



## American Postal Workers Union, AFL-CIO

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### Case No. Q10C-4Q-C 15206043

### POStPlan Staffing Violation: Remedy

On June 7, 2017, Arbitrator Goldberg issued an award in the national-level case over what remedy was due for the Postal Service's failure to staff POStPlan offices timely in accordance with the POStPlan Award and the Memorandum of Understanding *Re: POStPlan: Staffing of Offices, Filling of Assignments, PSE Usage and Conversions* (POStPlan MOU). Arbitrator Goldberg held that the Postal Service must make whole all bargaining unit employees who were denied Clerk Craft work as a result of the Postal Service's failure to comply timely with the POStPlan MOU. (Award at 3)

Following the issuance of the original POStPlan Award on September 5, 2014, the parties negotiated the POStPlan MOU in which they set December 22, 2014, as the date by which the Postal Service would staff Level 4 and 6 POStPlan Remotely-Managed Post Offices (RMPOs) with career clerks as well as replace 81-8 PSEs in Level 18 offices with career employees. For many months following that deadline, however, the Postal Service continued to use PMRs to staff the Level 4 and Level 6 RMPOs in offices all across the country. Many Level 18 offices also reported still using 81-8 PSEs instead of career employees. The Postal Service acknowledged its widespread violations of the POStPlan MOU. (Award at 11) The issue before Arbitrator Goldberg was how to remedy these admitted violations of the POStPlan Award and MOU.

The Postal Service raised a threshold matter in the case that the dispute was not arbitrable because it did not meet the requirements for national-level arbitration. (Award at 8) Arbitrator Goldberg rejected the Postal Service's request that the hearing be bifurcated for the Arbitrator to hear and decide the arbitrability issue before taking evidence on and deciding the merits of the APWU's dispute. (Award at n.3) Instead, Arbitrator Goldberg ordered and the parties presented all of their evidence and arguments in one day of hearing and in post-hearing briefs.

The APWU cited the language in the POSTPlan Award in which Arbitrator Goldberg retained jurisdiction over any “issues of interpretation or application” and in the POSTPlan MOU in which the parties agreed that “disagreements over interpretation of this document will be promptly assigned” to Arbitrator Goldberg. (Award at 11) Arbitrator Goldberg relied on the authority the parties gave him to address POSTPlan issues. He noted his retention of jurisdiction in the POSTPlan Award, and the parties’ subsequent agreement to reserve “disputes over the interpretation of that MOU for decision by the National Arbitrator who had issued the POSTPlan Award.” (Award at 11) He concluded, therefore, that “[u]nder both the POSTPlan Award and the terms of the MOU, then, I have jurisdiction to hear and decide this case.” (Award at 11)

Turning to the merits of the remedy question before him, Arbitrator Goldberg held that the Postal Service owed the bargaining unit for all of the hours improperly worked by PMRs and PSEs after the December 22, 2014, deadline with the exceptions noted. He acknowledged the Postal Service’s ready admission that there were “widespread violations of the POSTPlan Award after December 22, 2014,” and that the Postal Service did not “deny the propriety of a monetary remedy based on the harm sustained by Clerk Craft employees as a result of those violations.” (Award at 11) He also noted, however, that in some instances, there may have been an explanation for the violations in that the PMR was performing carrier, not clerk, work or that there was “no available clerks who had passed the window training” the parties had agreed was required. (Award at 11-12.) The arbitrator indicated that granting a remedy for those non-violations would “...be inconsistent with the principle that the goal of a remedial order is to make affected employees whole for injuries sustained by them as a result of an employer’s violation of the contract, not to punish the employer for having committed that violation.” (Award at 12) At the same time, however, Arbitrator Goldberg acknowledged the APWU’s response to the Postal Service’s position that the evidence showed that these exceptions were “too few and too limited to significantly affect the scope of the violation.” (Award at 12)

Arbitrator Goldberg ordered the Postal Service “to make whole all employees who have been denied Clerk Craft work as a result of the Postal Service failure to comply in a timely fashion with the POSTPlan MOU.” (Award at 13) The hours denied career clerks are to “be determined in the first instance by Postal Service records” like those referenced by the APWU in the hearing. (Award at 13) This remedy begins on December 22, 2014. (Award at 13) Arbitrator Goldberg noted there are two possible exceptions or adjustments that can be made to the PMR hours for hours that the Postal Service can prove were spent performing work outside the Clerk Craft or for performing window work because of “the absence of any trained Clerk Craft employee to perform that work.” (Award at 13) Arbitrator Goldberg ordered, however, that the burden of proving that PMR hours fall within one of those two exclusions is on the Postal Service. (Award at 13) He ordered the same remedy for the Level 18 offices in which Clerk Craft work was performed by 81-8 PSEs.

As requested by the APWU, Arbitrator Goldberg remanded to the parties the exercise of determining the compensable hours, who is entitled to a remedy, and the appropriate amount of any such remedy. (Award at 14) He clarified that the remand and review is to happen at the national level, "except to the extent the parties agree to utilize local resources and personnel to assist them." (Award at 14) Arbitrator Goldberg retained jurisdiction over any issues related to the Award including the hours worked and appropriate payment to affected employees, and directed that the review take place over the next 90 days. (Award at 15-16.)

June 7, 2017