

The Postal Service proposed a one-percentage point reduction – to 72% - in the employer contribution for health benefits premiums, which would bring the Postal Service's contribution in line with the federal government contribution in the Federal Employees Health Benefits Program (FEHB). The Postal Service argued that its proposal was justified based on comparability with the private sector, consistency with the rest of the federal government and the Postal Service's contributions for its non-bargaining unit employees, as well as the recent NRLCA Agreement. APWU countered with its own comparability evidence on the basis of which it asserted that the Postal Service's health benefits premium contribution should be increased.

Recent years have seen a steady reduction of 1% per year in the Postal Service's share of employee health insurance premiums. These reductions have been the product of both interest arbitration awards and voluntary agreements with the postal unions, including APWU. I shall continue this generally agreed upon approach, awarding the 1% reduction sought by the Postal Service. Because of the timing of open season and rate setting in relation to the expiration of the contract, the change will be effective in Plan Year 2021 and, like the NRLCA Agreement, will remain at 72% for Plan Year 2022.

F. Uniforms

Both parties proposed increases in the uniform and work clothes allowances. APWU proposed annual 5% increases, while the Postal Service proposed 2.5% annual increases. The Postal Service's proposal is consistent with the parties' practice

in past contracts, and there seems to be no basis to deviate from that here. As such, and in consideration of the fact that the date on which the 2019 uniform allowance would have been paid has already passed, the uniform and work clothes allowances will be increased as follows for the remaining years of the Agreement:

May 21, 2020	5%
May 21, 2021	2.5%

VI. NON-ECONOMIC ISSUES

A. Contingent Tentative Agreements Now Final

As was the case in 2016, the parties were able to reach tentative agreements (TAs) during their negotiations on a number of non-economic issues. Those TAs were contingent upon a complete National Agreement being reached. Because my Award is the culmination of the parties' negotiations for a National Agreement, those TAs are now final and will be incorporated into this Award and the 2018 National Agreement. They are identified in Attachment 1.

B. Disputed Non-Economic Issues

The parties brought several non-economic proposals before the Panel. Each party presented evidence and argument in support of its proposals, all of which have been fully considered.

Scheduling and Work Hours

A number of the parties' non-economic proposals concerned scheduling and work hours. The Union proposed a prohibition on postmasters performing bargaining unit work in Level 18 offices; advance notice to employees of their work schedule start time; and guaranteed hours for part-time flexible clerks. The Postal Service proposed changing the measure of postmaster time applicable to the Global Settlement MOU

and Article 1.6; creation of a “universal PSE”; and amending the scheduling rules for MVS drivers.

I am not convinced that interest arbitration is the best place to address the issues underlying the foregoing proposals. It is clear, particularly when there are conflicting proposals on the same issue, that there may be a number of different solutions to the legitimate problems the parties raise. Settling on just one solution or combining ideas into an outcome that serves both parties’ interests is best accomplished through discussion and negotiation. While I am not suggesting that these matters should never be arbitrated, it would be an unwise use of the interest arbitration process for us to decide them now. Rather, the Panel urges the parties to take advantage of the information amassed for interest arbitration and continue their discussions.

Line H and Custodial Staffing

I take a slightly less restrained approach to the parties’ issue about Line H and custodial staffing, which has crystallized to a point at which limited intervention should lead to resolution.

Contentions of the Parties

On July 9, 2014, the parties entered into an MOU Re: MS-47 TL-5 Implementation and Maintenance Craft PSE Conversion. At issue is item 6 of the MOU, which provides:

In facilities that are maintained by USPS custodians, upon the conclusion of each Postal Fiscal Year (FY), during October of the new FY, the total custodial work hours for the just completed fiscal year shown on the end of year report(s) for Labor Distribution Code (LDC) 38 (custodial work) will be compared with 90% of the custodial work hours shown on Line H of PS Form 4852.... Falling short of 90% of the work hours shown on PS Form 4852 Line H will result in compensation for each hour short of 90% of the hours on PS Form 4852 Line H paid at the overtime rate to the custodial employees....

It is undisputed that the MOU was intended to ensure that custodial positions would be fully staffed, even as new cleaning methods in the MS-47 TL-5 were expected to reduce custodial work hours. According to the Postal Service, however, the times the Postal Service has fallen short of the agreed-upon 90% of the Line H custodial work hours requirement have resulted in substantial monetary payments to custodial employees, often when the shortfall is due to circumstances largely beyond the Postal Service's control.

Among the circumstances which the Postal Service cited as impeding its ability to assign 90% of the Line H required work hours to custodial employees were long-term absences of custodial employees, Article 12 withholding, and injured employees with restricted duties. According to the Postal Service, the built-in 10% leeway in its Line H obligation was meant to provide relief for weather-related cleaning, short term absences, variances in snow or lawn care needs, and other minor unexpected changes to custodial work. The 10% leeway is insufficient, the Postal Service contends, to address longer-term personnel situations that take custodians away from their job duties.

The Postal Service also pointed out that when the MS-47 TL-5 MOU was agreed to in 2014, there were PSEs in the Maintenance Craft; the Postal Service could assign those PSEs to cover the work hours of those longer-term absences of the career custodians and thus still meet the Line H requirement. A recent OIG audit report introduced by the Postal Service acknowledges the difficulty of not having PSEs to supplement staffing during periods of long-term absences. The OIG concluded that the Postal Service is at risk of incurring another \$64.4 million in damages for fiscal years 2019 through 2022 for failure to meet the MOU requirement.

David E. Williams, the Postal Service's Chief Operating Officer, acknowledged that the Postal Service has an obligation to fully staff custodial positions. But, Mr. Williams testified, without additional flexibility the Postal Service will be unable to avoid grievance payouts to custodians even when a facility is fully staffed. He further testified that the monetary remedies for Line H violations can result in a custodian being paid for more hours than the custodian is allowed to work under the contract. Without relief, the Postal Service asserts that it will be paying custodians for hours the custodians did not and could not have worked.

In response, the Union was adamant that the Panel not disturb the MS-47 TL-5 MOU. The Union pointed out that the MS-47 TL-5 MOU is, after all, the product of settlement negotiations. The Line H obligation was the quid pro quo the Union insisted upon in exchange for its agreement to reductions in custodial staffing.

According to the Union, the Postal Service's problem in satisfying its custodial work hours obligation is not long-term absences, which the Union rarely sees raised in Line H grievances, but the Postal Service not living up to its obligation to fully staff custodial positions. If the Postal Service were fully staffed, a problem the Union pointed out the OIG acknowledged in the same report the Postal Service relies on, the Postal Service would be in compliance with Line H. The Union also asserted that the understaffing of custodial positions is exacerbated by management assigning custodians to tasks other than MS-47 cleaning. Together, the Union claims, understaffing and the diversion of custodial work are the real culprits behind the Postal Service's Line H violations. Certainly, the Union urged, the Panel should not take the drastic step of reintroducing PSEs in the Maintenance Craft to correct the Postal Service falling short of its Line H commitments in the MS-47 TL-5 MOU. In brief, the

Union concludes, if the Postal Service fully staffs its custodial positions, Line H violations should no longer be frequent.

Discussion and Award

Interest arbitrators should tread lightly when asked to change settlement agreements intended to resolve a specific dispute. It is important to maintain as much of the purpose and terms of a settlement as possible in a situation such as this. Regarding the MS-47 TL-5 MOU, I see a basis for adjusting the parties' agreement on two narrow issues concerning long-term absences and limits on remedy without harming important fundamentals of the parties' settlement. However, even as to those, my intervention is limited and will still require the involvement of the parties to develop criteria for implementation.

At the outset, particularly given the narrowness of the issues, I reject the Postal Service's demand to reintroduce PSEs in the Maintenance Craft. I do acknowledge that the loss of PSEs as a result of the 2016 Award made it more difficult for the Postal Service to respond to personnel circumstances beyond its control, and that those circumstances could impact the Postal Service's Line H compliance. But I also give consideration to the Union's position that fully staffing custodial positions is both a key component of the MS-47 TL-5 MOU, and a potential help to the Postal Service's compliance issues.

Accordingly, I award a revision of the July 9, 2014, MOU, Re: MS-47 TL-5 Implementation and Maintenance Craft PSE Conversion to allow the Postal Service to pro-rate the Line H work hours' calculation to exclude the work hours of custodians who are on long-term absences. The types of leave or situations in which this Line H adjustment can be made are limited to the five situations proposed by the Postal Service: military leave; FMLA-covered absences; leave under USERRA; OWCP

leave; or court leave. I will also permit the Postal Service to adjust the Line H hours to account for the hours in a staffing package of a custodial position that has been properly withheld as a custodial residual vacancy under Article 12.

As to limiting the remedy a custodian can be paid for a violation of Line H, I direct a limit based on the maximum hours that a custodian could have worked. In other words, the number of hours of overtime compensation used to calculate the remedy for a Line H violation paid to a custodian will be capped at the limits in Article 8 of overtime hours for that custodian. For custodians who are on work-hour restrictions, the cap will be adjusted to the number of overtime hours within the custodian's restricted work hours.

Consistent with what both parties expressed during the hearing, the Postal Service can invoke either the long-term absence allowance or the remedy cap or both only in a facility that is fully staffed.

The record is insufficient for me to define two key terms here – “fully staffed” and “long term”. Certainly, the parties possess greater knowledge of the relevant considerations in determining when a facility is fully staffed. And defining long term would also benefit from the practical knowledge and expertise of the parties in drawing a line between absences that should be regarded as normal, and so covered by the 10% leeway, and those absences that should be regarded as long term under the adjustment I am ordering. I will therefore remand to the parties and retain jurisdiction over the task of determining the meaning of “fully staffed” and “long term”. The remand is for a reasonable period of time to be determined by the parties after which, in the absence of agreement by the parties, either party may request the Panel to take appropriate steps to define those terms.

C. Renewal of Three MOUs

The parties did not agree whether or not to renew the following MOUs, leaving it to the Panel to decide whether to renew them for the term of the 2018 National Agreement. For the reasons set out below, the Layoff Protection MOU and the Highway Contract Route (HCR) Limitation MOU are renewed; the Retail MOU is not renewed.

Layoff Protection MOU

The Layoff Protection MOU, which the Union would retain, extends the no-layoff provisions of Article 6 to bargaining unit employees who are on the rolls as of the date of this Award. The Postal Service asks that the Layoff Protection MOU be allowed to lapse, and that career bargaining unit employees achieve protected status under Article 6 only after fifteen years of career service, rather than six years as currently provided. The Union asks that the MOU be renewed for another contract term and that Article 6 continue unchanged.

Since postal reform in 1970, the Postal Service has never conducted a layoff of career bargaining unit employees. The Layoff Protection MOU was renewed in 2016 on the reasoning that the Postal Service has sufficient tools to reduce the employee complement without a layoff. The Postal Service has demonstrated its ability in the past to reduce complement without layoffs using various mechanisms and contractual procedures available to it. The Union presented evidence that these tools remain available and have continued to be sufficient. I also note that PSEs do not have layoff protection and so serve as an additional means for managing the size of the employee complement. I therefore award an updated version of the Layoff Protection MOU that extends the termination date of the MOU to September 20, 2021, and covers

employees on the rolls as of the date of this Award. I do not change the six years of service in Article 6 for when employees achieve protected status.

HCR Limitation MOU

The HCR Limitation MOU came out of the 2016 arbitration proceedings in response to a need voiced by both parties to address the complicated issue of bringing or keeping HCR work in-house in a cost-effective way. A main aspect of the MOU was a moratorium on any new HCR subcontracting which I concluded was necessary to create conditions in which the parties could work together. Three years later, the Union reports that progress has been slow and that a moratorium is still necessary for the parties to reach the kind of broad resolve imagined in 2016. The Postal Service expressed its continued interest in working with the Union to identify the most cost-effective way for it to accomplish the highway transportation of mail. It remained adamant, however, that continuing the HCR moratorium was unnecessary and inappropriate.

It is clear that HCR subcontracting is an active issue with many aspects about which the parties must negotiate. It would be premature to lift the moratorium while the parties are discussing issues that bear directly on the working conditions of bargaining unit employees. I will, therefore, renew the HCR Limitation MOU for the term of the 2018 National Agreement.

Retail MOU

The Retail MOU served a similar purpose as the HCR Limitation MOU when it was awarded in 2016. The parties had been locked in litigation over the lawfulness of the Postal Service's Approved Shipper Program and were trying to create conditions in which they could meaningfully discuss the future of postal retail services. To accomplish this, a temporary moratorium was placed on specific retail contracting out

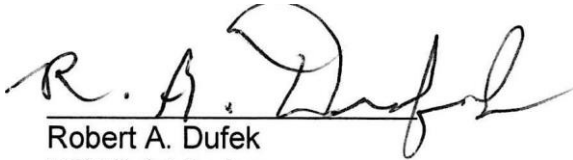
initiatives. The Union was also directed to suspend any action to address retail subcontracting outside of negotiating with the Postal Service.

Unlike the HCR Limitation MOU, it appears that the Retail MOU has run its course. While there appear to be interesting and fruitful ideas for future postal retail endeavors, the record does not support a need to re-impose a restriction on management's retail programs or the Union's legal rights to challenge those programs for those ideas to be discussed. Accordingly, I will not renew the Retail MOU in the 2018 National Agreement. I do, however, encourage the parties to continue to work together on their shared goal of making the United States Postal Service prosperous and sustainable for many years into the future.²

² Other than as specifically addressed by this Award, all MOUs and Letters of Intent contained in the 2016 National Agreement are carried over and incorporated into the 2018 Agreement unless the parties have mutually agreed to terminate or modify those MOUs or Letters of Intent.



Stephen B. Goldberg
Neutral Arbitrator



Robert A. Dufek
USPS Arbitrator



Phillip Tabbita
APWU Arbitrator

Entered: March 10, 2020

Tentative Agreements – Attachment 1

- 1 Workplace Environment Improvement
- 2 Article 2.1
- 3 Article 15.6 Administration
- 4 Article 26 Uniforms and Work Clothes
- 5 Article 31.2 (APWU 31A-1)
- 6 MOU Re Mutual Exchanges in the Clerk Craft Between Pay Levels (APWU
37A-1)
- 7 Article 38.5 (APWU 38D-1)
- 8 Article 38.6.A.1 -A.3 Training Selection Criteria (E-05-38)
- 9 Article 38.6.A.2 (APWU 38B-1)
- 10 Article 39.2.A.6 (APWU 39P-1)
- 11 Article 39.2.A.9 (APWU 39G-1)
- 12 Article 39.2.A.10 (E-49-39)
- 13 Article 39.2.A.11 (APWU 39M-1)
- 14 Article 39.3.H (APWU 39L-1)
- 15 Article 41.2.G.2 Bidding (E49-39)
- 16 MOU Re Arbitration Scheduling Procedures - (LMOU)
- 17 MOU Re Electronic Technician PS-11 (NTSN Technician)
- 18 MOU Re Expedited Arbitration
- 19 MOU Re Bargaining Information (APWU 31A-1)
- 20 MOU Re Mail Equipment Shop Prior MOUs
- 21 Continue Discussion