

NATIONAL ARBITRATION  
BEFORE IMPARTIAL ARBITRATOR STEPHEN B. GOLDBERG

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In the Matter of Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case No. Q10C-4Q-C 12318440
	)	Call Center Jobs
and	)	
	)	
AMERICAN POSTAL WORKERS	)	
UNION, AFL-CIO	)	

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Ruth B. Stephenson, Attorney; Todd Coffey,  
Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Melinda K. Holmes, Attorney  
(O'Donnell, Schwartz & Anderson, P.C.)

Place of Hearing: American Postal Workers Union, AFL-CIO, 1300 L  
Street, N.W., Washington, D.C.

Date of Hearing: July 22-23, 2013

Date of Award: October 28, 2013

Relevant Contract Provisions: Article 3; Article 19; MOU on Clerk Craft Jobs;  
MOU on Contracting and Insourcing of Contracted  
Services; MOU on Motor Vehicle Craft Jobs; MOU  
on Maintenance Craft Jobs


Contract Year: 2010-2015

Type of Grievance: Contract Interpretation

## Summary of Award

The Postal Service violated Article 19 by failing to follow the procedures of ELM 233.2 in relying on private sector wage comparisons to rank the Customer Care Agents at Levels 4, 5, and 6, rather than at Levels 6, 7, and 8, found to be appropriate by the OE Department, which applied ELM Section 233.2. Contrary to the arguments of the Postal Service, its reliance on private sector wage comparisons was not justified by the Postal Reform Act or the alleged overall intent of the 2010 Agreement to insource work to the APWU bargaining unit only when bargaining unit employees can perform that work at a cost equal to or less than private sector employees.

As an appropriate remedy for its violation of Article 19, the Postal Service will be directed to place all Customer Care Agents, Tier 1; Customer Care Agents, Tier 2; and Customer Care Agents, Lead, at Levels 6, 7, and 8, respectively. The employees in these positions shall also be made whole for lost pay and benefits resulting from their improper position rankings.



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Stephen B. Goldberg, Arbitrator

I. SUMMARY OF RELEVANT EVIDENCE

The MOU on Clerk Craft Jobs (“Jobs MOU”), which is part of the 2010 Agreement, provides in relevant part:

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

- 1) Corporate Call Center locations shall be staffed by Clerk Craft employees no later than two (2) years from the ratification of the 2010 National Agreement.

The Employer shall staff Call Center locations with no fewer than a total of 1,100 Clerk Craft duty assignments during the term of the 2010 Agreement. These duty assignments will be filled by a mix of 70% career and 30% rehabilitation status employees. Each call center location shall become part of the bid cluster for the nearest postal installation. The appropriate administrative process will be followed by the Employer during the transition.

In order to implement the Jobs MOU, the Postal Service created three Call Centers, located in Troy, MI, Los Angeles, CA, and Edison, NJ. As required by the Jobs MOU, these Call Centers employ 1,100 Clerk Craft employees.

The Postal Service established three Clerk Craft positions at the Call Centers: Customer Care Agent, Tier 1; Customer Care Agent, Tier 2; and Customer Care Agent, Lead. The position descriptions for these positions, which were developed by the Postal Service’s Organizational Effectiveness (OE) Department, state that the Customer Care Agent, Tier 1, handles incoming customer calls, as

well as e-mails and online chats. The Customer Care Agent, Tier 2, also handles incoming customer calls, e-mails, and online chats, in addition to handling more complex customer inquiries. The Customer Care Agent, Lead, is responsible for resolving incoming customer inquiries, and also for serving as group leader.

The OE Department ranked these three positions at Level 6 (Customer Care Agent, Tier 1), Level 7 (Customer Care Agent, Tier 2), and Level 8 (Customer Care Agent, Lead). It did so pursuant to ELM Section 233.2, which provides, in relevant part:

### **233.2 Basis for Position Evaluation**

Comparison of a position's duties, responsibilities, and work requirements to key position descriptions serves as the only basis for evaluation. Specifically, the following factors determine final ranking:

- a. Difficulty of the work to be performed.
- b. Degree of responsibility to be exercised.
- c. Scope and variety of tasks involved.
- d. Conditions under which the work is performed.

According to Labor Relations Specialist Todd Coffey, who was the Postal Service's representative in discussions with the Union about the ranking of the Customer Care Agent positions, he was told by Shannon Decastro of the OE Department that OE had determined that the closest key position match for the Customer Care Agent positions was the Level 7 Complaints and Inquiries Clerk, but that the match was not exact. Mr. Coffey testified that because the match was not "one for one", he reviewed other labor documents. Based on that review, he concluded that:

". . . [W]e had an obligation or, to my understanding, a requirement to compare externally. . . [M]y understanding is that this is the law, that we at least have to consider this. And

following that, with the law and the ranking of these positions, the overarching idea under the Postal Service contract, through my involvement in labor relations, is that if we're going to insource work, it should be somewhat competitive. Well, not somewhat, it should be.<sup>1</sup>

Subsequent to Mr. Coffey's review, the Postal Service engaged Tom Pavlik, a certified compensation professional, to provide an analysis of salaries paid to persons in private sector jobs with duties comparable to the Call Center jobs. Mr. Pavlik's report showed that the salaries for the Call Center positions at Levels 4, 5, and 6 would be on the whole higher than the average salary for comparable private sector positions. In addition, Mr. Pavlik's report showed that if the Call Center positions were ranked at Levels 6, 7, and 8, they would receive salaries significantly higher than their private sector counterparts.

The Postal Service also compared the salaries that would be paid to the Customer Care Agents, Tier 1 and Tier 2, at Levels 4 and 5 with the wages paid by the contractor personnel who performed the job duties of the Customer Care Agents before the Postal Service assigned this work to APWU-represented employees. This analysis, too, demonstrated that the Postal Service salaries for Tier 1 and Tier 2 Customer Care Agents would be higher at Levels 4 and 5 than the wages paid by the contractor for the same work.

Based on the evidence of private sector wage rates for similar jobs collected by Mr. Pavlik, and the evidence of contractor wage rates for the same jobs, the Postal Service revised the initial decision of the OE Group to rank the Customer Care Agents at Levels 6, 7, and 8. Instead, the Customer Care Agents were ranked at Levels 4, 5, and 6.

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<sup>1</sup> Transcript 247.

## II. ISSUE

Did the Postal Service violate the Agreement in setting the salary levels for the Customer Care Agents at Levels 4, 5, and 6? If so, what is the appropriate remedy?

## III. DISCUSSION

Article 19 provides in relevant part:

### Section 1. General

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. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. . . At the request of the Union, the parties shall meet concerning proposed changes . . . If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration . . .

It is undisputed that the ELM contains no provision for the comparison of newly-established USPS bargaining unit positions with private sector positions as a basis for position evaluation. To the contrary, ELM 233.2 provides that:

Comparison of a position's duties, responsibilities, and work requirements to key position descriptions serves as the only basis for evaluation. (Emphasis supplied.)

It is similarly undisputed that the Postal Service did not provide the Union with an Article 19 notice that it wished to change Section 233.2. Instead, after the OE Department had ranked the Call Center jobs at Levels 6, 7, and 8, the Postal Service chose, for reasons to be discussed below, to revise those rankings based on data collected by it which showed that private sector employees engaged in similar work were paid wages closer to those for Levels 4, 5, and 6.

In doing so, the Union asserts, the Postal Service violated Article 19, as interpreted by Arbitrator Sylvester Garrett to require that "no new Standard Position be established in the P-1 Handbook except in full compliance with the controlling principles and procedures of Subchapter 450 of the Postal Manual". (Case No. AC-NAT-11991 (1978) at 15).<sup>2</sup> Arbitrator Garrett went on to state the meaning of the Article 19 "fair, reasonable, and equitable" concept for purposes of ranking new standard positions:

When the phrase is read in light of Subchapter 450 in the Postal Manual and the P-1 Handbook, it necessarily requires that (1) significant procedures prescribed in Chapter 450 of the Postal Manual must be observed to the extent practicable, and that (2) the new position be ranked by reference to the established Key Positions, as applied in accordance with the principles delineated in Subchapter 450

Arbitrator Garrett's decision was followed by Arbitrators Mittenthal (Case No. A8-NA-540A (1981)) and Aaron (Case No. H1C-NA-C26 (1985)), and has not been overruled by subsequent Agreements of the parties. Under these circumstances, it is the Union's position that since the Postal Service did not follow the procedures of ELM Section 233.2 in ranking the Customer Care Agents

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<sup>2</sup> Subchapter 450 of the Postal Service Manual was the predecessor to ELM Section 230. The P-1 Handbook set out all the positions employed by the Postal Service, and included the wage scale and level of each position. The P-1 Handbook has been replaced by an electronic database called "BQNet" for bargaining unit position descriptions.



at Levels 4, 5, and 6, instead establishing those rankings on the basis of comparisons to private sector positions, those rankings must be set aside and replaced by the rankings established by the OE Department in compliance with ELM Section 233.2.

The Union's position, as set out above, appears sound. The Postal Service, however, advances two central arguments why that position should be rejected. It asserts that its reliance on private sector wages was (1) compelled by the Postal Reorganization Act, and (2) consistent with the overall intent of the 2010 Agreement to insource work to the APWU bargaining unit only when bargaining unit employees can perform that work at a cost equal to or less than private sector employees. I consider these arguments in turn.

The Postal Reform Act (PRA) states in relevant part:

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. 39 U.S.C. Sec. 101 (c).

The PRA further states:

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. 39 U.S.C. Section 1003.

According to the Postal Service, these provisions of the PRA, as interpreted in several interest arbitration decisions<sup>3</sup>, required the Postal Service to consider private sector comparability when determining the wage levels at which the new Call Center positions would be placed.

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<sup>3</sup> Interest Arb. Between Postal Service and National Postal Mail Handlers Union at 8 (Feb. 15, 2013)(Fishgold, Impartial Arb.); Interest Arb. Between Postal Service and National Postal Professional Nurses/APWU at 3 (April 28, 2009)(Goldberg, Impartial Arb.); Interest Arb. Between Postal Service and APWU, Supplemental Opinion Dealing with Economic Issues at 7 (Jan. 11, 2002)(Goldberg, Impartial Arb.)

The Postal Service argument cannot be sustained. The comparability command of the PRA is addressed to the pay grades negotiated by the parties (or determined by interest arbitrators) and set out in their periodic collective bargaining agreements. *See, e.g.* Article 9 of the 2010-2015 Agreement. It is those pay grades, as well as the overall level of compensation, that must satisfy the PRA comparability standard. Once that has been done, the Postal Service's obligation to insure comparability with the private sector when establishing new positions is met by compliance with Article 233 of the ELM, the procedures of which insure that employees are placed in the appropriate pay grade.

Neither the PRA nor the ELM contemplate that wages for each new position must, independently of the ELM position evaluation procedure, be the subject of a comparison with private sector wages. This conclusion follows not only from the absence of any arbitration decisions requiring private sector comparisons in setting wages for new positions<sup>4</sup>, but also from considerations of practicality. As anyone who has been involved in USPS interest arbitration knows, the process of determining wage levels that satisfy the PRA comparability standard is enormously complex, involving numerous comparisons to different private sector positions, arguments about which of those positions are comparable to Postal Service positions, and the testimony of highly qualified economists and compensation experts supporting the position of each party. It is wholly unlikely that Congress, in enacting the PRA, sought to require a similar process every time the Postal Service proposed to add a new position and could not agree with the Union on the wage level at which that position should be placed. Rather, as set out above, the Congressional requirement of comparability with the private sector is satisfied by the parties' negotiation of wage levels that satisfy the comparability requirement (or abiding by the decision of an interest arbitrator that does so), and then insuring, through compliance with the ELM procedures, that each new position is placed in the appropriate wage level.

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<sup>4</sup> Postal Service and NALC and APWU Intervenor at 24-27 (Jan. 24, 2007)(Das, Arb.), referred to by the Postal Service as citing and applying the PRA in a rights arbitration did, indeed, do so, but not in a case in which wage rates were at issue.

The Postal Service's second central argument in support of its reliance on private sector wages in reclassifying the Call Center positions at Levels 4, 5, and 6, is that assigning those positions to Levels 6, 7, and 8, at which they would be paid more than their private sector counterparts, would be contrary to the intent of the 2010 Agreement. For, asserts the Postal Service (Brief at 15):

[T]he Agreement demonstrates an overall effort to insource work to the APWU, or to retain work within the APWU bargaining unit instead of contracting out, when the APA can perform the work in an equally cost effective manner as its outside counterparts.

The Postal Service's assertion is quite sound, and is borne out by the MOU on Contracting and Insourcing of Contracted Services, which provides that:

It is understood that if the service can be performed at a cost equal to or less than that of contract service, when a fair comparison is made of all reasonable costs, the work will be performed in-house.

The flaw in the Postal Service argument, however, is that the Union's claim in the above MOU to all work that could be done by bargaining unit employees at the same or lower costs than a contractor was not the Union's only successful effort in the 2010 Agreement to obtain additional positions for bargaining unit employees. In other MOUs, the Union obtained additional bargaining unit positions without regard to whether the work in question could be performed by the bargaining unit at the same or lower costs than a contractor. In Paragraph 1 of the MOU on Motor Vehicle Craft Jobs, for example, the Postal Service agreed to fill 740 duty assignments currently performed by contractors with bargaining unit employees, and with no requirement that doing so result in the same or lesser costs as the contractors. The same MOU provides in Paragraph 2 that the Motor Vehicle Craft will assume service on a minimum of 600 PVS routes currently contracted to HCR, again with no requirement that the work be done in house at the same or lesser cost than if it were outsourced. Conversely, the parties also agreed in Paragraph 1 of the Motor Vehicle Craft MOU to review approximately 8,000 other existing HCRs, but to return that work to the bargaining unit only if it

would cost less to have the work performed by MVS employees. Thus, the parties clearly knew how to indicate what work would remain in or return to the bargaining unit without regard to comparative costs and when a cost comparison was to be made in deciding where work would be assigned.

The same pattern is found in the MOU on Maintenance Craft Jobs, which provides in Paragraph 1.a that custodial duties performed by contractors in 1,500 designated Post Offices will be assigned to bargaining unit employees, provided that work can be performed by those employees at a cost equal to that of the contract service. In contrast, the Maintenance Craft MOU also provides in Paragraph 6 that the Postal Service will provide 60 administrative and technical duty assignments to the Maintenance Craft bargaining unit, with no requirement of equal costs, once again demonstrating that at times the parties limited the addition or creation of positions to the bargaining unit on the basis of a cost comparison to outside contractors, but at other times no cost comparison was required.

Paragraph 1 of the Clerk Craft Jobs MOU, with which we are here concerned, is similar to Paragraphs 1 and 2 of the Motor Vehicle Craft MOU and Paragraph 6 of the Maintenance Craft MOU in imposing no requirement that the work in question can be done in house at the same or less cost than by a contractor. Under these circumstances, and in view of the clear evidence that the parties knew how to limit the addition of bargaining unit positions to those circumstances in which the bargaining unit could perform the work at the same or less cost than a contractor when they wished to impose such a limit, it is clear that no such limit was intended in Paragraph 1 of the Clerk Craft Jobs MOU.<sup>5</sup>

A related Postal Service argument, equally without merit, is that because Paragraph 1 of the Clerk Craft Jobs MOU, different from other provisions of that MOU relating to different positions, does not set out salary levels for the Call Center positions, “the Agreement does not require the Postal Service to establish

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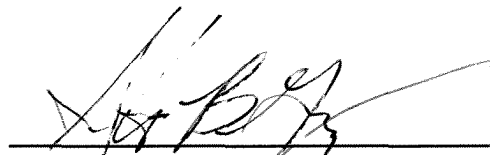
<sup>5</sup> It should also be noted, as the Union points out, that even if the cost at which this work could be performed by a contractor were relevant, that cost is not solely a function of the wages paid by the contractor to its employees, but is determined by the total cost charged by the contractor to the Postal Service, as well as the cost to the Postal Service of administering the contract. See MOU on Contracting or Insourcing of Contracted Services.

certain positions at any particular level in order to staff the Corporate Call Center with APWU employees” (Brief at 15). The absence of direction in the Jobs MOU concerning the wage levels for Call Center employees does not, however, free the Postal Service from its other contractual obligations in setting wage levels, in this case Article 19, with which, as set out above, the Postal Service did not comply.

In sum, and despite its arguments to the contrary, I conclude that the Postal Service violated Article 19 by relying on private sector wage comparisons to place the Call Center positions at Levels 4, 5, and 6, rather than at Levels 6, 7, and 8, found to be appropriate by the OE Department applying ELM Section 233.2.<sup>6</sup>

#### IV. REMEDY

The Postal Service is hereby directed to place all Customer Care Agents, Tier 1; Customer Care Agents, Tier 2; and Customer Care Agents, Lead, at Levels 6, 7, and 8, respectively. The employees in these positions shall also be made whole for lost pay and benefits resulting from their improper position rankings.<sup>7</sup>



Stephen B. Goldberg, Arbitrator

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<sup>6</sup> The Postal Service also relied on Article 3, the Management Rights provision of the Agreement, in support of its decision to place the Call Center positions at Levels 4, 5, and 6. Inasmuch, however, as the Postal Service’s Article 3 rights are limited by the other provisions of the Agreement, and I have found the Postal Service’s reclassification of these positions to have violated Article 19, Article 3 provides no support for the Postal Service’s action.

<sup>7</sup> The Union requested that it be made whole for any dues lost as a result of the improper rankings. The propriety of such a remedy was not briefed by the parties, and I do not know if it is a customary remedy in this relationship. Accordingly, I shall not order this remedy, without prejudice to the Union’s right to file a Supplemental Brief in support of its request, and the right of the Postal Service to file a Supplemental Brief in Opposition. If the Union chooses to file such a Supplemental Brief, it shall be due no later than November 13, 2013, and a Postal Service Supplemental Brief in Opposition shall be due no later than November 27, 2013.