

NATIONAL ARBITRATION PANEL

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In the Matter of the Arbitration )  
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between )  
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UNITED STATES POSTAL SERVICE ) Case No. Q06C-4Q-C 11182451  
 ) (Implementation of Award)  
and )  
 )  
AMERICAN POSTAL WORKERS )  
UNION, AFL-CIO )  
 )

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BEFORE: Shyam Das

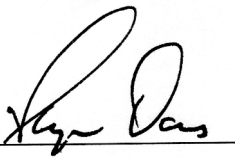
APPEARANCES:

For the Postal Service:	Tiffany McCleave, Esq. Kelly Ann Taddonio, Esq.
For the APWU:	Darryl J. Anderson, Esq.
Place of Hearing:	Videoconference
Dates of Hearing:	November 19, 2020 November 20, 2020
Date of Award:	June 4, 2021
Relevant Contract Provision:	Article 32.2
Contract Year:	2010-2015
Type of Grievance:	Contract Interpretation

## Award Summary:

ORDER

1. The Postal Service is directed to complete the conversion of the remaining routes -- or agreed alternatives -- as soon as reasonably practical and to provide the Union with a projected timetable within 45 days of this Order -- unless otherwise agreed.
2. The Postal Service is directed to make the bargaining unit whole by making a monetary payment calculated by multiplying the number of additional work hours that would have been worked by employees in the bargaining unit if the Postal Service had completed the required conversions during the periods from January 1, 2019 through March 31, 2020 and, prospectively, from July 1, 2021 until the conversions are completed. The Union will be responsible for ensuring that the amount so paid is expended for the benefit of PVS employees in the bargaining unit.
3. I retain jurisdiction for 90 days to resolve any matters relating to implementation of this Order.



Shyam Das, Arbitrator

BACKGROUND

Q06C-4Q-C 11182451  
[Implementation]

On August 18, 2016, I issued a final Award in Case No. Q06C-4Q-C 11182451 involving violation of the notice provisions in Article 32.2 of the 2010 National Agreement (2016 HCR Award). The basis for that Award is set forth in the Findings as follows (footnote omitted):

Article 32.2.B of the National Agreement provides that the requisite notice ("information") "will be" furnished to the Union at least sixty days prior to the scheduled installation of highway contract service. This includes HCR renewals. The Union has forty days in which to request a meeting to discuss a specific contract. The parties then are to exchange basic cost analyses within forty-five days and meet on or before the sixtieth day since the notice. In no uncertain terms, Article 32.2.B states:

At no time will the subject highway contract(s) for which a meeting has been requested be awarded prior to the actual meeting.

Timely notice is a necessary prerequisite for the Union to exercise its right to request a meeting before which the Postal Service is proscribed from awarding a highway contract.

The Postal Service in this case has not disputed that during 2010 and in subsequent years it engaged in wholesale and repeated violations of its obligation not to award an HCR contract before: providing notice, giving the Union the opportunity to request a meeting, and, if a meeting is requested, exchanging basic cost analyses and meeting with the Union to discuss the subject contract. The Postal Service has not offered an explanation for why it failed to comply with Article 32.2.B or to take effective corrective action even after the filing of this National grievance in 2011....

\* \* \*

A cease and desist order...is proper and necessary, but is not by itself sufficient given the nature of the Postal Service's violation, including that it was systemic, knowing and not shown to have resulted from circumstances beyond management's control. At the same time, any additional remedy must be related to and proportional to the harm -- as best it can be determined -- to the Union and the bargaining unit.

\* \* \*

The Award in the 2016 HCR Award provides as follows:

### AWARD

The Postal Service violated the National Agreement by notifying the Union of HCR contracts after they have been let. The Postal Service is ordered to cease and desist such violations and to comply with the notice and procedural provisions of Article 32.2.B before it awards a Highway Contract Renewal (HCR) contract.

The Postal Service also is ordered to comply with the following remedy:

- (1) Within six months of the date of this Award (unless otherwise agreed), the Postal Service shall convert the 110 (or whatever number there continue to be) disputed routes remaining in service (out of the original 212 cited violations) to PVS service for a four-year period.
- (2) By agreement, the parties may substitute other route(s) to be converted to PVS service pursuant to this order based on particular circumstances.
- (3) I retain jurisdiction to resolve any matters relating to implementation of this remedy.

In the Findings, I explained:

Part of the context I have taken into account in providing this particular remedy is that the Postal Service's violation of Article 32.2 is not limited to the 212 cited violations that occurred in 2010, but has been widespread and repeated. Together with the cease and desist order, this is intended to remedy the harm to the Union and the bargaining unit arising from these violations and to impress upon the Postal Service its obligation to fully comply with the procedures it agreed to with the Union.

On May 17, 2017, the parties entered into the following Memorandum of Understanding (MOU):

Re: Implementation of Remedy Award in  
Case No. Q06C-4Q-C 11182451

The United States Postal Service (“Postal Service”) and the American Postal Workers Union (“APWU”) (collectively, “the Parties”) execute this Memorandum of Understanding (“MOU”) to confirm their commitment to full implementation of the Arbitration Award in Case No. Q06C-4Q-C 11182451 (hereinafter “the Award”). The parties now agree as follows:

1. The Postal Service will convert 110 routes from HCR to PVS service no later than September 1, 2017. A list identifying the 110 routes to be converted is Exhibit A to this MOU.
2. The Parties agree to cooperate in good faith to effectuate the transfer of the 110 HCR routes to PVS in a timely manner. The Postal Service will begin the staffing process and any necessary hiring immediately. Once sufficient staffing is in place, notice of cancellation will be given to the contractor operating the HCR. The Postal Service will give the APWU written notice concerning the transfer of routes, identifying each route and stating the date on which the transfer(s) was completed and the postal employees assigned to the route(s), and PS form 4533's.
3. If for any reason, despite the Postal Service's good faith efforts, any of the routes identified in Exhibit A cannot be converted by September 1, 2017, the Postal Service will notify the APWU as soon as reasonably practicable of the reasons therefore. The parties will discuss possible alternatives.
4. This MOU is non-citable without the permission of both parties and non-precedential except that if the parties return to the Arbitrator in this matter, it is understood that this MOU will become an exhibit introduced in the arbitration hearing.
5. This MOU expresses all of the parties' agreements and understandings to date concerning implementation of the Arbitrator's Award in this case. This MOU does not modify the Arbitrator's retained jurisdiction. This MOU may be modified only by a subsequent MOU expressly modifying this MOU and executed by both parties.

The first HCR conversion actually occurred on September 9, 2017. By May 14, 2018, the Postal Service had completed conversion of 51 of the 110 HCRs. On May 14, 2018, the parties entered into the following Addendum to the May 17, 2017 MOU:

RE: Addendum to Memorandum of Understanding dated May 17, 2017, regarding *Implementation of Remedy Award in Case No. Q06C-4Q-C 11182451*.

The Parties have agreed to the following Addendum to the Memorandum of Understanding "Re: Implementation of Remedy Award in Case No. Q06C-4Q-C 11182451." The parties agree to the following to ensure full implementation of the Award in the above referenced case and to confirm the Arbitrator's continuing jurisdiction to resolve any matters relating to implementation of the remedy in this case.

1. This Addendum does not address or forego the Union's right to seek an appropriate remedy for failure to meet the September 1, 2017 implementation date.
2. With respect to any installation where the Postal Service is not presently in compliance, the Parties at the national level may agree on an installation-by-installation basis that newly hired PTFs utilized to insource the HCRs may cause the ratio of PTFs to FTR's to exceed the 20% PTF cap. Any agreement under this paragraph must be in writing and for the sole purpose of facilitating the Postal Service's compliance with the Award.
3. The Postal Service will provide the APWU a monthly report listing each site that is to be converted to PVS pursuant to the Award and stating for each site (1) what progress has been made since the previous monthly report; (2) what, if any, problem may be impeding conversion to PVS at that installation; and (3) a projected date for completion of conversion at that installation. The report required by this paragraph will be provided no later than the seventh day of each month.
4. Any local grievances filed for non-compliance with the September 1, 2017 implementation date should be held in

abeyance, at whatever step they are filed or first identified or are presently being held.

5. This Addendum does not modify the Arbitrator's retained jurisdiction or either party's right to invoke the continuing jurisdiction. If for any reason Arbitrator Das is not available to exercise his continuing jurisdiction under his Award, the case will be scheduled in front of another arbitrator on the national panel who will exercise the continuing retained jurisdiction to resolve any matters relating to implementation of the remedy of this case.
6. This Addendum is non-citable without the permission of both parties and non-precedential except (1) for purposes of enforcing this Addendum or the Parties' MOU; and (2) if a party asks an arbitrator to exercise the retained jurisdiction in this matter it is understood that this Addendum will become an exhibit introduced in the arbitration hearing.

Subsequently, the APWU invoked my retained jurisdiction "to resolve any matters relating to implementation" of the remedy provided in the 2016 HCR Award on the basis that the Postal Service had failed to comply with the Award. A hearing was heard on this matter on November 19-20, 2020, and the parties subsequently filed post-hearing briefs.

Ray Wagstaff, National PVS (Postal Vehicle Service) Lead for the Postal Service, testified that following issuance of the 2016 HCR Award, the Postal Service, working with the Union, identified 110 routes at 47 sites to be insourced. It was estimated that this would require hiring 991 employees. The plan was to insource all of these routes by September of 2017, as provided in the May 17, 2017 MOU. Wagstaff stated that all of the required vehicles, which the Postal Service leased, were in place by the end of August 2017, and still are there. He stressed that there never was a period when the Postal Service did not intend to insource all 110 routes, which he indicated was doable.

James Lloyd, a Labor Relations Specialist at Postal Headquarters, noted that Paragraph 3 of the 2017 MOU reflects the concern that the Postal Service would not be able to complete the conversion by September of 2017. Moreover, it is recognized in Paragraph 2 that a location needed to be fully staffed to be able to effectuate a route conversion. Essentially, he

stated, the only real problem with converting the routes was a staffing problem. He said it required a herculean effort to hire 1,000 drivers, which was in addition to additional new hires required due to attrition of the existing driver work force. He noted that the Postal Service always has a driver shortage, so that even locations where they were hiring to enable the insourcing of an HCR route already were shorthanded. In this regard, Wagstaff indicated that PVS compensation is not attractive to long-haul drivers.

Lloyd testified that the Postal Service initially decided to hire PSEs to staff the insourced routes for multiple reasons, including that the insourced work might be returned to HCR service after four years and the Postal Service did not want to end up with excess career employees at that time. In addition, using PSEs is less expensive than hiring career employees. Lloyd noted that they ran into problems after partially staffing up with PSEs because they could not insource the HCR until fully staffed and, yet, contractually they only could assign these PSEs to new work, and the Union was not willing to agree to a temporary exception. As a result, he said, some of the PSEs who were hired to perform the insourced routes ended up leaving the Postal Service before the insourcing could occur. He added that the Union also nixed certain proposed efforts to make the PSE positions more attractive, such as providing a signing bonus and making it easier for veterans to apply for those positions. As a result of these problems hiring PSEs, in the fall of 2019 the Postal Service decided to only hire career employees at the remaining sites.

Lloyd reviewed the staffing and HCR conversion progress over the period between the signing of the May 2017 MOU and the November 2020 arbitration hearing. Thirty-two routes were converted between September and December 2017. By the end of 2018, 74 routes had been converted, and by the end of 2019, 80 routes had been converted.<sup>1</sup> In the first four months of 2020, prior to the full onset of the Covid 19 pandemic, there were four conversions. In September and October 2020 there were an additional eight conversions. At the time of the hearing in November 2020, Lloyd stated, 92 of the 110 identified HCR routes had been converted. In its post-hearing brief, the Postal Service pointed out that subsequent to the

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<sup>1</sup> The six conversions in 2019 all occurred prior to April of that year.



hearing it was discovered that two of the 92 routes included segments which still were being operated by HCR. Since all the work was not being operated by PSEs, two routes were taken off the list of insourced routes. Therefore, the number of routes that had been fully converted as of the November 2020 hearing actually was 90 of the 110 identified routes.<sup>2</sup>

Lloyd insisted that the Postal Service recognizes its obligation to complete the conversion of the remaining routes, and fully intends to do so. Lloyd also stated that the Postal Service recognizes its obligation to provide monthly updates in accordance with the May 14, 2018 Addendum MOU, but noted that during some months there has not been enough new information to support an update. This, he explained, was why no updates were provided to the Union in certain months. He added that, beyond the monthly updates, the Postal Service has tried to keep the Union abreast of what is going on. Lloyd acknowledged that he told the Union that the Postal Service was having trouble with the local managers doing what was needed to complete the conversions.

Jeryl Wilson is Director of Diversity and Talent Acquisition, a position she has held since 2013. Talent Acquisition primarily is focused on headquarter and headquarter-related professional positions, but also works with the field to develop strategies for some of their critical and hard-to-fill positions. After the 2016 HCR Award, Wilson said, she was approached by Surface Transportation in 2017 to help develop strategies to increase the hiring of PVS drivers. She noted that there are two categories of PVS drivers: Motor Vehicle Operator (MVO) and Tractor Trailer Operator (TTO). The primary difference is that the MVO only require a Class B Commercial Drivers License, while the TTO needs a Class A CDL and six months experience operating a tractor trailer. Wilson stated that between 2016 and 2020, the Postal Service nationwide hired a total of 841 MVOs, but during the same period lost about 1,000 MVOs. During those same years, the Postal Service hired 5,106 TTOs and lost 3,677.

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<sup>2</sup> At the arbitrator's request, the April 2021 update was provided to supplement the record. It shows that 20 of the 110 routes still remain to be converted.

Wilson described the various recruitment efforts the Postal Service utilized to enable it to hire the required number of PVS drivers. In addition to posting open positions on the Postal Service career website, she testified regarding the efforts summarized below:

- Posting on CDLjobs.com -- began in September 2017
- One-Page Ad in National Trucking Magazine -- ran from December 2018 through July 2019
- Spots on Sirius Radio aimed at truckers -- ran for two weeks in October 2019
- National and Specific Area Ads on "Women In Trucking" website -- began in February 2020
- Various efforts to attract Veterans, including participation in career events
- Various Videos, including Videos run at Truck Gas Stations -- shown in January 2020
- Making Hiring Decals available for use on Postal Vehicles and Tractor Trailers
- Creating Brochures for Distribution at Postal Service career events
- Creating "Every Door" Mailers -- 2018 through 2019
- Program to increase internal pool of TTOs (from MVOs) -- announced in February 2020, subject to discussion with APWU; put on hold due to Covid 19 Pandemic
- Providing Training to Field on Virtual Career Fairs
- Advertising Vacancies on Various Social Media

On cross-examination, Wilson acknowledged that these recruitment efforts were made based on a combination of the need to hire sufficient drivers to comply with the 2016 HCR Award and the Postal Service's overall need for additional drivers. These efforts were nationwide, not targeted to specific locations where the HCR routes to be insourced existed. She also noted

that the training provided by headquarters to the field was voluntary, and that the field was encouraged to do and try various avenues for recruitment, but not required to do so. Similarly, the use of decals on Postal Service vehicles and direct door mailers was up to the districts to utilize and pay for.

Michael Foster, Director of the Motor Vehicle Division (MVD) in the APWU, noted that, in his opinion, too many of the PVS positions created by the Postal Service to staff the HCR routes to be insourced were created with short hours, which made them unattractive to potential drivers. He also pointed to issues that arose in Kansas City and elsewhere when the Postal Service hired PSEs to man the insourced routes, but were not fully staffed to do so. The HCR route could not be insourced until the Postal Service was fully staffed, but meanwhile the Postal Service could not keep the PSEs it had hired gainfully employed because contractually it could only assign such hires to “new work.”

Javier Piñeres retired in August 2020, after serving as Assistant Director of the MVD since 2013. He noted that in the monthly updates the Postal provided to the Union under the May 2018 Addendum to the May 2017 MOU, the Postal Service referred to the postings on the Postal Service career website as one of its “ongoing recruitment efforts.” He said that prior to the hearing he went to the website where the Postal Service posts available jobs by location and checked to see whether PVS positions were posted at the remaining sites still to be converted from HCR. When he did this in October 2020, none of the locations where such positions were posted coincided with sites where the Postal Service still had to insource an HCR route. In November 2020, some of the postings were for positions at the remaining conversion sites, but most of these were for “annuitant holiday transportation assistant,” a temporary Christmas position open to retired Postal Service drivers with the requisite CDL. He did find at least three PSE TTO postings -- which are up for 5 days -- at remaining conversion sites.

Piñeres also pointed out that PVS MVO and TTO total earnings, including overtime, can be quite substantial. According to an exhibit submitted by the Postal Service at

the most recent APWU Interest Arbitration, total earnings for these positions average between \$110,000 and \$115,000, and some drivers earned as much as \$140,000.<sup>3</sup>

### UNION POSITION

The Union asserts that the history and context of this dispute show that the Postal Service has been determined not to comply with the 2016 HCR Award or with Article 32.2. Since at least 1996, the Postal Service repeatedly has violated Article 32 in contracting out PVS routes. Indeed, this dispute arose in the context of Postal Service attempts to contract out all PVS work in violation of the National Agreement. Not long after the effective date of the 2010 National Agreement -- in which the Union made financial concessions to the Postal Service worth \$3.7 billion in exchange for the agreement by the Postal Service to bring work back into the bargaining unit -- the Postal Service sought to contract out all PVS work nationwide, while at the same time failing to comply with its commitment to increase bargaining unit work. This was grieved by the Union, resulting in a 2015 national arbitration award by Arbitrator Goldberg (Case No. Q10V-4Q-C 14125953) concluding that the Postal Service effort violated its contractual obligations to the Union. The Union stresses that at the same time the Postal Service was attempting to contract out all PVS work it was not complying with the notice requirements of Article 32.2 and engaging in other efforts to subvert compliance with that provision.

The Postal Service's failure to comply with Article 32.2 resulted in the 2016 HCR Award which ordered the Postal Service to convert 110 routes from HCR to PVS for a period of four years. As permitted by the Award, the parties agreed to extend the time limit for conversion of the 110 routes until September 1, 2017. The Union emphasizes, however, that the Postal Service has neither complied with the Award nor invoked the Arbitrator's continuing jurisdiction to seek relief from its requirements. The Postal Service has not argued it was impossible to comply with the Award; it simply has not complied.

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<sup>3</sup> The Union also points out that PVS jobs are attractive to many people because they permit drivers to return home every day after work unlike non-local over-the-road driver positions.

The Union insists that the record in this case also shows the following: (1) the Postal Service had no plan to comply with the 2016 HCR Award; (2) there is no evidence that any Postal Service executive with authority to do so ordered managers to comply with the Award and the Postal Service did nothing to overcome resistance from local managers who did not want to comply; (3) although some route conversions to PVS occurred in 2017 and 2018, such conversions then virtually stopped until just before the November 2020 noncompliance hearing in this case; (4) through its purported driver recruitment program, the Postal Service paid only lip service to the need to hire drivers while failing to even advertise the need for drivers on the Postal Service web page -- the Postal Service has not proven that it could not hire enough drivers to comply with the Award and its recruitment efforts were too little and too late; (5) the Postal Service has ignored repeated Union requests to substitute other routes to be converted where hiring drivers would be more successful; and (6) while the Postal Service has been violating the Award, the Union has been abiding by its agreement in the May 2018 Addendum MOU to hold locally filed cases in abeyance.

The Union insists the Postal Service must be compelled to come into compliance with the 2016 HCR Award and to redress its delay in complying. The Union needs an order that will make the Award effective. The Postal Service was ordered to comply with the Award by February 2017. By agreement of the parties, as permitted by the Award, the Postal Service agreed to comply by September 1, 2017. More than four years later the Postal Service still is not in compliance. Therefore, a strong order correcting the Postal Service's noncompliance is warranted. Moreover, such an order finds ample support in arbitration precedent, including Arbitrator Mittenthal's 1994 decision in Case No. H7C-NA-C 36 et al.

The Union asserts that the remedy to be provided here should recognize and reflect the long history of the Union's efforts to obtain an adequate remedy for the Postal Service's wholesale, obstinate and ongoing violations of Article 32.2. On the present record, there can be no conclusion other than that the Postal Service has paid only lip service to the 2016 HCR Award, while doing little or nothing to comply with it. Accordingly, the Union requests that the Arbitrator enter an order:

1. Providing that the routes converted to PVS routes pursuant to the Award in this case must remain PVS routes until four years after all 110 routes have been fully converted to PVS routes;
2. Requiring the Postal Service to make the bargaining unit whole by making a monetary payment to the bargaining unit calculated by multiplying the number of work hours that would have been worked by employees in the bargaining unit if the Postal Service had complied with the September 1, 2017, deadline for the conversion of 110 routes to PVS, but which were not worked by bargaining unit employees because of the Postal Service failure to meet that deadline. This compensation must be calculated using the employee costs specified in Article 32.2.E for the purposes of cost comparisons of the type and mode of transportation. The Union will be responsible for ensuring that the amount so paid is expended for the benefit of PVS employees in the bargaining unit, in [sic] including those who have a pending claim for compensation pursuant to a grievance claiming a violation of the Award in this case;
3. Requiring the Postal Service to collect accurate and detailed information about the 110 routes to be insourced pursuant to the award in this case, of a nature and in a form to be specified by the Union, and must communicate that information to the Union each month no later than the seventh day of each month until the expiration of the four-year period prescribed above;
4. Requiring that the determination of the monetary compensation to be provided under paragraph 1 above and the determination of the nature and form of the information to be provided to the Union under paragraph 3 above, must be specified within 60 days after the date of this order, and the monetary payment must be made by the Postal Service within 90 days after the date of this order; and
5. Providing that the Arbitrator will retain jurisdiction for 90 days to resolve any matters relating to implementation of this order.

#### POSTAL SERVICE POSITION

The Postal Service insists there is neither legal nor factual support for the Union's requested remedies, which exceed make whole relief and constitute a windfall to the

Union. The Postal Service argues that in assessing whether any additional remedies are warranted for the Postal Service's delay in converting the routes, it is important to consider the position the Union would have been in had the Postal Service converted the work by September 1, 2017. The Union would have received 110 routes for a four-year period. With the exception of twenty routes, which the Postal Service is actively working to insource, the Union has received that remedy. Granting the Union the remaining twenty routes, labor costs for routes that already have been and will be insourced, and extending the time period that the routes are to remain in PVS -- as the Union requests -- is well beyond where the Union would be had the Postal Service timely converted the routes.

The Postal Service contends that the Union's requested remedy is not proportionate to the harm. At best, the delay in converting the routes could be quantified as an inconvenience to the Union. The delay certainly does not harm current members of the bargaining unit who could not have performed the work hours necessary to insource those routes. The Postal Service asserts that, unlike the circumstances in the 1994 Mittenthal Award cited by the Union (Case No. H7C-NA-C 36 et al.), the Postal Service in this case has taken effective action to comply with the 2016 HCR Award, and has made good faith efforts to comply with the Award, thereby mitigating any potential harm to the Union.

The Postal Service maintains that the Union, essentially, is seeking a punitive remedy. Not only are punitive damages disfavored in the labor arbitration context, but in the rare instances where they have been deemed appropriate, they typically are reserved for "situations of subjective bad faith and flagrant and known violations of contractual rights." There is no evidence in this case to suggest that the Postal Service acted in bad faith or willfully and wantonly delayed compliance with the 2016 HCR Award. To the contrary, the evidence indicates that the Postal Service fully intended and intends to comply with the Award. Indeed it is spending approximately \$15.3 million each year to finance the vehicles necessary for conversion of the routes. The Postal Service's good faith also is evidenced by management's recruitment and hiring campaign for MVOs and TTOs. The Postal Service would not have embarked on such an extensive and expensive campaign if it were not fully committed to hiring the personnel necessary to insource the routes. The Postal Service further points out that it

proposed other initiatives that ultimately were rejected by the Union -- such as waiving the requirement that veterans possess a Class A CDL at the time of applying, providing hiring bonuses, and allowing newly hired PSEs to perform other work -- which highlights the Postal Service's commitment to implementing creative strategies to bolster hiring and retention of bargaining unit truck drivers.

The Postal Service asserts that the Union's claims that it impeded conversion of the routes do not amount to bad faith. Although the Union takes issue with the Postal Service's use of short runs, use of PSEs in lieu of career employees, failure to propose alternative routes and the frequency and duration of job postings, none of these actions amount to bad faith or demonstrate that the Postal Service attempted to delay implementation of the 2016 HCR Award.

The Postal Service contends that it should be granted additional time to convert the remaining twenty routes. The evidence shows that the Postal Service already has begun hiring at the remaining sites, and many are close to reaching the staffing level necessary for conversion of the routes.

In the event the arbitrator does deem a monetary remedy appropriate, the Postal Service urges that the only appropriate remedy is the labor cost for any route not insourced by the date of the Award for a four-year period. If that monetary remedy is granted, the Postal Service adds, it should not also be required to insource any of the remaining routes as that would exceed restoration of the status quo. Moreover, to avoid future disputes on those regional grievances held pending the outcome of the instant case, the Postal Service requests that the Award in this proceeding clearly establish that such grievances are resolved by the Award in this case.

### FINDINGS

The evidence as a whole falls short of showing intentional or willful failure to comply with the 2016 HCR Award on the part of the Postal Service. The evidence does show that the Postal Service at the Headquarters level did not effectively ensure that the affected



districts completed timely conversion of all of the jointly agreed to routes, particularly in the face of some at least passive local resistance. The Postal Service stresses that 90 of the 110 routes now have been converted, but not only was this incomplete compliance, but the conversions that were effected were not timely.

It was perhaps predictable that the Postal Service would not favorably view the required conversion of certain HCR routes to PVS that was ordered in the 2016 HCR Award. But, as stated in my Award, such an order was deemed necessary “to remedy the harm to the Union and the bargaining unit arising from...[the “widespread and repeated” violation of Article 32.2] and to impress upon the Postal Service its obligation to fully comply with the procedures it agreed to with the Union.” That being said, the circumstances preceding the 2016 HCR Award, including the situation addressed by Arbitrator Goldberg in his 2015 award, are not directly germane to resolution of the current remedial dispute.

In the parties’ May 17, 2017 MOU, the Postal Service agreed that it would convert the 110 identified HCR routes “no later than September 1, 2017.” Although it had leased all the necessary motor vehicles by then, the Postal Service did not meet this deadline. None of the routes was converted by September 1, 2017, and only 51 were converted by May 14, 2018, when the parties agreed to the Addendum to the May 17, 2017 MOU.

Although out of compliance with the agreed September 1, 2017 deadline, the Postal Service did complete conversion of 74 of the 110 routes by the end of 2018. Such conversions are neither easy, nor quick. The essential problem is staffing -- particularly in a period when the Postal Service already was facing a shortage of PVS drivers. The Postal Service explained its reasons for attempting to hire PSEs to do this “new work”, which realistically might last only four years, but that led to assignment and retention problems in the interim before a sufficient number of qualified employees were in place to actually effectuate the route conversion(s) at a particular location.

For unexplained reasons, continued conversion of routes in 2019 was much slower than before -- only a total of six routes were converted in all of 2019. Four more

conversions occurred in the first four months of 2020 before the pandemic took hold. Six additional conversions were completed thereafter prior to the hearing in November 2020.<sup>4</sup>

As the Union points out, the Postal Service did not invoke my retained jurisdiction to seek relief from the terms of the 2016 HCR Award or the May 2017 MOU. The Postal Service also did not dispute or explain why it did not pursue possible alternate routes with the Union, if there were hiring problems at certain locations.

A failure to comply with an arbitration award's remedial order, as modified by the parties' subsequent MOU, is analogous to failure to comply with a cease and desist order. As such, the Union is entitled to an appropriate additional remedy for this failure, as well as prompt compliance by the Postal Service with its remaining outstanding obligations.

The Union seeks an arbitral order at this time that includes the following two demands:

- Providing that the routes converted to PVS routes pursuant to the Award in this case must remain PVS routes until four years after all 110 routes have been fully converted to PVS routes;
- Requiring the Postal Service to make the bargaining unit whole by making a monetary payment to the bargaining unit calculated by multiplying the number of work hours that would have been worked by employees in the bargaining unit if the Postal Service had complied with the September 1, 2017, deadline for the conversion of 110 routes to PVS, but which were not worked by bargaining unit employees because of the Postal Service failure to meet that deadline....

The Postal Service insists that these demands go beyond a make whole order and are not proportional to the harm caused to the Union and the bargaining unit. In particular, the Postal Service stresses that there has been no harm to current members of the bargaining unit, all of whom are fully employed. The insourced work and the work yet to be insourced was and will be

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<sup>4</sup> Evidently, there have been no further conversions through March 2021.

assigned to new hires. The Postal Service further asserts that it has made a good faith effort to comply with the 2016 HCR Award, and that the Union is seeking a punitive remedy.

The PVS bargaining unit as a whole has been harmed by the Postal Service's failure to convert the work at issue as provided for in the 2016 HCR Award and subsequent May 2017 MOU. Individual employees possibly may have been deprived of additional earnings opportunities. Moreover, while there is some basis to the claim that the Union is seeking a punitive remedy, some such remedy seems reasonably necessary to induce the Postal Service to fully honor its contractual obligations. The evidence may not establish that the Postal Service has acted in bad faith, but it also has not maximized its efforts to comply over a lengthy period of years.<sup>5</sup> The Postal Service asks for more time to complete conversion of the remaining 20 routes, but provides no firm indication of when it believes that reasonably can be concluded, which it insists it can accomplish.

Under all the circumstances, including the likely impact of the widespread pandemic, I will direct the Postal Service to complete conversion of the remaining 20 routes -- or agreed alternatives -- as soon as reasonably practicable, and to provide the Union with a projected timetable within 45 days of this decision -- unless otherwise agreed. I also will grant the bargaining unit a monetary remedy based on the number of additional hours that would have been worked on unconverted routes if they had been timely converted during the periods from January 1, 2019 through March 31, 2020 and, prospectively, from July 1, 2021 until the conversions are completed. That, on balance, constitutes an overall appropriate remedy in my judgment. I am not persuaded that the Union's demand that converted routes must remain PVS routes until four years after all 110 routes have been fully converted is appropriate. That would go substantially beyond the remedy provided in the underlying grievance by the 2016 HCR Award.

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<sup>5</sup> The Postal Service indicated that the Union rejected certain of its proposed initiatives, but in the Union's view those initiatives negatively affected or could have affected its members. The Union has not been shown to have acted unreasonably.

The Postal Service also must comply with the obligations it agreed to in the May 17, 2017 MOU and May 14, 2018 Addendum thereto. This includes the requirement to provide a monthly report as stated in Paragraph 3 of the Addendum. If there is no substantial new information to convey in a particular month, the Postal Service can so indicate, but still must provide the report.

I address one additional matter. In this national arbitration proceeding, the Union seeks a remedy for failure of the Postal Service to comply with my 2016 HCR Award. Evidently, regional grievances on the same matter are being held in abeyance by agreement pending the determination in this national proceeding. While I do not have jurisdiction over those regional grievances, and make no ruling on them, the present decision addresses and applies to the Postal Service's national failure to comply with the remedy provided in the 2016 HCR Award over which I have retained jurisdiction.

\* \* \*

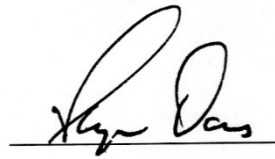
In accordance with my retained jurisdiction in Case No. Q06C-4Q-C 11182451, decided on August 18, 2016, and the above Findings, I issue the following:

### ORDER

1. The Postal Service is directed to complete the conversion of the remaining routes -- or agreed alternatives -- as soon as reasonably practical and to provide the Union with a projected timetable within 45 days of this Order -- unless otherwise agreed.
2. The Postal Service is directed to make the bargaining unit whole by making a monetary payment calculated by multiplying the number of additional work hours that would have been worked by employees in the bargaining unit if the

Postal Service had completed the required conversions during the periods from January 1, 2019 through March 31, 2020 and, prospectively, from July 1, 2021 until the conversions are completed. The Union will be responsible for ensuring that the amount so paid is expended for the benefit of PVS employees in the bargaining unit.

3. I retain jurisdiction for 90 days to resolve any matters relating to implementation of this Order.

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

Shyam Das, Arbitrator