

**NATIONAL JURISDICTIONAL DISPUTE
ARBITRATION RI-399
JOSEPH M. SHARNOFF,
ARBITRATOR**

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

NATIONAL POSTAL MAIL HANDLERS UNION

**Case Nos. Q11M-6Q-J
15281315 & Q10C-4Q-J
15291805;(Small Parcel
Sorting System -Merits)**

AND

AMERICAN POSTAL WORKERS UNION

<u>Appearances:</u>	<u>For U. S. P. S.:</u>	Brian M. Reimer, Esquire Leigh S. Hsu, Labor Relations Specialist
	<u>For N.P.M.H.U.:</u>	Bruce R. Lerner, Esquire Philip C. Andonian, Esquire Bredhoff & Kaiser, P.L.L.C.
	<u>For A.P.W.U.:</u>	Darryl J. Anderson, Esquire O'Donnell, Schwartz & Anderson, P. C.

**OPINION AND AWARD
OF THE
ARBITRATOR**

The instant National-level grievance was filed on September 15, 2015, by Thomas J. Branch, Manager, Contract Administration, National Postal Mail Handlers Union [NPMHU herein], with Doug Tulino, Vice President, Labor

Relations United States Postal Service [USPS herein], pursuant to Article 15, Section 15.3(D), of the National Agreement between the NPMHU and the USPS. The NPMHU, as set forth in this grievance, states its protest, in relevant part, of:

. . . the Postal Service's ongoing and continuing violations of Articles 5 and 7.2 of the National Agreement, stemming from its assignment of clerk craft employees to operate the Small Parcel Sorting System (SPSS).

As you know, by letter dated June 1, 2015, the Postal Service acted pursuant to the tripartite process under the RI-399 Dispute Resolution Procedures (DRP) and issued its jurisdictional craft determination for operating the SPSS. That June 1, 2015 craft determination found that the "primary craft for all duties associated with the operation of the SPSS is the Mail Handler Craft." Further, that June 1, 2015 determination was effective and final and binding when issued, unless either the NPMHU or the American Postal Workers Union (APWU) or both timely challenged that determination by filing a dispute under the RI-399 DRP or otherwise appealing the issue to National arbitration. Neither the NPMHU nor the APWU filed such a timely dispute; nor did either the NPMHU or the APWU timely appeal the issue to National arbitration. Accordingly, the Postal Service's craft determination of June 1, 2015 became (and remains) final and contractually binding on all parties, including the Postal Service.

On August 7, 2015, the Postal Service unilaterally tried to reverse its June 1, 2015 craft determination by issuing a revised determination, declaring that certain duties associated with the operation of the SPSS would be assigned to the clerk craft represented by the APWU instead of the mail handler craft represented by the NPMHU. In particular, the Postal Service advised the NPMHU that clerks would be assigned to "singulating/separating packages & facing/feeding packages into [the] induction belt" on the SPSS, as well as to the sweeping function on the SPSS when necessary for rotation of these craft employees.

It is the NPMHU's position that the revised craft determination unilaterally issued on August 7, 2015 was and is null and void and of no effect, and that the Postal Service's June 1, 2015 determination

remains binding on the Postal Service and the two unions. Indeed, beginning on June 1, 2015 and continuing through at least August 7, 2015, the Postal Service implemented its June 1, 2015 craft determination for the SPSS by posting and awarding bids to employees in the mail handler craft for positions and assignments on the SPSS in those facilities where the SPSS had been deployed. Also, in some facilities, many temporary, non-career employees from the NPMHU bargaining unit - that is, Mail Handler Assistants or MHAs - have been converted to full-time regular and permanent career positions as mail handlers as a result of the June 1, 2015 craft determination.

In these circumstances, the NPMHU submits that only mail handlers may be assigned to operate the SPSS, and any use of clerk or other craft employees on the SPSS must comply with the provisions of Article 7.2 of the National Agreement, specifically subsections C and D of Article 7.2 that govern cross-craft assignments and prohibit such assignments except in narrow circumstances not presented by the current situation.

The NPMHU therefore files this National-level grievance to challenge the Postal Service's ongoing and continuing assignment of clerk craft employees to operate the SPSS, contrary to the final and binding determination of June 1, 2015. The Postal Service's failure to comply with the June 1, 2015 determination is a violation of Articles 5 and 7.2 of the National Agreement. The NPMHU requests a prompt meeting (and, if necessary, arbitration) on this subject, and seeks a financial remedy (at appropriate overtime rates for mail handlers identified by the NPMHU) for all hours improperly worked by clerk employees instead of mail handlers.

This matter should be scheduled for a pre-arbitration meeting as promptly as possible.

* * *

Bifurcation of Dispute

The Parties, the NPMHU, the APWU and the USPS, reached an agreement, related to a proceeding in the U. S. District Court for the District of Columbia, to hold the instant proceeding, on June 15 and 16, 2016. The three

Parties agreed that the issue to be resolved by the Arbitrator in the initial proceeding was limited to the propriety and effect of the changes made by the USPS, on August 17, 2015, to the Craft Determination for the SPSS, which the USPS initially had issued to the NPMHU and to the APWU on June 1, 2015. The instant proceeding involves the Parties' agreement to present for resolution the merits of the dispute(s) concerning the awards by the USPS, initially in June 2015 and then as revised on re-evaluation in August 2015, of the positions on the new SPSS machine to members of the bargaining units, represented by the NPMHU and the APWU respectively.

The Arbitrator issued an Opinion and Award, dated December 2, 2016, which resolved the preliminary issues presented in the course of this bifurcated process. Thereafter, hearings were held on March 19 and 20, 2019, and on March 10, 2020, on the merits of the determination by the USPS of the jobs on the SPSS, which the USPS issued initially on June 1, 2015, and as a revised determination on August 7, 2015. The Arbitrator received transcripts of these hearings. Post-Arbitration briefs were submitted to the Arbitrator by each of the Parties on July 10, 2020.

ISSUES

The Arbitrator finds the issue to be resolved in this proceeding is: Whether the SPSS Craft Determination, which was issued initially by the USPS on June 1, 2015, or the revised SPSS Craft Determination, which was issued by the USPS on August 7, 2015, and which changed the initial award of jobs, was proper under the RI-399 principles, the Parties' respective Collective Bargaining Agreements and relevant Arbitral authority, and should be found to be controlling. If such a violation is found to have been demonstrated, what should be the remedy?

**RELEVANT PROVISIONS OF
MEMORANDUM OF UNDERSTANDING
BETWEEN THE USPS, THE APWU, AFL-CIO
AND THE NPMHU, A DIVISION OF
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO
Effective April 29, 1992**

REGIONAL INSTRUCTION 399 - DISPUTE RESOLUTION PROCEDURES

General Principles

The parties to this Agreement agree to a new procedure for resolving jurisdictional disputes under Regional Instruction 399 (hereafter "RI-399"). The new procedures will be implemented sixty (60) calendar days after the effective date of this Agreement.

Effective with the signing of this Agreement, no new disputes will be initiated at the local level by either union challenging jurisdictional work assignments in any operations as they currently exist. Except as otherwise specifically provided in the New or Consolidated Facilities, New Work, or Operational Change sections contained in this memorandum, all local craft jurisdictional assignments which are not already the subject of a pending locally initiated grievance will be deemed as a proper assignment for that facility.

In order to provide for expeditious and efficient resolution of jurisdictional disputes only one representative case shall be processed for each operation/function in dispute. Multiple disputes arising out of the same or substantially similar issues or facts shall not be allowed.

Dispute Resolution Committees shall be established at the local, regional and national levels. The Committee shall be composed of one (1) representative from each of the three parties. The representative on the Committee may be assisted by a technician at any or all meetings if advance notice is given to the other two parties. At larger installations the local parties may mutually agree to establish more than one (1) Committee; however, there shall not be more than one (1) Committee per facility. Committee decisions shall be by mutual agreement of all 3 parties.

Meetings of the Committee must be scheduled with sufficient frequency so that a decision can be rendered within the time limits contained in this Agreement. The time limits contained in this Agreement may be extended by mutual agreement of the

parties. If a committee fails to render a decision with the time frames in this Agreement the moving union may appeal the dispute to the next step in the procedure.

Each party at the local level will be responsible for maintaining an inventory of jurisdictional assignments not in dispute. As jurisdictional disputes are resolved under this procedure, the results shall be added to the inventory.

The national parties shall mutually determine and implement a new numbering system to be utilized in this procedure.

All parties to this Agreement may participate in the arbitration proceedings at either level and all parties shall be bound by the arbitrator's award whether or not they participate in the arbitration proceedings. The arbitrator's award shall be final and binding.

Any settlement entered into at any level must be a tripartite settlement.

* * *

National Level

The National Dispute Resolution Committee (NDRC) shall have sixty (60) calendar days after receipt of a properly filed or appealed dispute to attempt to resolve the dispute.

1. Either union may initiate a dispute at the National level when such dispute involves an interpretive issue which under the National Agreement is of general application. Such disputes shall be provided to the National Committee, in writing, and must specify in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the contentions of the Union.
2. If a dispute is resolved, a tripartite settlement agreement will be signed by the parties.
3. If the dispute is unresolved at the end of the sixty (60) calendar day period, a tripartite decision will be written by the Committee setting forth the position of each party. The moving Union may appeal the dispute to National

Arbitration within twenty-one (21) calendar days of the date of receipt of the written decision of the Committee. Copies of the appeal will be provided to the other parties.

4. In the event the National Committee, after review, decides that a dispute appealed from the regional level does not involve an interpretative issue which is of general application, the dispute shall be remanded to the regional level and placed on the list of pending arbitration cases.

* * *

National Arbitration

One arbitrator will be jointly selected by the parties at the national level on the basis of mutual agreement. Once selected, the arbitrator will hear only jurisdictional disputes. The arbitrator's fees and expenses will be allocated on the basis of one-half (1/2) to management and one-half (1/2) shared equally by the participating unions. However, if a party decides not to participate in the arbitration proceedings, the remaining parties will equally divide the arbitrator's fees and expenses. Scheduling of cases will be jointly performed by the parties from a list of dates submitted by the national arbitrator. Time frames will be the same as those designated for regional arbitration. The method of scheduling will normally be on a first-in/first-out basis.

Pursuant to Article 15 of the National Agreement, only disputes involving interpretive issues under the National Agreement which are of general application will be arbitrated at the national level.

Additionally, the national-level arbitrator may be invited to participate in an advisory capacity at National Committee meetings on items related to problems of consistency of regional-level awards or other problems mutually determined by the committee. The arbitrator may be empowered by mutual agreement of the parties to issue instructions to the regional-level arbitrators which were consistent with any mutual understanding on these issues reached as a result of committee discussions. Payment for such services will be made as for an actual arbitration hearing.

New or Consolidated Work

The following procedures shall apply to the opening of new or consolidated facilities.

Forty-five (45) calendar days prior to the opening of a new or consolidated facility, the members of the RDRC will be notified of the date on which activation will take place. Within ninety (90) calendar days of that activation, the LDRC designated for the facility will conduct an inventory of jurisdictional assignments at the facility and will attempt to resolve any disputes which arise from these discussions. If necessary, representatives of the RDRC will assist the local parties with on-site reviews.

Jurisdictional assignments shall not be changed solely on the basis of moving operation(s) into a new facility. If jurisdictional assignments existed in a previous facility, they shall be carried forward into the new facility except where operational changes as described below result in the reassignment from one craft to another.

In a new or consolidated facility, the jurisdictional assignment in the previous facilities must be considered by the LDRC in the determination mentioned above, in the event the consolidated operation(s) had a mixed practice in the previous installations.

The decision of the LDRC will be processed in accordance with the decision and appeals procedures previously outlined, including appeals to the higher levels of the process.

New Work

This section refers to implementation of RI-399 involving work which had not previously existed in the installation.

The procedures for activation of a new or consolidated facility shall apply to the assignment of new work to an installation. The standards contained in Section II.E of RI-399 shall apply in making the craft determinations.

BACKGROUND

The Arbitrator notes, preliminarily, that some of the following summary includes portions of the testimony of individuals who testified during the course of the first set of hearings concerning the issue of whether the revision by the USPS in August 2015 of the initial determination of jobs on the SPSS in June 2015 was improper, such that the revised determination, in fact or in effect, was null and void with the result that the determination of June 2015 was controlling. The following also includes summaries of the testimony of individuals who participated in the hearings on March 19 and 20, 2019, and on March 10, 2020, concerning the merits of the dispute over the initial determination in June 2015 by the USPS of the jobs on the SPSS, and of the August 2015 revised determination by the USPS and the subsequent award of the jobs pursuant to that revision.

Testimony of Patrick M. Devine,
USPS Manager, Contract Administration
NMPHU

Patrick M. Devine testified, during the initial hearings, that, at the time, he was the USPS Manager, Contract Administration – NPMHU, and Manager of Employee Workplace Programs. At the time of the matters at issue in 2015, Mr. Devine served as the Manager, Contract Administration – APWU.

Testimony of Mr. Devine
Re: Background of SPSS
Craft Determination

Mr. Devine testified, during the initial hearings, that, prior to issuing the SPSS Craft Determination, by letter dated June 1, 2015, the Parties, including, Ricky Dean, as the representative of the USPS, and representatives of the NPMHU and the APWU, scheduled a site visit in March 2015, to see the SPSS machine in operation but, because of inclement weather, the site visit was postponed until April 2015. The Unions thereafter submitted written statements of position on the staffing of the SPSS.

Craft Determination Letter

By the USPS of the
Small Parcel Sorter
System (SPSS)
Dated June 1, 2015

The USPS, by letter, dated June 1, 2015, from Patrick M. Devine, Manager, Contract Administration, to Paul V. Hogrogian, President, NPMHU, set forth the USPS' jurisdictional craft determination for operation of the Small Parcel Sorting System (SPSS). This letter states, in relevant part:

. . . On April 23 members of the RI-399 National Dispute Resolution Committee (NDRC) visited the West Valley Processing & Distribution Center (P&DC) to observe the SPSS in operation. By the enclosed letter dated April 28, the Postal Service asked the American Postal Workers Union (APWU) and the National Postal Mail Handlers Union (NPMHU) to provide input regarding which craft should be the primary craft for operation of the machine. The Postal Service received input from both unions by letter dated May 7.

The SPSS is designed to provide additional processing support for the growing package needs of small parcels weighing 20 pounds or less. As indicated in previous correspondence and the February 10 briefing provided to the unions, the Postal Service plans to deploy 26 SPSS machines, in addition to the 5 pilot test locations.

The standard configuration for the SPSS includes five (5) induction stations on one platform with 196 discharge chutes to wiretrainers, pallet boxes or spinner sack racks. Parcels are dumped onto incline belts leading to each induction station. The operator then singulates, faces and slides packages to the induction belt. There will be no keying operation associated with the SPSS. The system collects weight & dimensions of every package, and includes a Postal Furnished Equipment (PFE) Top-read camera, with OCR enhancement, to identify barcodes. Packages are discharged to the appropriate wiretrainers, sack or pallet box, and sweepers remove the containers for transfer to the appropriate dispatch area.

Recent enhancements to the pilot machine, as indicated in the enclosed April 28 follow up correspondence, include:

4. Larger carrier cell size – allowing larger packages to be processed;
5. OCR capability – providing improved address and barcode readability; and
6. VCS capability – providing remote coding capability through the REC site.

The duties performed in operation of the SPSS include:

- Retrieval of packages from a staging area
- Operating a container dumper and dumping packages onto incline belt
- Singulating/Feeding packages to induction belt
- Sweeping packages (removing full containers and replacing with empty containers)
- Transporting full containers to a staging area

The duties performed on the SPSS are similar to those performed on the Automated Package Processing System (APPS) and the Automated Parcel Bundle Sorter (APBS), with one distinct difference. On the APBS, the employees singulating and facing the mail also perform keying duties. Where keying is involved, the work is normally assigned to the Clerk Craft. However, the SPSS, with OCR and VCS capability, eliminates the need for any keying whatsoever. Therefore, the duties performed on the SPSS are most similar to those performed on the APPS, where no keying is involved.

After reviewing the equipment operation, carefully considering the input from the American Postal Workers Union, AFL-CIO and the National Postal Mail Handlers Union, and applying the principles of RI-399, the Postal Service has determined that all duties performed on the SPSS are most similar to the duties performed by a Mail Handler. Accordingly, the primary craft for all duties associated with the operation of the SPSS is the Mail Handler Craft.

The actual number of employees required to perform the duties associated with the SPSS at any time will be determined based on local configuration and operational needs. In the test sites where the SPSS is already in operation and clerk craft employees have been utilized for machine testing, assignment of the appropriate craft in accordance with this determination will be made as expeditiously as possible, but no later than 90 days from the date of this letter.

If you have any questions or concerns, please contact Ricky Dean at extension

* * *

Testimony of Mr. Devine
Re Events After the Issuance of
the SPSS Craft Determination
June 1 and 2, 2015

Mr. Devine testified that he issued the SPSS Craft Determination letter by fax to each of the Unions on the afternoon of Monday, June 1, 2015, between 4:00 p.m. and 5:00 p.m. According to Mr. Devine, during the weeks preceding the issuance of the SPSS Craft Determination, he had been engaged in negotiations with the APWU, which ended on about May 20, 2015. For the next two weeks, Mr. Devine and his staff were completing the drafting of documents related to those negotiations.

According to Mr. Devine, Mike Mlkar, the Manager of Field Labor Relations in the Chicago area, spoke to him about the SPSS Craft Determination which just had been issued:

And Mike came in and started talking about this letter. And he - - it was clear that he didn't agree with it. And so I started to explain to him the rationale behind the letter. And I said, well, hold on, let's have Ricky involved, because Ricky had drafted the letter for my signature. And then the three of us discussed it at length.

* * *

Letter From NPMHU National President
Hogrogian, to All NPMHU Local
Presidents, dated June 2, 2015

NPMHU National President Hogrogian and Thomas J. Branch, Manager National CAD, sent the following letter, dated June 2, 2015, concerning the USPS's Craft Determination for the SPSS, dated June 1, 2015. This letter states, in relevant part:

We are pleased to enclose a copy of a June 1, 2015 letter that sets forth the Postal Service's determination of craft jurisdiction for employees operating the Small Parcel Sorter System, which is currently deployed in five pilot test locations, and will be deployed shortly in twenty-six other facilities around the country. As set forth in the attached letter, the Postal Service has determined that "the primary craft for all duties associated with the operation of the SPSS is the Mail Handler Craft."

* * *

More details about this assignment and the SPSS are included in the attached letter, and will be discussed in future correspondence. We also plan to circulate, as promptly as possible, additional information about deployment locations, the timing of deployment, and the actual positions to be filled.

Should you have any questions about this letter or its implementation in any particular facility, please contact the National CAD. Please note that, as stated in the USPS letter, any SPSS machine that currently is utilizing clerk craft employees should be reassigned "as expeditiously as possible, but no later than 90 days from" June 1, 2015. If you are encountering resistance or opposition from management when implementing this letter, please contact the National CAD so that we can address particular implementation problems with postal headquarters.

* * *

Testimony of Mr. Devine
Re Events After the Issuance of

the SPSS Craft Determination
June 3, 2015

Mr. Devine testified that, on the morning of June 3, 2015, he met with Mr. Tulino, Mr. Dean, Alan Moore, USPS Manager, Contract Administration – National Association of Letter Carriers [NALC herein], and Allen Mohl, who previously had been in Mr. Devine’s position as Manager, Contract Administration – NPMHU. According to Mr. Devine, the discussion at the meeting was, as follows:

So Doug [Tulino] comes in and says we’re here to talk about your letter on this RI-399 matter. And I said, okay. He goes, there have been some questions raised about this letter, and I need you - - meaning myself [i.e., Mr. Devine] - - to explain to me what this letter is about, why it’s written this way, all that sort of thing.

And I noted that he was containing - - he was upset with me. And so I explained to him - - and what I explained to him is just basically following the text of the letter itself.

After I finished explaining to him - - as I said, Alan Moore and Allen Mohl were in the room talking. And they start talking about cases from the 1980’s, based upon their experience - - Alan Moore had handled RI-399 cases out in the central region for about ten years. And Alan Mohl was talking about his experience with RI-399.

And at that point, I started going through a summary of the more recent arbitration awards, including the two from Arbitrator Sharnoff. And then picking up beginning in 2004 with APPS forward.

* * *

According to Mr. Devine, although Mr. Tulino had referred to the SPSS Craft Determination which had issued on June 1, 2015, as “a mistake,” Mr. Tulino did not direct Mr. Devine to make a particular decision.

Testimony of Mr. Devine
Re Memo - Prior Craft Determinations
Dated June 3, 2015

Mr. Devine testified about an e-mail memorandum, dated June 3, 2015, Subject "Fwd: RI-399 Analysis to SPSS", which he had sent to Mr. Dean, Mr. Moore, and Mr. Mohl, following their discussion with Mr. Tulino. The memo states, in relevant part:

AUTOMATED PARCEL BUNDLE SORTER (APBS)

July 29, 2011 letter from Devine (attached) awarding work to a retrofitted SPBS primarily to mail handlers, giving facing and keying work to clerks.

* * *

This may provide the basis for revising the SPSS determination letter, giving (only) the facing work to clerks.

However, it may not be very efficient to have a clerk in a crew of mail handler because employees could not be fully rotated.

AUTOMATED PACKAGE PROCESSING SYSTEM (APPS)

June 2, 2004 John Dockins letter to APWU and NPMHU advising that the primary craft to perform activities associated with the APPS is the mail handler craft.

DISTRIBUTION

Zumas award dated July 14, 1986 on Article 1.5 dispute re award to clerks the mail processor position. He gave work on OCRs, recognize right of clerks to perform distribution. However, Zumas was guided by the fact that 088-089 OCR Machine distribution of all classes of mail is specifically assigned to clerks under the June 15, 1979 RI-399 Primary Craft Designations. For the SPSS: no specific reference in RI-399.

DUTIES NOW PERFORMED BY A MACHINE

Snow award dated September 17, 2001 in another Article 1.5 case, upheld assignment of Carrier Sequence Bar Code Sorting (CSBCS) to clerks. NALC argued that casing of mail is letter carrier work. Snow found that clerks operate machines while letter carriers

don't. He also noted that the clerks were not performing manual casing, which would have been a violation For SPSS: mail handlers operate similar machines (APPS). Also, the distribution by machine, not manual.

SMALL PARCEL BUNDLE SORTER (SPBS)

Sharnoff award dated September 7, 2009 upheld the assignment of dedicated sweeping to the mail handlers on the Small Parcel and Bundle Sorter (SPBS). APWU argued it should have the entire machine, and that sweeping was part of the "allied duties" that are "integral part of the distribution function" on the machine where the clerks were keying. Sharnoff relied on the fact that the same assignments were made on the Mechanized Parcel Sorter (where clerks perform distribution by keying for no more than 2 hours and mail handlers do dumping and sweeping). Sharnoff specifically rejected the APWU's letter sorting machine (LSM) and optical character reader (OCR) "allied duties" argument, finding there was no need for the additional sweeping to be incorporated into the rotation system.

* * *

Mr. Devine testified that, later on June 3, 2015, he discussed these awards with Mr. Dean, Mr. Moore and Mr. Mohl:

. . . What I was talking about was here were more recent assignments. So we talked about the APBS, which I don't think it's been explained to the arbitrator. But the APBS is an automated version of the small parcel and bundle sorter So the background here is I sent this to these guys talking about first the assignments the then [sic] finally a couple of the cases that were decided since the 1980s.

* * *

According to Mr. Devine, Mr. Tulino, in his discussion with Mr. Devine and the others on June 3, 2015, did not make any reference to the APWU in the context of the decision to award the work. Mr. Devine testified that neither he, nor Mr. Tulino, had any contact with the APWU between June 1, and August 7, 2015.

On cross-examination by the NPMHU, Mr. Devine stated that Mr. Moore had had experience with the RI-399 process but he never served on the NDRC. Mr. Moore had had experience with RI-399 cases as a representative of the APWU but, after he was employed by the USPS in Labor Relations, he also participated, as an advocate for the USPS, in “a significant regional award from Arbitrator McCallister somewhere in Minnesota.” Mr. Devine was not aware of any relationship between Mr. Moore and APWU representatives with the NDRC, such as Ron Suslak or Tom Meier. Nor was Mr. Devine aware if Mr. Moore had had any conversations about the SPSS Craft Determination with anyone in the APWU during the June to August 2015 period. Mr. Devine noted that, at the time, Mr. Mohl was the Manager, Contract Administration – NPMHU. Mr. Devine understood that Mr. Mohl had attended some of the NDRC meetings. Mr. Devine stated that Mr. Mohl had been an APWU Local President in Fort Lauderdale, Florida, in which position he had handled RI-399 “local arbitrations.” Mr. Devine was not aware whether Mr. Mohl had had any contact with any APWU official during the period June to August 2015. [The Arbitrator notes that Mr. Reimer, attorney for the USPS, represented that, pursuant to the NPMHU’s request for information in this proceeding, he had checked with Mr. Moore and with Mr. Mohl and neither had had any written communications, including text messages and e-mails, during this period with the APWU concerning the SPSS Craft Determination.] Mr. Devine stated that he had no knowledge as to why Mr. Tulino had asked Mr. Moore to participate in the SPSS Craft Determination reconsideration. Mr. Devine stated that neither he nor Mr. Dean had discussed the SPSS Craft Determination with Mr. Moore prior to the meeting on June 3, 2015.

Mr. Devine testified, on cross-examination by the NPMHU, that Mr. Mlkar was the first person in the USPS management to question the initial SPSS Craft Determination. Mr. Devine did not know why Mr. Tulino did not include Mr. Mlkar in the June 3, 2015, meeting. Mr. Devine did not have any further discussions with Mr. Mlkar about the SPSS Craft Determination after Mr. Mlkar raised questions about the result and was not aware whether any of the other three, Mr. Dean, Mr. Moore and Mr. Mohl, had any such contact.

Mr. Devine testified, on cross-examination by the NPMHU, that, during the meeting with on June 3, 2015, Mr. Tulino did not mention that APWU President Diamondstein was upset with the craft determination issued on June 1, 2015, nor did he mention the APWU except in the following context:

The only comment that was made about the union - - and it was both unions - - was that if we had made a mistake - - again, the word “mistake” - - then that would impact our credibility with both unions, as well as the bargaining units themselves.

* * *

Mr. Devine added that, Mr. Tulino “was clear to me in making that statement that this was - - it was a very serious matter if, indeed, a mistake had been made.”

Mr. Devine testified, on cross-examination by the NPMHU, that, with regard to Mr. Mohl, who was the Manager of the Labor Relations staff of the USPS for the NPMHU, there was no discussion at the time about notifying the NPMHU about the potential mistake or the reconsideration. According to Mr. Devine, “No. Our focus was very - - I don’t want to say singular, which suggests something is off. But we had a single task, and that was figuring out the correct assignment, whether the first letter was wrong and then if so how to correct it.” Mr. Devine testified that he had no knowledge during the period from June 1, to August 7, 2015, with regard to how the review was being characterized by the NPMHU.

Testimony of Mr. Devine
Re: Consideration of Changes
To the June 1, 2015 SPSS Craft
Determination Between June 3,
And August 7, 2015

Mr. Devine testified that, between June 3, 2015, and August 7, 2015, when the revised SPSS Craft Determination issued, he and Mr. Dean, Mr. Moore and Mr. Mohl, took the following actions:

Well, basically we looked at every single RI-399 arbitration award. We also looked at some of the - - Article 1-5, which is the contractual provision for new positions.

We looked at - - and several of them were looked at yesterday. And then we looked at the assignments that had taken

place since, again, since the APPS machine in 2004, which were assignments. They'd not been assigned or overturned by an arbitrator, but they were assignments.

And we argued and bickered back and forth. But the thing that was noted was as going to the merits. But we noted some shifts in the patters of the assignments, which is consistent with what we saw in the award.

And then what happened is Allen Mohl asked us if we needed to take a second look at the APPS machine. So he and Ricky went and visited the APPS. There's an APPS machine in several different places around here, including Dulles, Virginia. They went out and came back.

And at that point, the consensus among the four of us is this new SPSS was more like the APBS that it was the APPS. So that meant we were going to recommend to Mr. Tulido [sic] that we change the letter. Despite my earlier resistance, I was on board with that.

And we decided and told Doug [Tolino], sent him eventually the letter which, if memory serves, is probably the document that was created by Rickey Dean, which was in that e-mail you showed me with the bcc sheet earlier.

* * *

Mr. Devine testified that they decided to indicate in the heading of the document that they sent to Mr. Tulino that all four, Mr. Devine, Mr. Dean, Mr. Moore and Mr. Mohl, were in agreement about the modification of the June 1, 2015, SPSS Craft Determination. Mr. Devine, Mr. Moore and Mr. Dean each testified that he had not spoken to any representatives of the APWU about the SPSS Craft Determination between June 1, and August 7, 2015.

Letter, From Mr. Devine, Manager,
Contract Administration (APWU)
to APWU President Dimondstein,
dated August 7, 2015

Mr. Devine, USPS Manager, Contract Administration (APWU), sent the following letter, dated August 7, 2015, to Mark Dimondstein, National President, APWU. An identical letter also was sent by Mr. Devine to Mr. Hogrogian, National NPMHU President. Mr. Devine's letter to each respective Union President states, in relevant part:

This replaces and supersedes our June 1 letter regarding the craft determination for operation of the Small Parcel Sorting System (SPSS). After further review and consideration of the equipment operation, arbitral history and prior jurisdictional craft determinations, and again carefully considering the input from the American Postal Workers Union, AFL-CIO and the National Postal Mail Handlers Union, and applying the principles of RI-399, the Postal Service has determined that a modification to the June 1 SPSS craft determination is necessary.

We have determined that the hands-on induction, including the singulating/separating and facing of individual packages, on the five induction stations of the SPSS is similar to the induction stations on both the Small Parcel Bundle Sorter (SPBS) and the Automated Package Processing System (APBS), which are staffed with mail processing clerk craft employees.

The primary craft designation for the performance of duties for operation of the SPSS is as follows:

- | | |
|--|--------------------|
| 1. Retrieval of packages from a staging area | Mail Handler Craft |
| 2. Operating a container dumper and dumping packages onto incline belt | Mail Handler Craft |
| 3. Singulating/separating packages & facing/feeding packages onto induction belt | Clerk Craft |
| 4. *Sweeping packages (removing full containers and replacing with empty containers) | Mail Handler Craft |
| 5. Transporting full containers to a staging area | Mail Handler Craft |

*Clerk craft employees assigned to the induction stations will do so before rotating to other duties. Clerk craft employees who rotate to another work assignment will perform sweeping duties on the SPSS. Personnel assigned to perform sweeping duties in

addition to the minimum number required to implement the subject rotation system will be from the primary craft (mail handler).

The actual number of employees required to perform duties associated with the SPSS at any time will be determined by management based on local configuration and operational needs. In the test sites where the SPSS is already in operation, assignment of the appropriate craft in accordance with this determination will be made as expeditiously as possible, but no later than 90 days from the date of this letter.

* * *

rotation of employees onto the sweeping function of the SPSS. These functions were assigned to the clerk craft. The revised craft determination included in the letter of August 7, 2015 is inconsistent with the principles of Regional Instruction No. 399, and is hereby appealed to National Arbitration in accordance with the RI-399 Dispute Resolution Procedures.

The NPMHU position on the SPSS craft determination was initially set forth in its position statement of May 7, 2015 from NPMHU General Counsel Bruce Lerner, and has been supplemented by prior and subsequent oral communications.

This matter should be scheduled for National arbitration as promptly as possible.

* * *

Testimony Regarding the Revision
Of the Determination in August 2015
Hearings on the Merits 2019

Rickey Dean testified, on behalf the USPS, that, at the time of the consideration by the USPS of the assignments of Craft jobs on the SPSS in 2015, he was a Labor Relations Specialist in the Contract Administration Group dealing with the APWU. At the time of the first set of hearings in this case, Mr. Dean was detailed as the Acting

Manager, Contract Administration Headquarters, Labor Relations, dealing with the APWU contract. At the time of the hearings in March and May, 2019, Mr. Dean was the Manager, Contract Administration, Contract Administration for the APWU contract. Mr. Dean previously had testified in the earlier proceeding that, he had participated in a site visit to the USPS facility in Phoenix, Arizona. Mr. Dean testified, as follows regarding that visit. "Well, we conducted a site visit under - - as the NDRC as we normally do when we're looking at possible craft determination. . . . We invited representatives from both the APWU and the National mail handlers union to accompany us on that site visit. It was the West Valley facility in Phoenix. John Prokity happened to be there at the time, so he accompanied us as well when we did a tour of the machine, watched the machine in operation. . . . And then normally what happens is after we do this site visit, we will solicit input from both of the unions as to what craft determinations they think should be made."

According to Mr. Dean, "That facility had an SPSS that was up and fully operational, running live mail, and - - and we thought we would get the best look at the machine there." Mr. Dean testified: "Well, as I said, we looked at the machine, and then when we came back, we solicited input from the two unions on what they thought the craft determinations should be, and then we - - we took a look at their input. We carefully considered the RI-399 principles, and we came to the conclusion, which is contained in our June 1st decision letter." According to Mr. Dean, "At that time we had decided that the primary craft for the operation of the SPSS would be the mail handlers union. . . . And that was primarily based on our visit to the West Valley facility. And probably the thing that stuck out, at least in my mind at the time, what entered into our initial discussion."

Mr. Dean testified that he did the first draft of the decision letter and had discussions with Patrick Devine, "who was ultimately the decision maker and who signed the letter. But we certainly discussed the input from the unions. We discussed the operation of the machine. We discussed, at the time, we felt that it was very similar to the APPS and that the mail handlers had the jurisdiction over that machine."

Mr. Dean testified that, shortly after they had issued the determination on June 1, 2015, "a couple of postal managers, Mike

Mlkar, in particular, who had approached Patrick regarding that decision and indicating that he thought we may have erred in that decision.” Mr. Dean testified that, about two or three days later, USPS Vice President for Labor Relations Doug Tulino held a meeting attended by Mr. Devine, Mr. Dean, Alan Moore, Manager of Labor Relations Policy and Contract Administrator for the National Association of Letter Carriers [NALC], Mr Mklar, and Allen Mohl, Manager of Contract Administration for the NPMHU contract.

According to Mr. Dean, “Mr. Tulino, asked - - I remember he asked Patrick specifically about the decision letter and how he had arrived at that decision. And he said he wanted us to. - - to take a second look at the decision. He wanted us to go back and particularly pay attention to previous determinations on some of the other machines, look at arbitration history, if necessary, and - - and - - and do a second look just to confirm and make sure that our decision was correct.” Mr. Dean testified that Mr. Tulino did not indicate one view or another about the correctness of the decision.

Mr. Dean testified that, at that point, he and Mr. Devine looked at several determinations “. . . for the. . . most recent machines in the last several years.” Mr. Dean testified, “We looked at - - we went back as far as looking at the OCR, but then we looked at the SPBS in particular, we looked at the APPS machine in particular - - and these are kind of in a chronologic order - - and then we looked at the APBS in particular. . . . Those - - those were the ones that we looked at specifically to see how those craft determinations were made.”

According to Mr. Dean: “Well, we looked at what went into the craft determinations and of the various machines and what the RI-399 principles were applied and - - and during that time, I need to point out also that we had decided that since, you know, our first decision letter, we were basing at least part of that decision on what we believed that the SPSS was similar to the APPS machine.” Mr. Dean testified that someone suggested that they take a “second look” at the APPS machine, so he and Allen Mohl, the Contract Manager for the NPMHU contract, went to see an operating APPS in a facility in Dulles, in Northern Virginia.

Mr. Dean testified: “Well, we take a look at the APPS, and I think it was - - the thing that stood out most in our mind then was how the

induction of the packages onto that machine are totally performed by the machine itself. . . . There's no human intervention, no employee involved. The mail handlers bring the containers with the packages over to the machine - - the container, dumper, or loader, or whatever it's called, it dumps those packages onto an incline belt that brings the packages up to the induction station, and then it goes on into [sic] machine. . . . The machine itself does the singulating [sic, singulating] and - - and - - and sorts the packages. And so that - - that was striking to us. . . . There is a - - a - - one employee involved in facing, redirecting packages through the machine that are rejected. Those that don't read. But what we also determined was that that employee is only dealing with about 10 to 15 percent of the total packages that go through the machine. So it's a de minimus amount of work, and we - - we determined that it was right that that entire machine was a mail handler function because that amount of work couldn't be officially separated - - that little bit of facing couldn't be officially separated from the entire function of the machine." Mr. Dean agreed that the USPS already had made the job determination for the APPS.

Mr. Dean testified that, after that they decided to review the SPBS, which had keying stations which was a Clerk function "which is critical to the distribution function of the , , , machine itself," and the APBS, which "was a retrofit of the SPBS, which added the OCR capability to the machine", which reduced the keying from five keying stations on the SPBS to one keying station on the APBS, which "was utilized as needed." Mr. Dean added, "But what was required then was for the induction employee to singular and face the package on the induction belt in such a way that it enabled the machine to continue the distribution function."

Mr. Dean testified: "So in essence what we believed then was that this induction employee was actually a part of the distribution function because they were putting the packages on the machine in a way that would allow the machine to - - to read the packages and do the actual sortation." Mr. Dean testified, with regard to the determination of Craft jobs on the APBS: ". . . The Postal Service had determined that the singulating or facing of the packages onto the machine in absence of the keying was still a clerk function. . . . The dumping was determined to be a mail handler function as was the sweeping."

Mr. Dean testified that he, Mr. Devine, Mr. Mohl, and Mr. Milkar discussed the SPBS and the APBS, and then "looked again at the SPSS,

and we determined that what that employee does on inducting in the SPSS, is essentially the same as done on the APBS - - the singulating and the facing in order to enable the machine to do the - - the distribution function or the sorting of the packages.” According to Mr. Dean: “The four of us in that so-called committee, we discussed that. We talked about Allen Mohl. And - - my visit to Dulles looking at the APPS. We discussed how we looked at the SPBS and APBS and what the inducting employee was actually doing. . . . And we decided then that the operation of the SPSS, in particular the induction employee was more properly a distribution function that belongs to the clerk craft and that’s what precipitated the August 7th decision. Of course, we first went back to Mr. Tulino with our recommendation.” Mr. Dean testified that their “recommendation” to Mr. Tulino was unanimous.

Mr. Dean testified that he made the initial draft of the letter of August 7, 2015. Mr. Dean testified with regard to the craft determination for each function, as set forth in that letter: retrieval of packages to the Mail Handlers, “historically under the RI-399 process, that has been a mail handler function; operating a container dumper and dumping packages onto the incline belt to the Mail Handlers, “consistent with our previous decisions”; singulating/separating packages and facing/feeding packages onto an induction belt to the Clerks, “the change that was brought about in the August 7th decision. We gave that to the clerk craft at that time because we had determined it was more like the APBS, and not the APPS matching and that the - - the work being performed by that induction employee was most similar to the designation function.”; sweeping packages, removing full containers and replacing with empty containers to the Mail Handlers as the Primary Craft, as a traditional function of that Craft, with rotational relief for the Clerks doing the induction work; transporting full containers to a staging area to the Mail Handlers.

Patrick Devine, USPS Manager of Contract Administration for the NPMHU contract, testified on recall in the NPMHU for rebuttal, that he has been involved in RI-399 matters for the USPS since 2003 and he agreed that, as of the time he worked on the SPSS determination in December 2015, he had extensive experience with RI-399 matters. Mr. Devine testified that Mr. Dean served as his subordinate since about August 2011. Mr. Devine agreed that, as of December 2015, he had more experience with RI-399 matters than Mr. Dean. Mr. Devine testified, with regard to the first of the two Craft determinations

concerning the SPSS machine, in June 2015, he was aware of the process of drafting such determinations for the USPS and he was aware of the importance of such determinations to the Craft Unions involved. He agreed that he tried to be as accurate as possible in drafting the determinations and would not issue a determination that he thought might be incorrect.

Mr. Devine testified, with regard to the June 2015 SPSS determination, that both the NPMHU and the APWU submitted position statements setting forth their respective views on to which Craft the work should be awarded. Mr. Devine testified that he understood that each Union “gave everything they had in those papers to try to convince [him] to rule in their favor” Mr. Devine testified that he also reviewed relevant jurisdictional dispute Arbitration awards and jurisdictional determinations that had not resulted in Arbitration. Mr. Devine testified that the only other source he would consider were “any relevant documents from operations in terms of how the machine operates and the functions of each one of the positions on the machine itself. . . .” Mr. Devine agreed that he carefully had considered all of these in reaching the determination issued on June 1, 2015, and he was certain that the decision issued was the right one. Mr. Devine agreed that, if he had not been certain he would not have issued it. Mr. Devine agreed that that determination had awarded all of the positions on the SPSS to the Mail Handler Craft.

Mr. Devine testified, with regard to the August 7, 2015 SPSS determination letter which he had drafted, that, after he had been called in by Mr. Tulino to reexamine the initial determination, he had reviewed it and had changed the award on August 7, 2015, insofar as one of the positions which had been awarded to the Mail Handler Craft instead was awarded to the Clerk Craft. That position involved the duties of singulating and facing the packages on the belt. Mr. Devine agreed that the function itself had not changed since the issuance of the June 1st determination letter. Mr. Devine agreed that he had sent an e-mail, “RI-399 Analysis - SPSS,” dated June 3, 2015, to Mr. Tulino, Mr. Dean, Mr. Moore and Mr. Mohl, in which Mr. Devine had stated: “I think the SPSS should stay as written.” Mr. Devine agreed that he also had stated in that e-mail that: “The more recent awards from Sharnoff and Snow have diminished the bright line in the Zumas award [on the OCR].” Mr. Devine testified, in this regard: “My conclusion at that time that I sent that e-mail, which included Mr. Tulino, was that there had not been enough

evidence presented to me to disturb the decision and award that was made in the June 1st letter.” Mr. Devine testified that he was not aware whether Mr. Tulino, Mr. Moore or Mr. Mohl, had had any conversations about the SPSS with any other individuals between June 1st and August 7th, 2015. Mr. Devine testified that there were several times during that period that he was called into Mr. Tulino’s office to discuss the SPSS determination.

Mr. Devine testified, in response to questions by the USPS, that Mr. Tulino had not indicated in that initial meeting what result he wanted reached after reconsidering the June 1st determination. Mr. Devine also testified that Mr. Tulino, between that first meeting and the issuance of the revised determination on August 7th, did not indicate in what direction he wanted the determination to go. After Mr. Devine reviewed the testimony of Mr. Dean at the hearing on March 20, 2019, to the effect that they had decided that the “induction employee was more properly a distribution function that belonged to the clerk craft, and that’s what precipitated the August 7th decision,” after meeting again with Mr. Tulino with that recommendation. Mr. Dean also had testified that, at that time, the proposed revision was unanimous. Mr. Devine agreed with Mr. Dean’s description. Mr. Devine, also was asked about the OCR decision of Arbitrator Zumas, which machine handles letters rather than parcels, as a distribution function which specifically was included in RI-399 as being performed by Clerks but now was being performed by the machine and, for that reason, Arbitrator Zumas had awarded the work of operating the machine to the Clerks. Mr. Devine agreed with that description.

Mr. Devine testified, in response to questions by the APWU, that Mr. Mlkar, at the time in question, was a USPS Manager at headquarters, in charge of contract compliance. Mr. Devine agreed that, on the morning after the issuance of the June 1st determination letter, Mr. Mlkar told Mr. Devine and Mr. Dean that he disagreed with it. Mr. Devine testified that he had not been on the field trip to see the APPS machine before that decision was made because he had not been in Labor Relations at that time. Mr. Devine also had not been on the field trip to see the operation of the APPS between the June 1st and August 7th determinations. Mr. Devine testified that Mr. Dean and Mr. Mohl had been on those trips.

Testimony Regarding Sorting Machines

The following summarizes the testimony at the hearings on the merits of Kevin Fletcher, NPMHU, Pat Vasquez, APWU, Ron Suslak, APWU, and John Prokity, USPS.

Kevin Fletcher testified on behalf of the NPMHU that currently he works as the NPMHU's National CAD Representative and serves as that Union's National Dispute Resolution Committee for RI-399 matters. Mr. Fletcher, among previous assignments, had served as a Local Union President, Local 305, covering a several-state area and as the NPMHU's member of a Regional Dispute Resolution Committee for the Eastern area.

Pat Vasquez who testified on behalf of the APWU, currently serves as the Clerk Craft Director for the APWU's Local Union in Flushing, Queens, New York. Currently, Mr. Vasquez is employed by the USPS as an SPSS Operator. Mr. Vasquez previously had performed work as a manual distribution Clerk, as an FSM Operator, as an OCR-BCS Operator and then as an SPBS Operator. Mr. Vasquez

Ron Suslak, who testified on behalf of the APWU, currently serves as the President of the Queens area Local in New York, APWU Regional Coordinator, Vice President of the New York State APW and a Representative on the National RI-399 Dispute Resolution Committee at the APWU's headquarters. Mr. Suslak also had served on the Regional Dispute Resolution Committee which reviewed appeals from the Local Dispute Resolution Committee. If cases were not resolved at the Regional level, the dispute could be appealed to arbitration at the Regional level, at which Mr. Suslak presented cases or served as a witness. Mr. Suslak also worked on a project to review all of the jurisdictional disputes pending at the Regional level. The committee also worked on a process to formulate an inventory of jurisdictional assignments upon which all three Parties could agree. Mr. Suslak testified that the function of the National Dispute Resolution Committee, on which he has served since 2014, is to take a look at jurisdictional determinations made by the National USPS and provide position papers as to why the work should be assigned to employees of one or the other Craft and deal with disputes filed at the National level or disputes filed at the local or regional levels.

According to Mr. Suslak, the National Committee also worked on the “resetting and rewriting this dispute resolution process.” Mr. Suslak testified that the Parties at the National level finally came up with an agreement on the status quo in the Regional jurisdictional disputes in 15 of 17 pending cases, which both Unions agreed to withdraw without prejudice. The USPS agreed, in exchange for the withdrawals of the pending cases to a financial payment of \$14.5 million for each Craft to distribute to its members. The Parties reached agreement for a revised RI-399 Dispute Resolution Procedure on June 26, 2018. The two jurisdictional disputes preserved were: the Advanced Face and Cancel System; and the SPSS [the instant grievances], which involved one grievance filed by the NPMHU and a grievance filed by the APWU.

John Prokity, who testified on behalf of the USPS, was assigned, at the time the USPS made the determination of jobs on the SPSS, to the USPS’s World Class Package Platform Group “to develop strategies for the growing package volume in the Postal Service. My portion of that was to work on . . . identifying and deploying a sorter that could be obtained quickly and deployed quickly because package growth was happening so quickly. Mr. Prokity also had served as a Chairperson of an RI-399 committee while he was a manager of in-plant support and a plant manager.

PSM

Mr. Suslak testified for the APWU, with regard to the Package Sorter Machine - PSM, that “It was a parcel sorter machine. And actually, the facility that I worked in back in the ‘70s actually had this PSM, and it really was a simple parcel sorting machine. There were two clerks up on a station. One clerk would actually - - the mail would come up - - after it was dumped into the system, the mail would come up and one clerk would face the mail, almost like a center giving it to the quarterback. You would face the mail and there was a keyed right next to them. And he would face it so the keyed - - the address was face up and the keyed would put in a key code, and it just went on its way and went down to runouts and there were clerks at the bottom. And the clerks would sort it a little further into the parcels - - into the sacks, and they would tie it out and they were throw it on a takeaway belt they used to call it, and go into the system that way. That was the first

machine that I'm aware of, parcel sorter machine on 105 operation. . . .
And then of course the '88 I guess the SPBS came around"

Mr. Suslak testified, on cross-examination by the NPMHU, with regard to the assignment of Clerks on the PSM: "I said there would be two clerks usually up on a keying station. And one would face it for the clerk that would key it and they would rotate. And then the mail, after it was keyed, it would come down a runout. And in those runouts they had a series of racks set up, and there were clerks in there that would sort them even further into these racks." Mr. Suslak testified: "The PSM, my experience with it was around 19 - - - it was actually in a facility I worked in around 1981, this machine, 1980, 1981. I assume it had to be come in the late '70s, because I don't really [sic] there was a new machine being developed then. But that's my first experience with that parcel sorting machine, and it was called PSM. And it was at the AMC in New York. And they had it at several, I think, bulk mail centers might have had it."

Mr. Prokity testified for the USPS, with regard to the Package Sorter Machine - PSM, with reference to a modern PSM, that they were designed for bigger packages, it takes packages up to 27 inches long, and 17 - 18 inches wide. According to Mr. Prokity: "But what this actually has is it actually has both parts of what we have on our other sorters. It actually has an SSIU on one side of it and induction stations on the other side of it. So on this machine mail handlers dump the mail, it comes up the slides, it goes through the SSIU, and is either inducted. - - if it's not read it can come over here on the induction station, and clerks inducted the mail into the PSM from the induction station. And they are able to both scan and key. Sweeping is done by clerks on rotation but mainly mail handlers. And a lot of the PSMs are very big machines. They can have up to 300, 400 actual runouts".

Small Parcel and Bundle Sorter - SPBS

Mr. Fletcher, testified for the NPMHU that the work on the Small Parcel and Bundle Sorter - SPBS, ". . . is assigned primarily - - the craft determination says the mail handlers are the primary craft. Normally, the machines are set up with four to six keying stations. Those keying stations were assigned to the clerk craft. There was also an asterisk. - -

well, the sweeping duties, the dumping and pulling the containers were all assigned to the mail handler craft as part of dealing with a rotation with the SPBS keyers, the clerk keyers. They were allowed to sweep to make the rotation with the keyers. The mail handlers were the primary craft to sweep. And if it took more sweepers than were needed to make the rotation, they would come from the primary craft, which was the mail handlers." Mr. Fletcher testified, with regard to the keying work performed by the Clerks: "The keyers at my facility were setting on a stool. When a bundle or parcel come up to them, their key station, they would look at it, they would key in a ZIP code or something or other, and either they would either put it onto the belt in front of them or it would kick out itself." Mr. Fletcher testified that, when they first received the SPBS at his facility there were four key stations, with a dumping section or area for each keying station. The mail was dumped into a hopper and then went on to the keyer. Mr. Fletcher testified that, between the hopper and the keyer, if pieces were too big or not machinable, they would be pulled out. Subsequently, the operation was modified by adding a wiretainer which the Mail Handler loaded, shut the doors, raise a bar and then dump the container. The parcels would end on a conveyor belt where another Mail Handler was stationed, who would either rake the boxes down onto the belt and then pull out pieces or cull parcels that were too large or non-machinable. These parcels were placed in a separate container to be worked somewhere else in the facility. The remaining parcels would continue on a conveyor, up an incline to the Clerks at the keying stations.

Mr. Fletcher testified, with regard to the sweeping function on the SPBS: "The sweeping was done on two sides of the machine. The mail would go down the conveyor and come out both sides into containers. Those containers would - - could be their sacks, APCs - - which are like wire cages - - boxes, and so forth. The mail would drop into those containers based on what was keyed by the clerk employee. And once they were full, the sweeper would pull those boxes, sacks, et cetera, off and into a staging area and replace with something - - an empty container.

Mr. Fletcher, on cross-examination by the APWU, testified regarding keying and singulating on the SBPS: "The piece comes to them [the Clerk], they would key it, and they would put it onto the belt, if that's what you want to call it, singulating." Mr. Fletcher agreed that, after the Mail Handler employee dumps the mail on a belt which carries

the mail to the Clerk, the Clerk picks up one piece of mail, which constitutes "singulating," which piece thereby is designated as the piece to be processed. Mr. Fletcher added, "I really take singulating being that we're taking it and we're putting it onto a square on this machine, and it's going. All you're doing is picking it up and sending it down." Mr. Fletcher agreed that the Clerk also performed "facing" of the piece.

Mr. Suslak testified, for the APWU, that the SPBS came into use in 1988. Mr. Suslak testified, with regard to how the mail reaches the keyer on the SPBS, "It's dumped - - the mail handlers would dump it in." Mr. Suslak testified, with regard to the keying function on the SPBS: "The clerk was at the keying station. There were anywhere from four to six keying stations going on and, of course, the amount of stations that were being operated, that would actually impact the amount of sweepers you had because I think it was up to four stations. You use two sweepers in a rotation and then five and six - - if you have five or six stations, you have three sweepers in a - - three clerk sweepers in a rotation. And the clerks, the mail would come up. They's pull it off the belt. You know, they'd face - - they'd position it and they would put in a key code and push it on its way." With regard to "positioning" the mail, Mr. Suslak testified, "They pick up the parcel and they would put it right down in front of them, okay, on a belt, and they would put in a key code."

Mr. Prokity testified, for the USPS, that the first type of package sorting machine used by the USPS was the Small Parcel and Bundle Sorter - SPBS, in the 1980s. According to Mr. Prokity: "It was a configurable machine. In this case you have four incline conveyors and an induction station, four induction stations. "In this case it's a single backbone, so it doesn't rotate around like the SPSS. And then you have a number of outputs. In this case this drawing shows 50 on either side. So this is a hundred induct machine. It has effectively the same sections of an SPSS, which is the incline conveyors, the induct station, a central backbone, and the chutes come out."

Mr. Prokity testified with regard to how the SPBS differed from the SPSS (at issue herein): "The SPBS was a keying only. At the time it had a key station and there would be a sort program in, and they could either do three-digit or five-digit keying using memory codes. I will say that in a lot of cases they would add some sort of a dumper here just like we

have on the SPSS.” According to Mr. Prokity, the dumping and sweeping functions on the SPBS were the same as on the SPSS: “On the SPBS mail handlers dumped, clerks keyed and helped sweep in rotation. The remainder of the sweepers are mail handlers.”

Automated Parcel and Bundle Sorter - APBS

Mr. Fletcher testified, for the NPMHU, with regard to the Automated Parcel and Bundle Sorter - APBS, had four keying stations. According to Mr. Fletcher: “They reduced the keying stations to normally one, and the other stations, all they did was induct. It read automatically the barcode or the address.” Mr. Fletcher testified that, when the job determination by the USPS issued, the NPMHU filed a grievance “. . . because they had taken the keying function away and went to facing and induction that it was more akin to mail handling craft work.” The job jurisdiction dispute concerning the APBS was resolved by the Parties in the updated RI-399 MOU of June 2018. Mr. Fletcher described the sweeping function on the APBS as the same as he described on the SPBS.

Mr. Suslak testified, for the APWU, that the NPMHU - as part of the Revised RI-399 Dispute Resolution Procedure, dated June 26, 2018 - agreed to withdraw the pending jurisdictional dispute concerning the APBS, without prejudice. Mr. Suslak testified that “. . . in 2011 they took that SPBS and they actually retrofitted it [sic, it] into an APBS. And literally all they did was put scanning units on. It was the same setup, and now you didn’t even have to key on it for the most part. That was the intent of the service was to do away with the keying and just have an induction there, and it would be scanned automatically. And it was the same machine. It was retrofit that way. And they had - - usually they left maybe one keyed for mis-septs and things that couldn’t be keyed.” Mr. Suslak testified that, after the APBS was retrofitted as the SPBS, “Well, the clerk takes the parcel. It gets inducted by the mail handlers through the loading system that was described earlier. It comes down a slide. They pull the mail out and they kind of face it, singular it right on the belt, and it goes on its way, assuming they are not keying. Eighty to 90 percent of the mail that I’m familiar with is usually just inducted. They are not using keyers. . . . Got to place it so the scanner would be able to identify it. . . . Well, I imagine it would be faced up. The scanner

is right on top.” Mr. Suslak testified that he had not worked on the APBS.”

Mr. Prokity testified, for the USPS, that the Automated Parcel and Bundle Sorter - APBS, was modified for scanning. “When it became the automated package and bundle sorter, an overhead camera was added, like we have on the SPSS, and the induction changed to being able to just manually face and induct or orient and induct under the OCR. And then the OCR BCR reader camera would add to the sort.” Mr. Prokity testified that the APBS had keying stations: “In fact, there’s a direct feed to this keying station, but the keying stations on some of the stations were available.”

Mr. Prokitty testified that the APBS “was also modified with the loose mail system so that they could dump, the mail pieces would come up these incline conveyors and then automatically go down to the induction stations. What this allowed, instead of having an individual person dumping on each induction station, it allowed us to centralize the dumping function here and move up.” According to Mr. Prokity, the original APBS had an individual person on each station like the SPSS now. The dumping function remained with the Mail Handlers, the induction function remained with the Clerks and the sweeping included Clerks, for rotational purposes, along with the Mail Handlers.

Automated Parcel Post System - APPS

Mr. Fletcher testified for the NPMHU with respect to the Automated Parcel Post System - APPS, which solely was staffed by Mail Handler Craft employees. According to Mr. Fletcher: “They would. - - they would obtain the mail, set the machine up with the containers around the machine. As I said, they would retrieve the mail from the staging area . . . They would dump it onto. - - they would use a container dumper to dump it onto a conveyor. The mail would go up a conveyor where it would be singulated into the machine.” Mr. Fletcher testified: “There’s an employee on a raised platform somewhere after the dumping station that dealt with rejects, and that was a mail handler craft employee. Pieces that would not be handled by the machine originally would go in a reject area. It would come back to this mail handler who was doing the rejects, who would pick up the piece, and then they would singular.

They would stick it where. - - set it up right where it needed to be so it could be read by the cameras or what have you. They put it on the machine, and it would be inducted. . . . They had to face it to get it to where the machine would read it.” There was no keying. The Mail Handler Craft employees also performed all of the sweeping.

Mr. Fletcher described the sweeping function on the APPS, as follows: “The APPS is more or less the same way [as the SPBS]. The mail would drop into containers and be pulled back. At that point on the APPS, the mail handler would do the sweeping as there were no clerks assigned to the machine.

Mr. Fletcher, on cross-examination by the APWU, described the performance of “facing” by a Mail Handler on the APPS: “It’s my understanding that once the mail was dumped on the machine, the APPS, it would go - - it would be inducted into the machine. I don’t know that the mail handler was facing it at that point. Once it - - if it went to the machine and the machine rejected it, then it would come back to the reject area where the mail handler would have to face it. He would have to situate it correctly so it will go through the machine.” Mr. Fletcher agreed that the Mail Handler employees who dump the mail onto the belt do not perform any singulating or facing. Mr. Fletcher, on cross-examination by the USPS, testified, with regard to the percentage of mail that the Mail Handler has to face after it has been rejected: “It’s generally quite a bit because that employee has to stay there the whole time the machine is running because there is quite a bit is going to come back to them. So they can’t just disappear. They’ve got to keep - - stay there with the machine.”

Mr. Suslak testified for the APWU that the APWU agreed - as part of the settlement of pending grievances under the Revised RI-399 Dispute Resolution Procedures, dated June 26, 2018 - to withdraw its pending jurisdictional dispute on the APPS, without prejudice. Mr. Suslak testified, with regard to the APPS, that “we kind of felt from the beginning that it was just a difficult machine. It was a big footprint. It’s really only one job, as Kevin [Fletcher] mentioned earlier. The fellow would stand up on a platform and only really touched the mail if it was a reject. It wasn’t that it had induction stations clerks inducting mail, actually, because the machine singulated itself. So it was kind of a different footprint to begin, really.” Mr. Suslak distinguished the APSS

from the APBS, “which we feel is almost identical to the SPSS.” Mr. Suslak testified that the APPS came into use in 2004.

Mr. Prokity testified that the Automated Parcel Post System - APPS, “. . . is quite a bit different than the other machines we’ve looked at. What the APPS has is very much like the APBS. It has a centralized dumping area. However, this next section is what we call an SSIU. It’s a sort and singulation induction unit. So in this series of belts - - this is a six-sided scan tunnel. So instead of having an overhead camera, it actually has a six-sided camera so it can scan all four sides of the box, the front or the back. So whenever a barcode or address is it can catch it from all sides.” According to Mr. Prokity: “. . . when you dump the mail it actually inclines the mail but also singulates it. So by the time the mail piece goes through the scan tunnel, it’s a single piece going through the scan tunnel. It then automatically comes around to what we call the shoe sorter. And the shoe sorter pushes the piece onto to these three inducts, never being handled by anybody - - by an inductor. Only the dumping part is done, and that is mail handlers.” He added: “The mail then goes into the backbone of the machine, which is cells. It also recirculates very similar to the SPSS. And again, this is configurable. . . . we have some of these that have over 200 bins. Any pieces that are either double fed or not read can reject and come here to what we call the semi auto. That is where a single operator, which in this case is a mail handler, faces the mail and puts it through another scan tunnel to be reinfected for induction.” Mr. Prokity testified that, on the APPS, no packages are touched by the Mail Handlers during the induction process. “Nothing inducted through the shoe sorter which is about 85, 90 percent of the mail is touched by anyone. Only the rejects or double feeds that are not able to be singulated and inducted to the sorter goes to the semiautomatic induct.” Mr. Prokity testified - with respect to whether any other machines have the unique function in which the machine itself is doing the singulation and the orientation of the mail before it is distributed - “This SSIU is only on the APPS and on the retrofitted PSMs.”

Small Parcel Sorting System - SPSS

Mr. Fletcher testified, on behalf of the NPMHU, with regard to the Small Parcel Sorting System - SPSS, the jobs in dispute in the instant

proceeding, that there are three types of jobs on this machine. There are Mail Handler Craft employees assigned to dump the mail into a wiretainer which then was pushed into a container dumper. This work is similar to what a Mail Handler employee performs on the SPBS, the APBS, or the APPS. The parcels goes on a conveyor to an employee who picks up each piece, turns it and places it on a belt. "That is the facing or induction, singulating, whatever you want to call it, that duty." Mr. Fletcher testified that these employees do not perform any keying work. The third type of work involves pulling the filled containers away from the machine, which is the sweeping work.

Mr. Fletcher testified that on the SPSS, the Clerk employee who, on the SPBS would be keying at the keying station, does no keying. According to Mr. Fletcher, "The keying, in my opinion, would be the clerk employee assisting with the distribution process by keying in a ZIP code or a code. Without the keying function there's no distribution being performed by an employee. The machine is doing the distribution."

Mr. Suslak testified, for the APWU, with regard to the function of the Clerk on the SPSS: "I think it's pretty much similar [i.e., to the APBS]. I mean the clerk on the SPSS does pretty much the same thing. Takes it, faces it so the scanner will hit it correctly and be able to identify it and sort it. And then there is the sweeping rotation similar to the APBS on the SPSS. It's pretty much identical. They have - - actually there is even a keyer in that that would key mis-sorts on the SPSS. Mis-sorts are keyed on the APBS at times, one keyer at best. It' like - - it's almost identical."

Mr. Prokity testified for the USPS, with regard to the SPSS, that, in 2015, he began working on the the USPS's World Class Package Platform Group. That group already had identified a sorter, Eurosort, which had been in use in Europe. The USPS ordered 26 of these machines, which were being modified and made bigger. The initial deployment by the USPS of the first production machine was in July 2016. Currently, according to Mr. Prokity, there are about 40 of these machines in use. Mr. Prokity testified that the standard configuration of the SPSS has five induction stations, with 196 bins. There are a few sites at which the SPSS has only four induction stations and a couple of sites at which the SPSS is slightly shorter, because of the lack of space in the building.

Mr. Prokity testified that the SPSS processes small parcels, up to 22 inches in length, 16 inches in width, and under 20 pounds. Mr. Prokity testified that he SPSS has the following equipment and is operated as follows:

Bulk Handling Conveyors: Each SPSS has five bulk handling conveyors which have container unloaders with attached dumpers. The packages initially are loaded by employees into a container unloader. The packages are unloaded by employees by tilting the unloader and dumping the packages onto the bulk handling conveyor which proceeds by moving the packages, in a bulk form, up an incline to the induction station. All of the dumping work is assigned to the Mail Handlers, represented by the NPMHU, as the Primary Craft.]This work is not in dispute in this proceeding.]

Induction System: Each SPSS has five induction stations which are located on a platform about 10 feet above the workroom floor on which the dumping and sweeping functions are performed. Currently, Clerks, represented by the APWU, have been assigned as the Primary Craft, to perform the disputed work at the induction stations. The Clerks assigned to work at the induction stations are assigned for two-hour periods and then rotated into the sweeping function (described below). [The assignment of the Clerks as the Primary Craft to perform the work at the induction stations and their assignment as part of the rotation has been grieved herein by the NPMHU as improper. The APWU has grieved as improper the assignment of any of the sweeping work to the Mail Handlers.]

According to Mr. Prokity, with regard to the work performed by Clerks at the induction station: “. . . the operator takes the individual piece that has come up the incline conveyor and faces it and orients it into - - . . . there’s this induction template They put that into that. - - that notch, and that allows the piece to be oriented properly to induct into the machine. There’s actually a three-stage induct. It’s automatically pulled away from that notch and it goes into the second section which is a scanner and a scale. And so that determines whether the piece will actually fit on the machine, and if it’s overweight it’ll stop that belt and the operator has to remove that piece from it. It then moves into the - - to the timing belt, and then on to the injection

conveyor. . . . Again, the operator will place the mail piece into position one, and then the conveyors actually automatically move it through and inject it into the split-tray conveyor.” According to Mr. Prokity, there is a sensor at the induction station to keep the packages from piling up.

The Parties stipulated that, at the time that the USPS made the determination to assign Clerks to perform the work at the induction stations, the keying station had not yet been added to the machines then in use. At the relevant time, the operator at the induction station could use a hand-held scanner or, subsequently, they could key in information, such as zip codes. Mr. Prokity testified that the USPS generally has moved from keying-in information to using optical character readers and barcode readers and that, currently, about 98 percent of the packages can be read by the optical character reader or by a barcode reader.

Split-Tray Sorters: Each SPSS has split-tray sorters on the conveyor. The package is injected into a carrier cell which has two “trap” doors, i.e., the split-tray. “As the carrier cell goes around the machine, as it gets to the chute that is the proper sort location, those two doors open up and drop the piece into the chute.”

Run-Out Chutes: Once the package on the split-tray on the conveyor has reached the proper location, of the 196 available locations, the split-tray opens and the package, if it destined for one of the locations on the inside of the SPSS machine, is dropped directly from the split-tray into a “Gaylord box” receptacle. If the package is destined for a location on the other side of the SPSS machine, it is dropped onto a slide and the package slides down the chute into a spinner rack with sacks, or into a hamper, a wiretainer, or a Gaylord box, whichever type of equipment is being used. The receptacle, once it is filled, is removed as part of the sweeping process. The individual performing the sweeping can turn off a switch which will prevent packages from continuing to be loaded into the receptacle until it has been replaced with an empty one. The package on the split-tray can continue to circulate on the conveyor, for up to three cycles, until the receptacle for that location has been replaced.

The sweeping work was assigned to the Mail Handlers, as the primary craft, with the Clerks being assigned into the sweeping rotation for relief from their work at the induction stations. Mr. Prokity testified that the sweeping function is “pretty segregated from the rest of the operation,” such that the individuals who perform the induction work do not have to perform the sweeping work as well. [As noted, the APWU herein has claimed all of the sweeping work and has grieved the assignment of any of the sweeping work to the Mail Handlers, based on its argument that all of the sweeping work appropriately should be assigned to the Clerks for rotational purposes.]

Testimony Re: Operation 105

Kevin Fletcher testified, on behalf of the NPMHU, with regard to Operation 105, the Mail Handlers were listed as the primary craft for the loading or dumping on the mechanized parcel sorter, as well as for item 6, pulling and dispatching sacks or other containers. Mr. Fletcher noted that the function assigned to the Clerk Craft was: “The distribution of parcel post or the use of parcel sorting machines.” Mr. Fletcher testified: “It would mean to me that they were using some type of mechanized machinery to sort parcels with some type of keying and so forth would be my understanding.”

THE PARTIES’ POSITIONS

Each of the Parties submitted a post-Arbitration hearing brief, which was received by the Arbitrator. Each of these briefs hereby is incorporated by reference into, and made a part of, this Opinion.

DISCUSSION

The Arbitrator notes that the NPMHU argued, in the initial Arbitration proceeding on the SPSS, that, once the USPS issued the SPSS Craft Determination on June 1, 2015, in which all of the positions on the SPSS machine were assigned to employees in the NPMHU bargaining unit as the Primary Craft, the USPS was precluded from making any unilateral changes, as the USPS did when thereafter it issued the revised SPSS Craft Determination on August 7, 2015. The issues involved in that preliminary matter, regarding

the propriety of the action of the USPS in revising the initial SPSS job determination were resolved by this Arbitrator in an Opinion and Award, dated December 2, 2016. That Opinion and Award is incorporated by reference and made a part of the instant Opinion and Award.

The assignment changes on the SPSS - made by the USPS in the revised craft determination issued in August 2015 - in favor of employees in the Clerk Craft represented by the APWU, instead of employees in the Mail Handler Craft represented by the NPMHU, are as follows [as emphasized]:

The primary craft designation for the performance of duties for operation of the SPSS is as follows:

- | | |
|---|--------------------|
| 1. Retrieval of packages from a staging area | Mail Handler Craft |
| 2. Operating a container dumper and dumping packages onto incline belt | Mail Handler Craft |
| 3. <i>Singulating/separating packages & facing/feeding packages onto induction belt</i> | <i>Clerk Craft</i> |
| 4. *Sweeping packages (removing full containers and replacing with empty containers | Mail Handler Craft |
| 5. Transporting full containers to a staging area | Mail Handler Craft |

**Clerk craft employees assigned to the induction stations will do so before rotating to other duties. Clerk craft employees who rotate to another work assignment will perform sweeping duties on the SPSS. Personnel assigned to perform sweeping duties in addition to the minimum number required to implement the subject rotation system will be from the primary craft (mail handler). [Emphasis supplied.]*

* * *

The Arbitrator is not persuaded by the NPMHU's position that, once the USPS had issued its determination, in this case on June 1, 2015, in favor of the NPMHU as the Primary Craft for all of the positions on the SPSS, the USPS properly could not revise that determination and, instead, assign some of the positions on the SPSS to the Clerks, as the Primary Craft, and/or assign some of the sweeping duties to the Clerks on the related basis of rotational purposes. The NPMHU also disputes

the position of the APWU that the USPS should have assigned to the Clerks all of the sweeping duties on the SPSS. The Arbitrator notes that the Parties, over the course of many years, have negotiated and refined the RI-399 Dispute Resolution Process and that the goal of the RI-399 process is the proper determination by the USPS of Craft assignments on new and revised equipment. The Arbitrator notes that the RI-399 dispute resolution process can involve several levels of proceedings, at the local, regional and national levels, before, if necessary, the final resolution of a disputed Craft determination in National Arbitration. The Arbitrator notes that the issuance by the USPS at the National level of a determination letter regarding the Craft or Crafts to be assigned to perform some or all of the functions on the new equipment, is issued after the submission to, and review by, the USPS of position statements by the MPMHU and the APWU. The Arbitrator notes that each Party - as was done in the instant case - then can file a grievance protesting the Craft determination issued by the USPS.

The Arbitrator finds that the USPS, at any point in this process after it issues its initial Craft determination, for significant reasons, properly may reconsider that initial determination in light of the considerations and arguments submitted by either or both of the contesting Unions with regard to one or another of the Craft assignments made in that initial determination. The Arbitrator finds no express language which requires a contrary result in the RI-399 Dispute Resolution Procedures, either before or after the 2018 negotiated revisions, i.e., language which precludes such reconsideration for significant reasons.

The Arbitrator finds that, in light of the existence of the Parties' detailed negotiated procedure for resolving these Craft jurisdictional disputes, and the absence of express language in that procedure which would require the USPS to maintain that initial Craft determination even if it has found significant reasons for reconsideration thereof and, upon such reconsideration, and found a significant basis for a re-determination of the initial award of jobs on the new equipment, it is not appropriate, nor is it warranted to hold that the USPS should be found precluded from making such a revision of its initial Craft determination award based on its own doubts concerning the validity of that determination. That is, the Arbitrator is not persuaded that such a reconsideration by the USPS, while appropriate if made pursuant to further analysis of matters raised by one or both of the Union position

statements, should be found unwarranted and precluded if the impetus for such reconsideration instead is based upon the further reflection of USPS officials who find a significant reason for the reexamination of their initial determination.

The Arbitrator finds that there is no dispute that the determination of Craft jobs on new equipment is a matter of great importance to: those employees who benefit from the award of such jobs to their Craft; those employees whose Craft is not selected; each of the two Craft Unions involved, and those USPS officials who are responsible for the efficient operation of the new equipment. In the Arbitrator's judgment, given this extensive negotiated RI-399 process for the proper determination of Craft jobs on new equipment, the discovery by the USPS that a possible error had been made in their initial award of Craft jobs on the SPSS, specifically with regard to whether the "singulating"/"facing" work as part of the induction process into the machine, instead should have been awarded to the Clerks as the Primary Craft, along with the associated assignment to those Clerks assigned to that work of sweeping, for rotational purposes only, constituted an appropriate basis for the USPS to review that initial determination and to thoroughly re-evaluate the many considerations which are relevant to the determination of the appropriate Craft for each work function on the new SPSS equipment.

In this regard, the Arbitrator notes the testimony of Mr. Devine, who along with Mr. Dean was responsible for the initial determination letter, to the effect that, his initial reaction to Mr. Tulino's direction to reconsider the soundness of that determination was that it had been correct. Nevertheless, Mr. Devine was convinced of that a change was needed by the reevaluation of the work performed by Clerks on other machines, including field trips by Mr. Dean and Mr. Mohl. Thus, Mr. Dean testified:

The four of us in that so-called committee, we discussed that. We talked about Allen Mohl. And - - my visit to Dulles looking at the APPS. We discussed how we looked at the SPBS and APBS and what the inducting employee was actually doing. . . . And we decided then that the operation of the SPSS, in particular the induction employee was more properly a distribution function that belongs to the clerk craft and that's what precipitated the

August 7th decision. Of course, we first went back to Mr. Tulino with our recommendation.”

Mr. Dean testified that the revised “recommendation” to Mr. Tulino was unanimous by Mr. Devine, Mr. Dean, Mr. Moore and Mr. Mohl. The USPS then issued the revised Craft determination on August 7, 2015.

The Arbitrator notes, with regard to whether the revised determination, in August 2015, constituted arbitrary conduct or an abuse of discretion by the USPS, that, pursuant to the RI-399 Dispute Resolution Procedure, each of the Unions, after the issuance of the revised decision letter on August 7, 2015, had the right to, and did, file a protest regarding one or more aspects of this revised determination. The RI-399 procedure provides the Parties with a process for the final resolution of such disputes. A Craft determination by the USPS, even a revised determination, is not a *final* determination at least to the anticipated extent that either or both of the Unions will challenge one or more of the Craft determinations. That is, the determination by the USPS is not a final action to the extent that it is subject to review through the established RI-399 process. The Arbitrator, for this reason, is not persuaded that the Decision of the Supreme Court, *Motor Vehicle Manufacturers Ass’n. v. State Farm Mutual*, 463 U. S. 29 (1983), relied upon by the NPMHU, is applicable to the instant dispute concerning the proper determination of Craft positions on the SPSS, which involves a negotiated dispute resolution process, RI-399, in which a determination by the USPS is subject to challenge by either or both Unions as a fundamental part of that process and is not a final resolution unless neither Union raises such a challenge.

There is no dispute that each of these Unions had the right to, and did, present their evidence and arguments in the course of the instant Arbitration proceeding as to which of the Craft determinations, as initially issued by the USPS, or as revised, should be found appropriate. These disputes include the propriety of: the initial award by the USPS in the June 1st determination of all of the jobs on the SPSS, including the “singulating”/“facing” work and all of the sweeping work, to the Mail Handlers, as the Primary Craft; an award by the USPS in the revised determination of August 7th, to the Clerks, as the Primary Craft, of the “singulating”/“facing” work on the SPSS, which work, the USPS and the APWU argue, constitute essential elements of the “distribution” function

which has been recognized as the work of the Clerks as the Primary Craft, and which work, therefore, should be assigned, pursuant to the August 7th award, to the Clerks as the Primary Craft; the APWU also claims all of the sweeping work on the SPSS to the Clerks; the award to the Clerks, as the Primary Craft, of all of the “distribution” work on the SPSS, i.e., the “singulating”/“facing” duties as part of the induction process, as well as an award to the Clerks of sweeping work, for rotational purposes only.

For the following reasons, the Arbitrator concludes that the final Craft assignments on the SPSS made by the USPS in the revised determination issued on August 7, 2015, reasonably were based on the appropriate reconsideration by USPS officials of relevant factors, including: the principles set forth in the rules established by the Parties for making Craft determinations, including the RI-399 Dispute Resolution Procedures and criteria; previous Craft determinations made by the USPS in light of the nature of the *distribution*-type work performed by Clerks as the Primary Craft on other sorting machines; and Craft determinations resolved pursuant to prior jurisdictional dispute Arbitration awards. The Arbitrator concludes that the reevaluation by the USPS officials, after questions were raised within the USPS about the correctness of the June 1st determination, resulted in

the revised August 7th award by the USPS: to the Clerks, as the Primary Craft, of the “singulating”/“facing” duties on the SPSS, which, the Arbitrator finds, the USPS reasonably determined constituted significant aspects of the *distribution function* which historically and traditionally have been assigned to Clerks, as the Primary Craft; and also the award of sweeping duties, for rotational purposes only, to those Clerks who were assigned to perform the work of “singulating”/“facing” of parcels on the SPSS.

Consequently, the Arbitrator finds, with respect to the grievance filed by the NPMHU, that that grievance is denied, insofar as the NPMHU has claimed on behalf of Mail Handlers, as the Primary Craft, all of the work on the SPSS, including the assignment to perform the work on the platform of “singulating”/“facing” of parcels before placing them on the induction belt and the sweeping work for rotational purposes for the individuals performing that work. The NPMHU’s grievance is sustained to the extent that it opposed APWU’s claim for *all* of the sweeping duties of the SPSS. The Arbitrator finds, with respect to the grievance filed by the APWU, that that grievance is sustained to the extent that the APWU has claimed on behalf of the Clerks, as the Primary Craft, the duties of “singulating”/“facing” parcels on the SPSS as significant aspects of the *distribution function* which historically and traditionally has been assigned to Clerks, as the Primary Craft. The Arbitrator also sustains the APWU’s grievance to the extent that it has claimed sweeping duties on the SPSS for rotational purposes only, i.e., the APWU’s grievance is not sustained to the extent that the APWU claimed all of the sweeping work performed on the SPSS.

The Dispute Concerning The “Distribution” Function on the SPSS

The Arbitrator concludes, for the following reasons, that the revised determination by the USPS regarding the Primary Craft to be awarded the jobs on the platform of the SPSS which perform the “distribution” function reasonably was based on appropriate considerations. The Arbitrator notes that Mr. Devine, Mr. Dean, Mr. Mohl and Mr. Moore, had been directed by Vice President Tulino that they were to review the initial June 1st Craft determination to see if it had been correct. The Arbitrator concludes that these officials acted reasonably insofar as they: visited the operation of the SPSS and other machines, including the APBS, on which Clerks performed arguably comparable functions of “singulating” and “facing” parcels, but no keying, which “distribution” work the USPS had awarded to the Clerks as the Primary Craft; considered the history of Craft determinations on other machines; considered the negotiated Craft determination principles; and considered the findings set forth in prior Arbitration awards resolving jurisdictional disputes. The Arbitrator finds that the factors considered by these officials were appropriate for making the revised Craft determinations on the SPSS and, cumulatively, constituted a reasonable basis for: the re-evaluation by the USPS of its initial award of all of the work on the SPSS to the

Mail Handlers as the Primary Craft; its conclusion that that initial award had been incorrect; and its revision of that initial determination to award the “singulating”/“facing” work in the induction process to the Clerk Craft, along with sweeping work for rotational purposes only.

The Arbitrator finds that the dispute in this proceeding centers on the proper evaluation of the “distribution” function on the SPSS. It is evident that, over the course of the evolution and development of various machines developed for letter and parcel sorting, the USPS has sought to automate some or all aspects of the distribution function which previously have been performed manually by Clerks as the Primary Craft. The question which must be resolved in this case, as in each such case, is whether the officials of the USPS who performed the review of the initial Craft determination acted reasonably in all of the circumstances and based on appropriate criteria in determining that, in essence, the work in dispute herein is within the type of distribution work traditionally assigned to Clerks as the Primary Craft.

The Arbitrator notes that the particular circumstances involved in this case include the following tasks on the SPSS machine: Mail Handlers, in this proceeding, are the undisputed Primary Craft for the preparatory work of dumping parcels onto the conveyors which takes the parcels up an incline to a platform at which the disputed work is performed before each parcel is inducted into the SPSS. The disputed work consists of separating or “singulating” each parcel as it comes up the incline by taking the parcel and, while “facing” it, i.e., orienting the parcel so that the address can be read by the OCR scanner, placing the parcel onto the induction belt so that it can be scanned and, thereby, inducted into the machine. The parcels are forwarded by the SPSS to a “split-tray” conveyor belt which rotates through 196 or so possible destinations. When the parcel on the split-tray is above the chute for the correct destination, the split-tray is opened by the machine and the parcel is injected into the cell and then into the receptacle which can be one of various types of wire baskets, sacks, etc. This sweeping work, pursuant to the Craft determinations of June 1st and August 7th, which involved removing the full receptacles and replacing them, was awarded to the Mail Handlers as the Primary Craft, with those Clerks who, in the revised Craft determination, were awarded the “singulating” and “facing” duties on the SPSS, also were awarded sweeping duties, for rotational purposes only.

The Arbitrator finds that the USPS officials who reevaluated the initial award of June 1st, reasonably concluded, in the revised August 7th determination, that the duties of “singulating” parcels, i.e., placing each parcel

on an individual section of the belt, and “facing” each parcel so that the address can be read by the OCR which permits the SPSS machine to “distribute” the parcels automatically by means of the induction belt by sending each parcel to the correct location, constituted significant aspects of the traditional “distribution” function, which historically have been assigned to Clerks as the Primary Craft. In this regard, the Arbitrator notes that the Parties agreed that, as of August 7th, the date of the revised determination, no “keying” work was performed by any employee on the SPSS. To the extent that, subsequently, some keying work was performed by Clerks on the SPSS, that circumstance - having begun after the disputed work was awarded to the Clerks, such that it was not a relied-upon consideration by the USPS officials - has not been considered relevant by the Arbitrator herein in reaching this decision and award.

The Arbitrator is not persuaded that the total absence of “keying” work on the SPSS properly should have precluded the USPS officials from considering the remaining “singulating”/“facing” duties performed on the platform(s) of the SPSS as constituting elements of the traditional “distribution” function which duties, historically, have been awarded to the Clerks to perform as the Primary Craft. The Arbitrator agrees with the respective positions of the USPS and of the APWU that, although no “keying” is involved on the SPSS, nevertheless the duties of “singulating” and “facing” parcels on the platform, so that the actual “distribution” can be accomplished by the automatic operation of the SPSS machine, are of sufficient significance, given the amount of such work performed on the SPSS (as discussed below), and relevant and integral to the “distribution” function, to support the August 7th award of the performance of this work to the Clerks as the Primary Craft.

The Arbitrator notes the testimony of Mr. Fletcher for the NPMHU with respect to the Automated Parcel Post System - APPS, which solely was staffed by Mail Handler Craft employees. According to Mr. Fletcher: “They would. - - they would obtain the mail, set the machine up with the containers around the machine. As I said, they would retrieve the mail from the staging area They would dump it onto. - - they would use a container dumper to dump it onto a conveyor. The mail would go up a conveyor where it would be singulated into the machine.” Mr. Fletcher testified: *“There’s an employee on a raised platform somewhere after the dumping station that dealt with rejects, and that was a mail handler craft employee. Pieces that would not be handled by the machine originally would go in a reject area. It would come back to this mail handler who was doing the rejects, who would pick up the piece, and then they would*

singulate. They would stick it where. - - set it up right where it needed to be so it could be read by the cameras or what have you. They put it on the machine, and it would be inducted. . . . They had to face it to get it to where the machine would read it.” There was no keying. The Mail Handler Craft employees also performed all of the sweeping. They would stick it where. - - set it up right where it needed to be so it could be read by the cameras or what have you. They put it on the machine, and it would be inducted. . . . They had to face it to get it to where the machine would read it.” [Emphasis supplied.] There was no keying. The Mail Handler Craft employees also performed all of the sweeping.

The Arbitrator credits the testimony of Mr. Prokity for the USPS that the Automated Parcel Post System - APPS, “. . . is quite a bit different than the other machines we’ve looked at. *What the APPS has is very much like the APBS. It has a centralized dumping area. However, this next section is what we call an SSIU. It’s a sort and singulation induction unit. So in this series of belts - - this is a six-sided scan tunnel. So instead of having an overhead camera, it actually has a six-sided camera so it can scan all four sides of the box, the front or the back. So whenever a barcode or address is it can catch it from all sides.” According to Mr. Prokity: “. . . when you dump the mail it actually inclines the mail but also singulates it. So by the time the mail piece goes through the scan tunnel, it’s a single piece going through the scan tunnel. It then automatically comes around to what we call the shoe sorter. And the shoe sorter pushes the piece onto to these three inducts, never being handled by anybody - - by an inductor. Only the dumping part is done, and that is mail handlers.” He added: “The mail then goes into the backbone of the machine, which is cells. It also recirculates very similar to the SPSS. And again, this is configurable. . . . we have some of these that have over 200 bins. *Any pieces that are either double fed or not read can reject and come here to what we call the semi auto. That is where a single operator, which in this case is a mail handler, faces the mail and puts it through another scan tunnel to be reinducted for induction.” [Emphasis supplied.]**

The Arbitrator notes particularly Mr. Prokity’s testimony that, on the APPS, no packages are touched by the Mail Handlers during the induction process. “*Nothing inducted through the shoe sorter which is about 85, 90 percent of the mail is touched by anyone. Only the rejects or double feeds that are not able to be singulated and inducted to the sorter goes to the semiautomatic induct.” [Emphasis supplied.]* Mr. Prokity testified - with respect to whether any other machines have the unique

function in which the machine itself is doing the singulation and the orientation of the mail before it is distributed - "This SSIU is only on the APPS and on the retrofitted PSMs."

The Arbitrator finds that, based on the above emphasized testimony of Mr. Prokity, although Mail Handlers on the APPS are assigned to "singulate" and "face" parcels, they perform these tasks only for the 10 to 15 percent of the mail which are "rejects or double feeds that are not able to be singulated and inducted to the sorter [which] goes to the semiautomatic induct." The Arbitrator finds that the USPS reasonably distinguished the assignment to the Mail Handlers of that limited "singulating" and "facing" work as part of the assignment of Mail Handlers as the Primary Craft to perform all of the work on the APPS. There is no dispute that, most of which work on the APPS involves dumping the mail onto the conveyors and sweeping it after the mail automatically has been inducted and sorted by the machine itself. The Arbitrator finds that the USPS reasonably determined that, by contrast, on the SPSS, the "singulating" and "facing" work awarded to the Clerks, as the Primary Craft, involves handling every parcel to properly place it on the belt so that that piece can be inducted by the machine.

The Arbitrator notes that Mr. Fletcher testified for the NPMHU, with respect to the APBS, that that machine initially had four keying stations. According to Mr. Fletcher: "They reduced the keying stations to normally one, and the other stations, all they did was induct. It read automatically the barcode or the address." Mr. Fletcher testified that, when the job determination by the USPS issued, the NPMHU filed a grievance ". . . *because they had taken the keying function away and went to facing and induction that it was more akin to mail handling craft work.*" [Emphasis supplied.] Mr. Fletcher described the sweeping function on the APBS as the same as he described on the SPBS.

The Arbitrator notes next that Mr. Suslak testified for the APWU, regarding the APBS that ". . . in 2011 they took that SPBS and they actually retrofitted it [sic, it] into an APBS. And literally all they did was put scanning units on. It was the same setup, *and now you didn't even have to key on it for the most part. That was the intent of the service was to do away with the keying and just have an induction there, and it would be scanned automatically.* And it was the same machine. It was retrofit that way. And they had - - *usually they left maybe one keyed for mis-septs*

and things that couldn't be keyed." Mr. Suslak testified that, after the APBS was retrofitted as the SPBS, *"Well, the clerk takes the parcel. It gets inducted by the mail handlers through the loading system that was described earlier. It comes down a slide. They pull the mail out and they kind of face it, singular it right on the belt, and it goes on its way, assuming they are not keying. Eighty to 90 percent of the mail that I'm familiar with is usually just inducted. They are not using keyers. . . . Got to place it so the scanner would be able to identify it. . . . Well, I imagine it would be faced up. The scanner is right on top."* [Emphasis supplied.]

The Arbitrator notes that Mr. Prokity testified, for the USPS, that APBS was modified for scanning: *"When it became the automated package and bundle sorter, an overhead camera was added, like we have on the SPSS, and the induction changed to being able to just manually face and induct or orient and induct under the OCR. And then the OCR BCR reader camera would add to the sort."* [Emphasis supplied.] Mr. Prokity testified that the APBS had keying stations: *"In fact, there's a direct feed to this keying station, but the keying stations on some of the stations were available."* Mr. Prokity testified that the APBS *"was also modified with the loose mail system so that they could dump, the mail pieces would come up these incline conveyors and then automatically go down to the induction stations. What this allowed, instead of having an individual person dumping on each induction station, it allowed us to centralize the dumping function here and move up."* According to Mr. Prokity, *the original APBS had an individual person on each station like the SPSS now. The dumping function remained with the Mail Handlers, the induction function remained with the Clerks and the sweeping included Clerks, for rotational purposes, along with the Mail Handlers. The Arbitrator agrees with the position of the USPS to the effect that the work of "singulating"/"facing" the parcels cannot possibly be considered mail handler work* because the employees who work on the platform of the SPSS *"play no role, whatsoever, in moving, dumping, or sweeping the mail."*

The Arbitrator recognizes, with regard to two of the previous disputes involving the USPS's determination of Craft jobs on the APPS, filed by the APWU, and that on the APBS, filed by the NPMHU, each Union agreed during the negotiations for the revision of the RI-399 Dispute Resolution Procedures in June 2018, to withdraw their respective claims *without prejudice*. Thus, neither of the Craft determinations made on these two machines by the USPS, the APPS and

the APBS, can be regarded directly herein as established precedent on the same basis as an undisputed/agreed-upon Craft determination or a Craft determination resolved through Arbitration. Nevertheless, the Arbitrator finds, in these circumstances, that the USPS, in reaching its determination to award the “singulating”/“facing” work on the SPSS to the Clerk Craft, was acting in a manner which was consistent with its determination of the award of jobs on these two machines, with the assignment of such duties to the Mail Handlers on the APPS in light of the limited amount of such work to be performed and to the Clerks on the APBS in light of the more significant amount of such work required. To that extent, the Arbitrator finds that the USPS, in awarding the “singulating”/“facing” work on the SPSS to the Clerks as the Primary Craft, based in part on the assignment of such work to the Clerks on the APBS, was not acting in a manner which was arbitrary or in abuse of its discretion.

RI-399 Principles and Prior Jurisdictional Dispute Arbitration Awards

The Arbitrator, in two previous Jurisdictional Dispute Arbitration Opinions and Awards (cited and discussed briefly below), discussed in detail the applicable considerations regarding the RI-399 Principles and previous relevant Jurisdictional Dispute Arbitration Awards, including the Opinion and Award by Arbitrators Zumas and Eischen (cited and discussed briefly below), regarding the “distribution function” for Primary Craft determination purposes. The Arbitrator hereby incorporates by reference the extensive discussion of these matters concerning the “distribution function” set forth in the Sharnoff Opinions cited below. The following summarizes these discussions.

RI-399 Guidelines

The USPS issued Regional Instruction No. 399 - Mail Processing Work Assignment Guidelines [RI - 399 herein] on February 16, 1979. These Guidelines periodically have been updated. As relevant, RI-399 sets forth: “primary craft designations relative to the performance of specific mail processing work functions.” The Arbitrator notes that RI-399 Implementation Criteria, at II.A, Efficient and Effective Operation, states, in relevant part: All actions taken relative to

implementation of these guidelines must be consistent with an efficient and effective operation.” The Arbitrator, for reasons discussed herein, finds that the award by the USPS to the Clerks, as the Primary Craft, of the work of “singulating”/“facing” parcels as part of the induction process on the SPSS machine meets Implementation Criteria, II.A.

The Arbitrator notes that the RI-399 Guidelines also provide, at Section II.C, Implementation Criteria, that “[w]here the functions of obtaining empty equipment, obtaining unprocessed mail, loading ledges and sweeping are an integral part of the distribution function and cannot be efficiently separated, the entire operation will be assigned to the primary craft performing the distribution activity.” The USPS did not determine that Implementation Criteria, II. C, is applicable or controlling to the award by the USPS of the sweeping work to the Mail Handler Craft, as the Primary Craft, with the assignment of sweeping, for rotational purposes only, to those Clerks performing the “singulating”/“facing” work on the SPSS. For reasons discussed below, the Arbitrator finds that the USPS Craft determination regarding the sweeping work met the other criteria of RI-399 and was appropriate.

RI-399 Operation 105 - Mechanical Parcel Sorter

The Arbitrator notes that RI-399, at Operation 105 - Mechanical Parcel Sorter, which included the following assignment: “4. Distribution of parcel post through the use of parcel sorting machines.” All other functions on the Mechanical Parcel Sorter were assigned to the Mail Handlers as the Primary Craft, with an asterisk note: “In offices where the tasks of obtaining empty equipment, obtaining unprocessed mail, loading ledges, sweeping and containerizing is an integral part of the distribution function, the entire operation is a function of the primary craft performing the distribution.” The Arbitrator is not persuaded that the USPS did not conclude, with regard to the award of duties on the SPSS, that all of the duties on the SPSS were “an integral part of the distribution function”. The Arbitrator notes that Mr. Prokity, in his testimony, explained that the SPSS processes approximately equal amounts of first-class packages and priority packages which, as argued by the APWU, meets the definition, in the RI-399 Mail Processing Work Assignment Guidelines, of “parcels,” as set forth in Postal Service Publication 32, Glossary of Post Terms, “(1) Mail that does not meet the

mail processing category of letter-size mail or flat-size mail. It is usually enclosed in a mailing container such as a carton. (2) A Package. . . .”

The Arbitrator agrees with the APWU that, although the mail distributed on the SPSS machine consists of “packages,” as does the mail processed on the SPBS machines, and the machine in Operation 105 distributes “parcel post,” rather than “parcels”/packages this is not dispositive regarding Operation 105 as a valid consideration for purposes of awarding jobs on the SPSS since the “distribution” of mail packages done on the SPBS machine serves the same purpose - for mail processing - as the distribution of mail packages on the SPSS. Operation 105 was found to be a relevant consideration for the Craft determination for the SPBS machine and the Arbitrator finds that the USPS appropriately considered it for the purpose of determining Craft assignments on the SPSS.

The Arbitrator notes the APWU’s argument that, although the USPS, based its award of the distribution functions on the SPBS to the Clerks on the relevance of Operation 105 - Mechanical Parcel Sorter, without reference to Operation 050/055 Priority Mail Distribution, the work assignments set forth in Operation 050/055 also support the award of the distribution functions on the SPSS to the Clerks. The Arbitrator agrees insofar as Operation 050/055 Priority Mail Distribution includes, 6. “Distribution of priority mail. Clerk”. The Arbitrator notes, with respect to 2. “*Culling, facing and cancelling. Mail Handler”, that this “facing” work, along with culling and cancelling, is set forth between 1. *Transporting empty equipment. Mail Handler” and 3. *Opening and dumping. Mail Handler”, 4. *Transporting mail. Mail Handler” and 5. “*Loading ledges. Mail Handlers.” Each of these duties precedes the work in item 6. “Distribution of priority mail.” And each of these duties is subject to the asterisk note: “In offices where the tasks of obtaining empty equipment, obtaining unprocessed mail, loading ledges, sweeping and containerizing is an integral part of the distribution function, the entire operation is a function of the primary craft performing the distribution.” The “facing” of parcels according to the APWU historically has been Clerk work on the earliest Parcel Sorting Machines and on the SPBS machines. The APWU points out that, in RI-399 Clerks, Bulk Mail Centers, for Primary Parcel Sorting, Clerks are assigned “1. Facing and keying” parcels and for Secondary Parcel Sorting Clerks are assigned “1. Facing and keying” parcels. The APWU asserts that the work claimed in this proceeding by the NPMHU is the same as

the work assigned by the USPS to Clerks on the APBS machines and notes that the jurisdictional dispute over that assignment has been withdrawn.

The Arbitrator, with these considerations noted, agrees with the APWU that the Craft determination in Operation 050/055 is consistent with the USPS's Craft determination to the Clerks of the distribution functions on the SPSS. The Arbitrator notes that the USPS did not claim to have relied on Operation 050/055, and the Arbitrator is not persuaded that the USPS's failure to consider the applicability of Operation 050/055 to the determination of the appropriate craft to award the "singulating"/"facing" work as elements of the distribution function of the SPSS therefore was arbitrary, unreasonable or constituted an abuse of its discretion to evaluate relevant factors. For these reasons, the Arbitrator does not find it appropriate to rely on the arguable applicability of this operation with regard to the propriety of the USPS's award of the disputed "singulating"/"facing" work to the Clerks. The Arbitrator, as discussed below, finds that essentially the same considerations are applicable to whether the USPS acted arbitrarily insofar as it did not consider the applicability of Operation 200 concerning the distribution of parcel post.

The Arbitrator also notes, and agrees with, the APWU's argument to the effect that *distribution* of mail, as opposed to the *sortation* of mail to fewer points, always has been assigned to Clerks and that the SPSS machines distribute small parcels and priority parcels to more than 190 receptacles, each of which constitutes a different destination. The APWU notes that Operation 100 distinguishes between manual distribution of parcel post without scheme knowledge, which is assigned to Mail Handlers, and manual distribution of parcel post with scheme knowledge, which is assigned to Clerks. The APWU argues that the same principle is relevant to Operation 200, involving incoming parcel post. The APWU argues that incoming distribution ordinarily requires more numerous separations, usually referred to as *distribution*, as opposed to simple *sortation*. The manual distribution of incoming parcels is assigned, pursuant to Operation 200, to Clerks. The APWU argues that the *machine distribution* of small parcels on the SPSS to over 190 receptacles is analogous to *scheme distribution*, which is assigned in Operation 200 to Clerks, such that the distribution function on the SPSS also should be awarded to the Clerks.

The Arbitrator agrees with the APWU that the work of “facing” the parcels on the SPSS, which it notes is assigned exclusively to Clerks in Bulk Mailing Centers including: “Primary Parcel Sorting 1. Facing and keying” ; and “Secondary Parcel Sorting 1. Facing and keying.” There is no evidence presented that Mail Handlers have been assigned to face packages on parcel sorting machines. The APWU points out that Mr. Suslak testified, by contrast, with respect to facing mail on the Operation 105 Parcel Sorting Machine, that one Clerk would face the mail and the keyer next to that Clerk would put a key code on the parcel. The APWU points out that there was only one Clerk on the SPBS machine who faced and singulated the parcel so it could be keyed. Mr. Suslak described the evolution of the facing work on the SPBS machines, to the APBS machines, and then to the SPSS machines. Mr. Suslak testified that, after the retrofit of the SPBS to the APBS machines, the Clerk still had to singular, face and induct the mail so that the address could be read by the machine. The Arbitrator finds that this is essentially the work that the employee on the platform on the SPSS machine is required to perform.

The Arbitrator is not persuaded that the USPS erred in assigning the “singulating”/“facing” work on the SPSS to the Clerks, because there are operations set forth in the RI-399 Guidelines in which facing work is assigned to Mail Handlers, including: Operation 010 Originating Mail Preparation, which operation does not include distribution or sortation; Operation 050/055 ; Operation 110-129 ; and Operation 180-189 . The Arbitrator notes that the facing function assigned to the Mail Handlers in these operations has an asterisk which indicates that where the allied duties are “an integral function of the distribution function, the entire operation is a function of the primary craft performing the distribution.” The Arbitrator notes that Clerk employees are assigned to the distribution function in each of those three operations.

United States Postal Service and National
Post Office Mail Handlers and American
Postal Workers Union, Case No. HIM-NA-
C 14, dated July 14, 1986, Arbitrator
Nicholas Zumas

Arbitrator Nicholas Zumas, in his Opinion, in United States Postal
Service and National Post Office Mail Handlers and American Postal

Workers Union, Case No. HIM-NA-C 14, dated July 14, 1986, as relevant, noted, at page 35, that the RI-399 Guidelines designated Clerks as the Primary Craft for all distribution functions and Mail Handlers as the Primary Craft for bulk mail handling, preparation and pre-distribution functions. Arbitrator Zumas noted, at page 36, also that the term “distribution” is defined in postal Handbooks as “Mail sorted by address into machine bins, pigeon hole cases, trays, sacks or pouches to group pieces with a common destination for transportation to the Post Office of address.” The dispute before Arbitrator Zumas involved the claim by the NPMHU that the newly created position of Mail Processor using OCR/BCS technology should be assigned to the Mail Handler Craft. The NPMHU, in the case before Arbitrator Zumas argued that in light of the use of OCR technology, the machines, rather than employees, performed the actual distribution work that previously had been performed by Clerks. Arbitrator Zumas applied the principles of Article 1.5 of the National Agreement and RI-399 noted that RI 399 applies to work functions and not to job titles or job descriptions. The APWU argues that the introduction of the OCR/BCS technology did not change the fact that machine distribution of mail is a Clerk function. The Arbitrator finds that the holding in the Zumas Award supports the Arbitrator’s finding herein that the USPS’s determination to assign the work of “singulating”/“facing” and placing the parcel on the induction belt of the SPSS was reasonable and appropriately based on relevant considerations.

United States Postal Service and American Postal Workers Union and National Postal Mail Handlers Union, Spreading the Mail to Carrier Case, Case No. H7C-NA-C 32, Dated April 14, 1998, Arbitrator Dana Eischen

The Arbitrator notes that this Opinion and Award by Arbitrator Eischen involved an issue concerning the proper Craft determination for “Spreading the Mail to Carrier Cases.” Arbitrator Eischen’s Order states, in relevant part: “The Postal Service properly assigned the mail handler craft as the primary craft to spread mail to letter carrier cases when such mail has been previously identified and marked by carrier route numbers.” Arbitrator Eischen concluded that the decision by the USPS fully was consistent with RI-399 *per se*, and that, if it were necessary to go beyond the confines of RI-399 to resolve a jurisdictional dispute

under RI-399, “the logic and the mutual intent of the Parties support a conclusion that the appropriate principal jurisdictional standards to consider would be the six (6) criteria agreed upon by the Parties in the 1975 MOY establishing the Committee on Jurisdiction.” Arbitrator Eischen noted that the six criteria continued to be part of the CBA of each of these Unions. The Arbitrator notes that, in the instant SPSS case, the six criteria were not discussed specifically by the USPS in explaining its determination regarding the “singulating”/“facing” work performed as part of the induction process on the SPSS machine.

United States Postal Service and National Postal Mail Handlers Union, AFL-CIO and American Postal Workers Union, AFL-CIO, Case No. Q90M-4Q-J 94021635, dated April 22, 2005, Arbitrator Joseph M. Sharnoff - Letter Mail Labeling Machine (LMLM)

The Arbitrator notes that, in the Letter Mail Labeling Machine case, this Arbitrator cited and agreed with the following statement made by Arbitrator Eischen in the above-cited Opinion and Award in the :

[Arbitrator Eischen stated that] the ‘general parameters for describing the types of Postal Service work performed by clerks and the types of Postal work performed by mail handlers are well established.’ He stated that ‘[] transporting the mail (movement of mail from Point A to Point B”) is a function primarily assigned to and performed by the mail handler craft.’ He further stated, “Nor does anything in the record call into question the countervailing truism that the functional duties and responsibilities of clerks primarily are described in terms of performing different types of distribution.

* * *

United States Postal Service and National Postal Mail Handlers Union, AFL-CIO and American Postal Workers Union, AFL-CIO, Cases Nos. K87C-1K-07702242 and H7C-NA-C 69, dated September 7, 2009, Arbitrator Joseph M. Sharnoff - Small Parcel and Bundle Sorter (SPBS)

The Arbitrator notes that the Opinion and Award in the SPBS case that the USPS, among other awards, properly assigned the duties of “5. Distribution of IPPs, newspapers, rolls, letter or flat bundles or slugs” and “6. Inserting labels.” to Clerks, as the Primary Craft. The Arbitrator noted therein the reliance by the USPS on the RI-399 Operation 105 - Mechanized Parcel Sorter, “4. Distribution of parcel post through the use of parcel sorting machines.”, to Clerks, as the Primary Craft. The assignment of the above distribution-type work to the Clerks on the SPBS was made in conjunction with the assignment to the Clerks performing those duties of the additional duties listed as No. “7. Pulling containers.” and No. “8. Containerizing and transporting.”, which were assigned to the Clerks for rotational purposes only. The Arbitrator also noted the reliance on RI-399 Operation 080-087, Multi-Position Letter Sorting Machine, “Machine distribution of all classes of letters.”, which had a note, amended in June 1979, “Allied labor required is normally performed by clerks because of the rotation system employed.” Also relied on was RI-399 088-089, Optical Character Reader Distribution, “OCR machine distribution of all classes of letter mail.”, with the revised note appended to Operation 080-087. Distinguished therein on were: Flat Sorting Machine (FSM 775) Guidelines, USPS Handbook PO-406, February 1984 and Flat Sorting Machine (FSM 881) Guidelines USPS Handbook PO-406, March 1993, on the grounds that the keying and sweeping/ledge loading in those operations were far more integrated than those at issue on the SPBS. The Arbitrator also discussed therein that the six factors are to be reviewed to determine the propriety of a Craft determination only to the extent that it is necessary to go beyond the confines of RI-399, as stated by Arbitrator Eischen [see above discussion].

The Arbitrator finds that the reliance by the USPS on the above-cited award in the SPBS case was appropriate regarding the award of the “singulating”/“facing” work to the Clerks, as the Primary Craft in the instant SPSS case.

The Dispute Concerning The Sweeping Function

The Arbitrator concludes that the determination by the USPS to assign some of the sweeping duties on the SPSS to the Clerks who were performing

the “singulating”/“facing” work on the SPAA, for rotational purposes reasonably was based on appropriate considerations and previous work assignments. The Arbitrator is not persuaded that the APWU has met its burden of demonstrating that the USPS acted improperly, arbitrarily or abused its discretion insofar as it did not assign to the Clerks all of the sweeping duties on the SPSS. There is no dispute that sweeping work is part of the duties recognized by the Parties as an appropriate function assigned to the Mail Handlers as the Primary Craft. The Arbitrator notes that the issue of the proper amount of the assignment of sweeping work to Clerks for rotational purposes is subject to considerations, including the proper level of staffing on the SPSS and ergonomics involved in the Clerk work on the platforms, which matters properly are not raised or resolved in this proceeding which is limited to the resolution of jurisdictional disputes. Nothing stated herein is intended to address or to resolve such other non-jurisdictional issues.

CONCLUSION

The Arbitrator, for the reasons set forth in the above Opinion, denies the following claims: the claim by the National Postal Mail Handlers Union [NPMHU], that the issuance by the United States Postal Service, on August 7, 2015, of the revised Craft Determination for the Small Parcel Sorter System [SPSS], was improper, insofar as the USPS changed its June 1, 2015, award of the “singulating”/“facing” work on the platform to Mail Handler Craft employees, by awarding such work to the Clerk Craft employees, and by its related assignment to those Clerks of some of the “sweeping” work (removing full containers from the SPSS and replacing them with empty containers) for rotational purposes only, insofar as such assignments were inconsistent with RI-399 Craft determination principles and with certain previously decided Arbitration Opinions and Awards; the claim by the American Postal Workers Union [APWU] that the USPS, in its revised determination of August 7, 2015, improperly awarded “sweeping” work to Mail Handler Craft employees, as the primary Craft, with the award of some of the “sweeping” work, for rotational purposes only, to those Clerk Craft employees who were assigned to perform the work of “singulating”/“facing” parcels, rather than assigning all of the “sweeping” work to Clerk Craft employees.

AWARD

The Arbitrator, for the reasons set forth in the above Opinion, denies the following claims: the claim by the National Postal Mail Handlers Union [NPMHU], that the issuance by the United States Postal Service, on August 7, 2015, of the revised Craft Determination for the Small Parcel Sorter System [SPSS], was improper, insofar as the USPS changed its June 1, 2015, award of the “singulating”/“facing” work on the platform to Mail Handler Craft employees, by awarding such work to the Clerk Craft employees, and by its related assignment to those Clerks of some of the “sweeping” work (removing full containers from the SPSS and replacing them with empty containers) for rotational purposes only, insofar as such assignments were inconsistent with RI-399 Craft determination principles and with certain previously decided Arbitration Opinions and Awards; the claim by the American Postal Workers Union [APWU] that the USPS, in its revised determination of August 7, 2015, improperly awarded “sweeping” work to Mail Handler Craft employees, as the primary Craft, with the award of some of the “sweeping” work, for rotational purposes only, to those Clerk Craft employees who were assigned to perform the work of “singulating”/“facing” parcels, rather than assigning all of the “sweeping” work to Clerk Craft employees.

Joseph M. Sharnoff, Arbitrator
National Jurisdictional Disputes

Dated: November 30, 2020
Oakton, Virginia