



American Postal Workers Union, AFL-CIO

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Date: August 14, 2023

Re: Arbitrator Daniel F. Brent Award

On August 1, 2023, Arbitrator Daniel F. Brent transmitted a National Award dated July 21, 2023, to the parties in the Motor Vehicle Craft Jobs MOU case, Case No. Q10C-4Q-C 4256800, finding that the Postal Service violated the MOU by failing to convert 600 Highway Contract Routes to the Postal Vehicle Service.

The dispute stems from the 2010 contract negotiations. At the time, the Postal Service claimed it was in a dire financial situation and was looking for significant economic concessions from the APWU. In return for concessions, the APWU demanded protections on existing work and a commitment from the Postal Service to bring more work "in house" to the bargaining unit.

Each craft negotiated MOUs that created new bargaining unit jobs for work that had been contracted out. In the Motor Vehicle Craft Jobs MOU, this included work coming from HCRs. Specifically, the Motor Vehicle Craft Job MOU said MVS would "assume service on a minimum of 600 PVS routes currently contracted to HCR upon the expiration of each supplier contract," along with reviewing "approximately 8,000 other existing Transportation Highway Contract Routes."

Soon after the 2010 contract was signed, the Union and the Postal Service disagreed over what the 600 PVS routes meant. The Postal Service took the position that the contract required it to provide 600 duty assignments made from work contracted out to HCR operators. The APWU disagreed, believing that the bargain was for the Postal Service to insource 600 HCR routes or contracts which was likely to generate at least but probably more

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than 600 PVS jobs. The APWU initiated a dispute which was arbitrated last year over three days of hearing before Arbitrator Brent.

In his Award, Arbitrator Brent ruled in favor of the APWU, finding that the Union advanced the “more persuasive interpretation” of the term “PVS routes.” Arbitrator Brent observed that describing the HCR insourcing “in terms of number of routes to be converted, rather than number of duty assignments or bargaining unit jobs or driving assignments,” supported the Union’s “assertion that the balance of evidence, particularly the expression of the new obligations to convert 600 existing routes as a minimum and [to] scrutinize thousands of other HCR routes for potential bargaining unit jobs[,] ... better explain[ed] and therefore mandate[d] interpreting the reference to ‘PVS routes’ in Section 2 [of the MOU] as sought by the Union.” Given the context of the subcontracting process under Article 32 as well as the rest of MVS Jobs MOU, Arbitrator Brent concluded that the term “PVS routes” could not “be construed as referring only to 600 duty assignments as the Employer contends.” Because the Postal Service failed to insource 600 HCR routes, Arbitrator Brent held that the Postal Service violated the Motor Vehicle Craft Jobs MOU.

Arbitrator Brent remanded the matter back to the Union and the Postal Service to determine an appropriate remedy for the Postal Service’s violation. Additional information will be released as the MVS Division works toward the remedy.

In Solidarity,



Charlie Cash
Industrial Relations Director

Attachment

CC:jm | OPEIU#2 | AFL-CIO

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration Between
UNITED STATES POSTAL SERVICE
and
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Case Number: Q10C-4Q-C 4256800
(Motor Vehicle Craft Jobs MOU)

A hearing was held in the above-entitled matter on May 23 and 24, 2022 and October 12, 2022 before Daniel F. Brent, duly designated as National Arbitrator. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross examine witnesses, and to present evidence and arguments. A verbatim transcript was made of the proceedings and both parties submitted post-hearing briefs.

APPEARANCES

For the Employer:

Kevin B. Rachel, Esq.

Robert E. Ocasio, Labor Relations Specialist

Ray Wagstaff, Lead PVS Analyst

Mike Malakar, Retired Executive Manager for Headquarters Contract Compliance

Patrick Devine, Manager for Contract Administration

For the Union:

Melinda K. Holmes, Esq., of Murphy Anderson, Esqs.

Adam Breihan, Esq., of Murphy Anderson, Esqs.

Mike Foster, Director of Motor Vehicle Division, APWU

Javier Pineres, Former Assistant Director of Motor Vehicle Craft

ISSUE SUBMITTED

Did the USPS violate the first sentence of Section 2 of the MVC Jobs MOU by failing to convert 600 HCR's to PVS?

If so, what shall be the remedy?

NATURE OF THE CASE

The American Postal Workers Union (hereafter, APWU or the Union) represents United States Postal Service (hereafter, the Postal Service, the Employer or USPS) employees in job classifications divided into three major crafts. The largest of these is the Clerk Craft. The Maintenance Craft is the next largest, and the Motor Vehicle Craft is the smallest of the three crafts. The Motor Vehicle Craft includes approximately equal numbers of employees in the Driver and Mechanic classifications. Drivers are subdivided into Tractor Trailer Operators and Motor Vehicle Operators. Tractor Trailer Operators (TTO's) and Motor Vehicle Operators (MVO's) comprise part of the Postal Vehicle Service (PVS), the Postal Service's in-house trucking operation that transports bulk quantities of mail among mail processing facilities; airport facilities; and individual post offices, stations, branches, and collection boxes. There are 157 PVS sites across the United States.

MVO's and TTO's are assigned to regularly scheduled routes for which they bid on a seniority basis. These route assignments are limited under the National USPS-APWU Agreement to 350 miles round trip so that drivers can return home at the end of each shift.

A significant portion of the USPS bulk mail transportation needs are met by contracting out to private trucking companies. These contracts are referred to as "Highway Contract Routes" (HCR's). HCR's

cover a larger service area than PVS routes. Some HCR's employ up to 100 contract employees a day to fulfill the terms of the contract, and other HCR's may require only 1 or 2 drivers to fulfill the contracts, primarily in rural areas. The Postal Service had at least 4,000 HCR's in effect at the time covered by this grievance.

The instant dispute arose because the parties disagreed about the meaning of a single sentence in Article 32 of the National Agreement as negotiated by the parties in their 2010 Memorandum of Understanding. When the MOU was being negotiated, the Postal Service was experiencing severe financial difficulties caused by declining mail volume that had led to reduction of the USPS workforce by more than 200,000 employees nationwide. In addition, several mail processing facilities had been closed, and the Postal Service was considering additional adjustments to cope with its financial crisis.

With this backdrop to their negotiations, the Employer was seeking extraordinary concessions from the APWU and other unions representing postal employees to manage the consequences of reduced revenue and burgeoning expenses. These concessions included wage freezes, deferred increases, and operational changes. The Union was seeking to preserve as much job security as it could for its bargaining unit members and to expand the work opportunities for the APWU bargaining unit. Both parties expressed the urgency of negotiating a bargain that would fairly balance their competing interests, as an Interest Arbitration Panel could

not impose the unprecedented arrangements necessary to satisfy the parties' needs.

To achieve these aims, the Union sought to retrieve work that had been subcontracted, particularly in the Motor Vehicle Craft, and to assign that work to full-time career employees. The parties struck a deal by which some of the HCR driving assignments would be returned to the bargaining unit. The parties agreed that the classification of Supplemental non-bargaining unit casual employees within the Postal Service work force would be eliminated. The parties also agreed that a newly created classification of non-career employees known as Postal Support Employees (PSE's) would be absorbed into the APWU bargaining unit and would perform the work previously performed by non-bargaining unit casual employees. PSEs would receive a lower level of wages, benefits, and job protections and would operate under different work rules. In exchange, the parties agreed that PSEs would form the exclusive pool of employees who could achieve career employee status in the Motor Vehicle Craft as openings became available.

In Section 2 of their Memorandum of Understanding, the parties agreed that:

The Motor Vehicle Craft will assume service on a minimum of 600 PVS routes currently contracted to HCR upon the expiration of each supplier contract. Route service may be assigned to either career or non-career employees, as necessary. The Employer will designate the 600 PVS routes to be assigned to Motor Vehicle Craft and no less than 25% of the duty assignments created will be assigned to career employees.

After the 2010 MOU was implemented, the Employer created 600 jobs for career and non-career bargaining unit PVS drivers. Thereafter, the parties differed on the meaning of the reference to 600 PVS routes in Section 2 of the Motor Vehicle Crafts MOU. According to the Union, the parties had agreed that 600 HCRs were to be selected by the Postal Services to be brought back in-house from among the 4,000, or possibly as many as 8,000, current HCR's. In-sourcing and subsequent "postalization" of these routes would be deferred until as each HRC contract expired.

The parties had agreed that no fewer than 25% of the jobs resulting from the reinstatement of these HCR routes as bargaining unit positions would be allotted to current full-time career bargaining unit employees and up to 75% could be allocated to non-career PSE drivers, whose contracts of employment were renewed annually. This aspect of the contract is not disputed.

The Postal Service asserted that the 2010 MOU reference to 600 "PVS routes" obligated the Employer simply to provide 600 additional jobs for APWU bargaining unit employees as HCR route contracts expired. The Employer further asserted that it had complied fully with the parties' Memorandum of Understanding because 603 Postal Vehicle Service route driver jobs have been provided.

The Union grieved the Employer's failure to convert 600 HCR routes for PVS drivers, which undoubtedly would provide many more than 600 additional jobs for bargaining unit career and non-career drivers, contending that the definition of "PVS route" mutually understood by the parties' negotiators bargaining at the National Contract level mandated conversion of 600 HCR routes, not creating 600 individual jobs. The parties were unable to resolve their dispute within the grievance procedure and the matter was brought to arbitration.

RELEVANT CONTRACT PROVISIONS

Article 32, Section 2

(Motor Vehicle Craft Jobs Memorandum of Understanding from the 2010 National Agreement, page 415 et seq.):

The Motor Vehicle Craft will assume service on a minimum of 600 PVS routes currently contracted to HCR upon the expiration of each supplier contract. Route service may be assigned to either career or non-career employees, as necessary. The Employer will designate the 600 PVS routes to be assigned to the Motor Vehicle Craft and no less than 25% of the duty assignments created will be assigned to career employees.

In addition, the parties agree to review approximately 8,000 other existing Transportation Highway Contract Routes (HCR's). It is understood that in considering the conversion of such work the parties will use DOT work rules and an appropriate mix of bargaining unit costs as submitted by the APWU. In considering whether or not bargaining unit positions may be created the parties will follow the below described process:

- a. The Postal Service will provide each individual HCR contract to the APWU upon ratification.
- b. The APWU will review the contracts and provide the Postal Service designee with specific route and trip information (including frequency, time of departure and arrival, annual mileage and equipment requirements) regarding where it believes opportunities exist to create

bargaining unit duty assignments based on the work contained in the HCR contract.

c. The APWU may initiate and obtain a cost comparison on segments (trips) of an HCR route: that is some, but not all, the routes covered by the contract. If the APWU fair comparison of a contract or a segment of a route shows that it would cost less to have the work performed by MVS employees, it will be assigned to MVS employees.

d. The parties shall meet within 14 days of receiving the APWU's input as described in paragraph 2b above.

e. The Postal Service will consider overall operational needs when creating the new assignments including fleet needs, maintenance capabilities, parking, route logistics, etc., but these factors will not be used to circumvent the Memo (Re: Contracting and Insourcing of Contracted Services).

f. After proper and appropriate notice has been given to the HCR contractor such that termination of the contract does not cause or incur additional expense or cost to the Postal Service, any and all new assignments will be posted for bid to the existing career workforce before filled with new employees.

FINDINGS AND ANALYSIS

Both parties agree that the outcome of the instant case hinges upon the definition of a "PVS route". The active participants who directly negotiated the 2010 Memorandum of Agreement for each party were not available to testify, in some cases because they are deceased. Each party asserts that the term "PVS routes" has a clear, but different, meaning and acknowledges that the meaning is not explicitly defined in any lexicon of Postal Service terms, in the contract, or in a mutually accepted single source.

The Arbitrator's task is further complicated because the participants in the 2010 contract negotiations did not express their good faith understanding of this aspect of their grand bargain in terms with a

commonly accepted meaning. If they had specified that 600 duty assignments would be transferred to bargaining unit Motor Vehicle Craft PVS drivers from existing HCR routes selected by the Employer as each route contract expired, non-compliance easily could be proved or disproved, as a duty assignment is an individual PVS driver's assignment to perform a defined set of stops along an assigned route. Each PVS driver selects a duty assignment by seniority bid.

Under the duty assignment definition of "PVS routes" urged by the Employer, appropriate segments from an expiring HCR contract could have been selected to constitute a duty assignment that could be accomplished within the time and mileage parameters established under the collective bargaining agreement and governed by DOT regulations. Conversely, the parties could have expressed their bargain as a promise to convert 600 HCR routes selected by the Employer and to reassign all of the eligible component segments of each route to PVS drivers as each HCR route contract expired, as the Union asserts.

Assuming that Employer and Union negotiators had reached a common understanding of the terms of their agreement, either formulation would have unambiguously memorialized their bargain as they now describe it. However, the parties' description of the negotiation process describes two materially different agreements on the disputed obligation to create 600 "PVS routes".

The original negotiators who dealt directly with each other in 2010 and early 2011 were unavailable to testify personally to provide a definitive first-person reconstruction of the bargaining history in a manner that would define the terms used in the contested second paragraph of the MOU that was incorporated into Article 32.2. The notes or other hearsay recollections referred to by the parties during the arbitration proceeding did not establish a definitive basis to accept one or the other of their assertions as dispositive of the instant dispute. As the Employer asserted, the Arbitrator must confine his analysis to the pertinent contract language. Therefore, the Arbitrator must analyze the syntax and the context of the negotiated language within the final version of the Memorandum of Agreement signed by the parties in early 2011.

The Union asserted that the trade-off for granting massive financial and operational concessions, including wage freezes, was to obtain a commitment by the Employer to convert a substantial number of HCR operated routes to segments to be driven by career and non-career bargaining unit employees. The Union agreed that the Employer could select which HCR contracts to convert for bargaining unit drivers and also agreed to defer determining exactly how many driving duty assignments would be derived from the six hundred HCR's.

The Employer cited the explicit number of 600 "PVS routes" as analogous to the number of additional bargaining unit jobs achieved under the 2010 MOU by the other two primary Crafts represented by

APWU. Both interpretations of the term “PVS routes” are reasonable in isolation, but neither interpretation of this phrase viewed in isolation can be established as the meaning the parties mutually intended. The task of effectuating the parties’ expressed bargain is further complicated because the term “PVS routes” is not defined in any official compendium of Postal Service terms or by common usage elsewhere in the parties’ written agreements.

The Employer established that the work individual duty assignments for which PVS drivers bid annually are often referred to colloquially by the drivers as “routes”. In the context of assigned daily work, analogous to routes driven or walked by local postal carriers, these “routes” define the parameters of their regular assignments. The Union established, however, that discussions at the National Contract Level bargaining sessions have not historically used the term “PVS routes” when referring to duty assignments for bargaining unit PVS drivers or when discussing contracting out to or insourcing from HRC service providers of segments of driving consisting of 350 or fewer miles that could be accomplished by PVS Craft bargaining unit drivers. Therefore, the appearance of this term of art in Article 32 must be defined in a manner that is consistent with paragraph 2, set forth immediately below, and the rest of the MOU, also quoted below:

The Motor Vehicle Craft will assume service on a minimum of 600 PVS routes currently contracted to HCR upon the expiration of each supplier contract. Route service may be assigned to either career or non-career employees, as necessary. The Employer will designate the 600 PVS

routes to be assigned to Motor Vehicle Craft and no less than 25% of the duty assignments created will be assigned to career employees.

Although the disputed MOU language containing the undefined term “PVS routes” is unclear, the MOU language directly after the term “PVS routes” appears offers meaningful insight regarding the parties’ usage of this term.

Article 32 further provides that:

In addition, the parties agree to review approximately 8,000 other existing Transportation Highway Contract Routes (HCR’s). It is understood that in considering the conversion of such work the parties will use DOT work rules and an appropriate mix of bargaining unit costs as submitted by the APWU. In considering whether or not bargaining unit positions may be created the parties will follow the below described process:...

The phrase “other existing Transportation Highway Contract Routes (HCR’s)” clearly refers to similar routes beyond the 600 guaranteed minimum routes initially to be selected by the Employer.

The reference to “other existing Transportation Highway Contract Routes (HCR’s)” supports the Union’s position and validates its understanding of the parties’ original bargain to convert 600 HCR contracts selected by the Employer as each such contract expired. Absent this connected companion obligation, the Employer’s interpretation would impair the ability of the Union, as the grieving party, to satisfy its burden to establish by a preponderance of the evidence that the reference to “PVS routes” to be converted meant more than 600 duty assignments. This reference to a two-part obligation

explicitly “In addition,...” cannot, however, be ignored in understanding the entire bargain.

The record does not indicate which party drafted the disputed language in the MOU. Therefore, the Arbitrator cannot apply the standard of construing ambiguous contract language against the drafter.

The colloquial description of PVS Craft driving bid assignments as “routes” by PVS drivers or by their first and second level supervisors and managers at the local level did not outweigh the MOU’s explicit reference by National Contract negotiators to 8000 “other existing Transportation Highway Contract Routes (HCR’s)” in connection to the “600 PVS routes” in the previous paragraph regarding guarantees for in-sourcing of work for bargaining unit drivers.

This finding is buttressed by the definition of “route” in the Glossary of Postal Terms (Union Exhibit 32) in effect in 2007, before the MOU was executed:

route — A scheduled course to be followed by a USPS employee or carrier (a contractor) in performing transportation or delivery duties. To designate the time, schedule, mode of transportation (such as air, highway, or rail), and the line of travel to be used in dispatching mail from a postal unit or transportation terminal.

and as in 2013:

route — A scheduled course to be followed by a USPS employee or carrier (a contractor) in performing transportation or delivery duties. To designate the time, schedule, mode of transportation (such as air, highway, or rail), and the line of travel to be used in dispatching mail from a postal unit or transportation terminal.

The definition of a “route” in both manuals explicitly applies equally to USPS employees, including PVS employees, and to drivers employed by contracted carriers, including Highway Contract Route carriers. Thus, the Employer’s citation of the informal references by PVS drivers to their individual bid duty assignments does not outweigh the decision of experienced negotiators for the Postal Service and the Union to mingle references to PVS routes and HCR routes in drafting Paragraph 2 of their 2010 MOU.

The more persuasive interpretation of this hybrid mixture of references to HCR routes and PVS routes in the same section is that the negotiators and drafters viewed them as equivalent for the purpose of expressing their new bargain to create many more bargaining unit driving positions. Otherwise, the negotiators could have simply used the unambiguous term “duty assignments” to specify the exact number of driver positions as they did for other crafts in the same MOU,

The Union’s consideration for attaining the greater number of HCR’s to be insourced was the assumption by the Union of uncertainty regarding the number of duty assignments that would ultimately be harvested after the Employer identified 600 routes that would yield an unknown number of driving segments that complied with both collective bargaining agreement restrictions and applicable DOT regulations. The Union also accepted the burden of uncertainty regarding when each of the 600 HCR contracts to be selected by the Employer would expire.

The Employer's consideration was the relatively minor percentage of the 8000 HCR's cited as existing when the MOU was executed in early 2011 that the Employer guaranteed to insource over a multi-year interval.

The importance of achieving a negotiated contract in 2010, rather than a limited revision of contract terms through an Interest Arbitration Award, was described at arbitration by both parties. The parties' stated goals of cutting costs and increasing bargaining unit jobs are met by reading the entirety of Paragraph 2's negotiated procedures as creating more bargaining unit jobs from existing HCR's in a way that addressed the increased financial costs on the Postal Service at a time when it was experiencing debilitating budgetary and revenue crises.

The parties' choice to speak of in-sourcing in terms of number of routes to be converted, rather than number of duty assignments or bargaining unit jobs or driving assignments, supports the Union's assertion that the balance of evidence, particularly the expression of the new obligations to convert 600 existing routes as a minimum and scrutinize thousands of other HCR routes for potential bargaining unit jobs employees better explains, and therefore mandates interpreting the reference to "PVS routes" in Section 2 as sought by the Union.

Finally, the arbitration decision issued by National Arbitrator Shyam Das on August 18, 2016 in Case No. Q06C-4Q—C 11182451 is useful in addressing the Employer's assertion that there is a widespread accepted usage of "PVS routes" as the equivalent of "duty assignments".

Arbitrator Das refers to PVS routes in this Award as the equivalent of HCR routes that were to be considered for conversion for service by bargaining unit drivers. Although the issue before Arbitrator Das dealt with pervasive failure to notify the Union before routes were re-contracted to HCR contractors, his analysis and findings use the phrase “PVS routes” in referring to HCR routes that could have been bargaining unit routes if the Employer had provided proper notice before re-contracting existing HCR routes. His usage of “PVS routes” as referring to something other than individual duty assignments supports the Union’s interpretation of this disputed phrase in the instant matter.

Given the context provided by the actual language in Article 32, particularly the reference in the subsequent paragraph to “other existing Transportation Highway Contract Routes (HCR’s)”, the reference to 600 PVS routes to be converted for service by bargaining unit drivers cannot be construed as referring only to 600 duty assignments as the Employer contends.

Therefore, based on the evidence submitted, the USPS violated the first sentence of Section 2 of the MVC Jobs MOU by failing to convert 600 HCRs to PVS. The parties have reserved to themselves determination of an appropriate remedy in the first instance. The matter is thus referred to the parties for this purpose.

The Arbitrator retains jurisdiction to correct or amend any aspect of this Award, to implement an appropriate remedy if the parties are unable to agree, and to resolve any dispute that may arise regarding the establishment or the implementation of any remedy created by the parties or ordered pursuant to this Award.

July 21, 2023

Daniel F. Brent, Arbitrator

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration Between
UNITED STATES POSTAL SERVICE
and
AMERICAN POSTAL WORKERS UNION, AFL-CIO

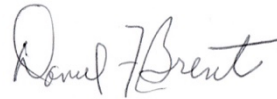
Case Number: Q10C-4Q-C 4256800
(Motor Vehicle Craft Jobs MOU)

INTERIM AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted, the USPS violated the first sentence of Section 2 of the MVC Jobs MOU by failing to convert 600 HCR's to PVS. The parties have reserved to themselves determination of an appropriate remedy in the first instance. The matter is referred back to the parties for this purpose.

The Arbitrator hereby retains jurisdiction to correct or amend any aspect of this Award, to implement an appropriate remedy if the parties are unable to agree, and to resolve any dispute that may arise regarding the determination or the implementation of any remedy created by the parties or ordered pursuant to this Award.

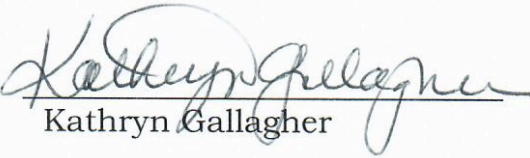


July 21, 2023

Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 21st day of July 2023 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.



Kathryn Gallagher

**KATHRYN GALLAGHER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 2/18/2026**