

**ADDENDUM TO
EAS PAY PACKAGE DECISION
THROUGH FISCAL YEAR 2019
FIELD EAS EMPLOYEES**

Panel members Susan Halperin, Robert Hite, and Joshua Javits issued their Report and Recommendations (“Report”) in factfinding proceedings between the National Association of Postal Supervisors (“NAPS”) and the U.S. Postal Service on April 30, 2019. Pursuant to 39 U.S.C. 1004(f)(3)(A), the Panel was tasked with recommending “standards for pay policies and schedules and fringe benefit programs affecting the members of the supervisors’ organization” for the duration of the collective bargaining agreement of the Postal Service’s largest union (i.e., the 2016-2019 Agreement with the National Association of Letter Carriers, AFL-CIO). The following constitutes the Postal Service’s response to the Report and written explanation of the differences between the Postal Service’s final pay decision and the panel’s recommendations, pursuant to 39 U.S.C. §1004(f)(3)(B)(4).

I. THE POSTAL SERVICE’S FINANCIAL CONDITION AND ITS IMPACT ON THE PAY DECISION

During the factfinding proceedings, the Postal Service presented evidence that it is essentially insolvent and has experienced twelve consecutive years of net losses, with a cumulative loss of \$69 billion dating back to FY 2006. Nonetheless, the Panel concluded that the Postal Service’s financial condition is irrelevant when establishing pay for managerial and supervisory employees. The Postal Service unequivocally rejects that conclusion. No responsible organization in the private sector functions in that manner; companies that sustain annual multi-billion dollar losses do not reward executive and managerial employees with significant pay increases.

The 2012 EAS factfinding panel recognized that the Postal Service faces onerous financial challenges, due not just to unique liabilities imposed by Congress, but also because of labor and benefit costs that are above market, dramatic changes in the industry (drastic decline of First Class Mail, electronic diversion, and advertising dollars moving to social media to name a few), and wide swings in the economy. Consequently, all employees of the Postal Service have made financial sacrifices in recognition of the economic challenges faced by the Service. As the 2012 factfinding panel observed: “In the past, Postal employees, including the employees represented by NAPS, have received increases in salaries that have been comparable to, and in some cases, greater than those received by private sector employees. In today’s economy, businesses both large and small are re-evaluating salaries and benefits for their employees and making adjustments based upon the financial health their [sic] respective organizations.” (Emphasis added).

Reviewing courts have also recognized that in making pay determinations, the Postal Service must review the relevant statutory factors in light of “the Postal Service’s overall [statutory] responsibility . . . of providing ‘prompt, reliable, and efficient’ postal

services.” *Nat’l Ass’n of Postal Sup’rs v. U.S. Postal Service*, 602 F.2d 420, 435-436 (D.C. Cir. 1979). That mandate includes a responsibility to “control costs and manage the . . . agency in a manner consistent with its views of what is the economical and efficient thing to do.” *Id.* at 432. Throughout the consultation process, the Postal Service has sought to address its managerial associations’ concerns while producing a pay package that is fiscally responsible in light of this obligation.

II. MARKET COMPARABILITY

The factfinding panel concluded that the Postal Service failed to satisfy its statutory obligation when it issued its initial pay decision without first conducting an external market survey examining comparable levels of work in the private sector. The panel’s finding ignores the reality that the Postal Service continues to function as an independent establishment of the Executive Branch of the United States government. No other agency within the United States government conducts annual market surveys of comparable employment when establishing annual pay increases. Furthermore, nothing in Title 39 requires the Postal Service to contract with an external supplier to conduct a market comparability study in connection with pay consultations.

Moreover, the Postal Service is not operating in a vacuum; interest arbitrators have consistently found that Postal Service employees enjoy a significant wage and benefit premium relative to the private sector, and EAS salaries are tied through the supervisor differential adjustment (SDA) to those of craft employees. The expert compensation testimony presented at the factfinding hearing confirmed the existence of a substantial benefit premium, and that, in most instances, EAS employees receive salaries at or above the market rate. (This wage and benefits premium would not have disappeared had the Postal Service engaged a compensation expert prior to pay consultations with NAPS.)

Finally, the panel’s observation is a curious one given the fact that the panel found that “there are no comparable private sector organizations that perform all the diverse functions that the Service is required to perform,” that private sector competitors such as UPS and FedEx, “do not have anything like the constraints and obligations imposed on the Service,” and that private sector companies do not “have managers or supervisors operating in comparable work structures or having similar responsibilities.”

III. SPECIFIC RECOMMENDATIONS OF THE PANEL

A. SALARY MINIMUMS AND MAXIMUMS

The Postal Service accepts the panel’s recommendation to convene a joint work group to explore the manner in which EAS salary range minimums and maximums are calculated. The panel’s recommendation is consistent with the Postal Service’s July 2018 pay decision, which established of a work group “for the purpose of exploring and resolving issues regarding Field EAS salaries and grades,” with the intention that salary minimums and maximums would be discussed.

In addition, the panel recommended that the Postal Service increase EAS salary maximums, but did not make a specific recommendation as to how much maximums should increase. The Postal Service notes that it increased salary maximums by 1.6% in January 2019, after factfinding hearings concluded.

B. SUPERVISOR DIFFERENTIAL ADJUSTMENT

The Postal Service also accepts the panel's recommendation that a joint work group explore possible modifications to the current method of calculating the supervisor differential adjustment ("SDA"), as it is already consistent with the Postal Service's July 2018 pay decision. However, in the Postal Service's view, the panel's analysis of the SDA conflicts with the interpretation by federal courts of the requirements imposed 39 U.S.C. §1004(a). In essence, the panel substituted its judgment for that of the Postal Service, both as to the appropriate formula for establishing the differential, and as to the substantive outcome the differential should achieve. That overreach exceeds the limited advisory role envisioned by the statute, which clearly delegates to the Postal Service broad authority in making compensation decisions. As the D.C. Circuit explained:

Section 1004(a) does not set a fixed differential . . . it does not mandate that management personnel receive increases as much or more than those given rank-and-file workers through the collective bargaining process; it does not hold the agency to an express formula for computing the salary differential; it does not define a precise relationship between the compensation received by one class of postal employees and that received by another Congress chose instead to leave the precise differential to the discretion of the agency, mandating only that the differential at any given time be "adequate" and "reasonable."

Nat'l Ass'n of Postal Sup'rs v. U.S. Postal Service, 602 F.2d 420, 433 (D.C. Cir. 1979).

In defining what "adequate and reasonable" means, the court instructed:

[T]he Postal Service must consider a number of factors . . . including the compensation paid for comparable work in the private sector, the need to attract and retain qualified and capable management personnel, and the importance of promoting the leadership status of those personnel vis-à-vis the rank-and-file workers they supervise. Together with the differential requirement, moreover, these factors must be considered with respect to the Postal Service's overall responsibility . . . of providing "prompt, reliable, and efficient" postal services. [Citation omitted] Some factors, like the differential requirement, may at times conflict with others, like the comparability standard. But it is for the Postal Service and the Postal Service alone to resolve those conflicts. This necessarily means that the differential will vary with time and circumstance, and the Postal Service is not obliged to provide the same differential year after year or to all of its management personnel regardless of the work those personnel perform. If

in establishing salary levels for management personnel the Postal Service considers each of these factors and arrives at a good faith judgment regarding a differential that is adequate and reasonable in light of these factors, then it has performed its duty under section 1004 and judicial inquiry is at an end.

Id. at 435-436.

With respect to the forgoing statutory considerations, the Postal Service presented evidence at the hearing of its good faith consideration of each factor. First, the Postal Service presented expert testimony confirming that the compensation and benefits provided to EAS employees are, in fact, comparable to or greater than those available generally in the marketplace. That evidence comports with the finding of third-party neutrals concerning the postal pay and benefits premium, as well as data reported by the non-partisan Congressional Budget Office concerning federal pay generally for employees lacking a college degree, a cohort that dominates the EAS ranks.

Second, the Postal Service presented statistical data and testimonial evidence that it was experiencing no difficulty promptly filling vacancies for EAS positions, and that turnover within the career EAS ranks is virtually non-existent (a 0.7% quit rate compared to a private sector quit rate of 26%), a fact that compensation experts have properly and logically determined to be a strong indicator of market- competitive compensation and benefits.

Third, the Postal Service presented evidence that it recognized the importance of promoting the leadership status of supervisory personnel by creating and maintaining the SDA in the first place. It explained the rationale both to NAPS and to the panel for its method of calculating the SDA, selecting the Clerk Grade 6, Step O benchmark position for most supervisory jobs because it was one of the most populous employee groupings, and because the vast majority of EAS supervisory and managerial personnel supervise clerks, whereas many EAS employees do not supervise letter carriers (the classification NAPS advocated as the proper comparator).

The Postal Service also explained that its chosen method of calculating the differential, which was a longstanding practice dating back many years, had been incorporated into the ELM as well as existing payroll systems and programming. In addition, the alternate proposals advanced by NAPS were impracticable or impossible to implement and would be overly costly to administer. The panel dismissed these justifications as being based on “practicality and administrative convenience,” but nothing in the statute precludes the Postal Service from taking practicality, cost, and administrative convenience into account in establishing methods to ensure a reasonable and adequate supervisory pay differential. Indeed, such considerations are essential to meet the Service’s overriding statutory obligation to ensure the prompt and efficient delivery of mail. There may well be other approaches to calculating the SDA that might result in a more “precise” measure, but that is not the statutory standard.

C. PAY-FOR-PERFORMANCE (PFP)

The Postal Service accepts the panel's recommendation to include the design and administration of PFP as one of the topics to be discussed by a joint work group. In so agreeing, the Postal Service in no way endorses the panel's characterization of the PFP model's design or implementation, or the consistency of PFP with the statutory factors set forth in Title 39. The Postal Service notes that the 2012 factfinding panel expressly found PFP to be "an innovative model pay-for-performance program that contributes to improved performance of the Postal Service and provides appropriate and equitable means for measuring performance and compensating NAPS members." No pay-for-performance program is perfect, and the Postal Service consistently has, and will continue to, solicit input from all stakeholders affected by the program, including NAPS, in an ongoing effort to ensure that the PFP model continues to evolve and drive institutional performance while fairly compensating employees.

Contrary to the panel's implication, the Postal Service does not unilaterally implement the PFP; rather, PFP has evolved over time with the direct involvement of NAPS. For example, as the panel correctly noted, the Postal Service formed a joint work group with NAPS after factfinding in 2012, which resulted in the removal of individual objectives as proposed by NAPS as well as a redesign of NPA composite weights. The Postal Service also proposes to NAPS the National Performance Assessment ("NPA") indicators, targets, thresholds, and weights for each year; invites NAPS to meet and discuss those proposals; solicits and responds to NAPS' input during those meetings; and modifies its proposals accordingly consistent with the consultation process. The Postal Service has every intention of continuing to work collaboratively with NAPS on PFP moving forward.

D. LOCALITY PAY

The factfinding panel, having determined that the financial condition of the Postal Service is irrelevant to pay decisions, not surprisingly recommended that the Postal Service consider implementation of a locality pay program and examine the issue in the context of the joint work group. That recommendation stands in stark contrast to that of the 2012 factfinding panel, who rejected locality pay in light of its finding that the Postal Service was not experiencing problems attracting or retaining qualified EAS employees in higher cost of living areas, and that development and implementation of such a program would entail considerable time and expense. The Postal Service presented evidence at the hearing that nothing has changed in that regard.¹ Indeed, the locality pay issue was not proffered by NAPS nor even discussed as an issue to consider during the current pay consultation process between the parties concerning the proposed pay decision. The only mention of locality pay during pay consultations was found in an analysis prepared by a consultant for NAPS that was attached to

¹ For that reason, the Postal Service also rejects the panel's conclusion that its failure to conduct a comprehensive study on locality pay prior to issuance of its July 20, 2018 pay decision constituted a failure to satisfy its obligation under the statute.

correspondence from NAPS officials. Nonetheless, the Postal Service accepts the panel's recommendation to examine locality pay in connection with the joint work group.

E. COST-OF-LIVING ADJUSTMENT

The Postal Service declines to address a permanent cost-of-living adjustment ("COLA") as part of the joint work group suggested by the panel, as that was never a proposal in the pay consultation process or during the factfinding hearings. Moreover, no evidence was presented at hearing that COLAs are common features in pay programs in the private sector. In addition, such non-performance-based pay programs are inconsistent with the direction of the rest of the federal government and the President's Management Directives on federal compensation reforms.

F. JOINT WORK GROUP STRUCTURE AND OPERATION

The panel made a number of suggestions and recommendations as to how the work group should operate in discussing the various aspects of compensation addressed in the Report. The Postal Service rejects the panel's recommendation for an arbitrary six-month limitation on concluding meetings of the workgroup and the issuance of a formal report and recommendations. The parties can certainly aspire to finalizing recommendations within that window, but the Postal Service cannot commit to a date for implementation of modifications to its pay programs, particularly with respect to the PFP, which as the panel correctly observes, affects a far broader segment of the postal employee complement than members represented by NAPS.

The Postal Service also declines to commit either to the retention of a mediator to assist the joint work group, or the retention of a compensation expert for purposes of facilitating the work group's discussions and examining components of postal supervisor pay. The parties historically have achieved significant success in working through issues directly and in a timely fashion. That is the Postal Service's intent here. Institutional reforms to a longstanding compensation system require thought and input from numerous stakeholders, both internal and external.

Similarly, while the Postal Service will fully explore with NAPS each of the issues to be discussed by the work group, and will provide its reasoning and rationale for either agreeing to or rejecting proposals raised during the work group discussions, the Postal Service declines to add a requirement to the statute providing for another formal written response to NAPS in connection with the final pay decision.

As for the panel's suggestion to effectively amend the statute to adopt interest arbitration, the Postal Service respectfully declines. Binding interest arbitration would completely undermine the Postal Service's broad statutory authority to set compensation levels for its supervisory and managerial employees, and neither the Postal Service, nor NAPS, nor the panel has the authority to modify the statute to change the mechanisms by which compensation for these employees is determined.

G. RETROACTIVE WAGE INCREASES

The Postal Service rejects the panel's recommendation to effectively provide across-the-board three percent (3%) pay increases to all NAPS-represented EAS personnel for 2017 and 2018. The panel identifies no evidentiary basis for assuming that all NAPS represented employees would have reached the corporate and unit ratings to achieve the target PFP matrix score of 6, which provides for a 3% increase. In fact, the Postal Service's overall performance on many of the relevant measures was objectively poor in many geographic areas and at the corporate level.

Moreover, the panel's justification that "the Postal Service provided retroactive pay to the craft employees" is completely irrelevant. As the Postal Service made clear during the factfinding hearings, wage increases received by bargaining unit employees are part of a bargained-for quid-pro-quo, and are typically offset by cost-cutting measures agreed to by the unions. Congress expressly excluded Postal Service supervisory and managerial employees from representation in any collective bargaining unit. 39 U.S.C. §1202(1). This was a conscious choice rooted in the desire to avoid a compulsory bargaining process that might polarize the interests of top management and lower level supervisors. As such, it is entirely appropriate for postal management to have different mechanisms for receiving pay increases than those in place for craft employees.

Nor is there any basis for imposing retroactive increases. The Postal Service maintained the PFP during the relevant period and continued to implement modifications to the pay ranges. Indeed, NAPS' members actually fared better on average under PFP over this time period than did their counterparts at the Headquarters level. In addition, NAPS rejected the Postal Service's offers during pay consultations to add values to the lower ranges of the PFP matrix that would have enabled more Field EAS employees to receive PFP increases. The Postal Service accepts that prudent, tailored reforms to the PFP program are appropriate, but any differential in pay under a revised PFP program will necessarily be prospective in application.

H. EFFECTIVE DATE

The panel recommended that "changes made as part of the Service's decision of July 20, 2018 should be applied as of that date, rather than at a later date." This recommendation impacts the implementation of increases to Field EAS salary minimums, which have been on hold pending outcome of the factfinding. The Postal Service declines to adopt the panel's recommendation, but will make the effective date of the increases January 5, 2019. This is the same effective date as the increases for Headquarters/ Area EAS.

IV. CONCLUSION

The Postal Service strongly disagrees with the panel's assessment that "communications and trust between the Service and NAPS have broken down, and that the relationship is in dire need of assistance." Such commentary is not only inaccurate, but it is inappropriate, and unhelpful to the parties as they work to bridge their differences on particular aspects of compensation. To the contrary, the Postal Service recognizes, like the panel, that field EAS supervisors and managers are the "lynchpin of the Service," and a "vital link" in "assuring upper management's goal's and policies are effectively and timely implemented."

The Postal Service values NAPS as a partner in working to ensure the success of its field leadership. Notably, the panel recognized the numerous ways the Postal Service altered its pay proposal during pay consultations in response to NAPS' suggestions. As acknowledged by the panel, the parties "have a long history of working collaboratively and cooperatively together on issues of mutual interest." The Postal Service intends to continue that partnership, and looks forward to working with NAPS to identify ways to improve pay policies and programs for its Field EAS workforce.