

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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NATIONAL ASSOCIATION OF)
POSTAL SUPERVISORS,)
)
	Plaintiff,)
)
	v.)
)
UNITED STATES POSTAL SERVICE,)
)
	Defendant.)
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Case No. 19-cv-2236-RCL

ANSWER

The Defendant, the United States Postal Service (“Postal Service”), by and through its undersigned counsel, hereby submits its Answer to the Complaint of the National Association of Postal Supervisors (“NAPS”) (ECF No. 1).

FIRST DEFENSE

Plaintiff’s claims fail, in whole or in part, to the extent there is no available remedy for Plaintiff’s alleged injury.

SECOND DEFENSE

The Postal Reorganization Act of 1970 (“PRA”) precludes Plaintiff’s claim that it is entitled to represent all non-postmaster Executive and Administrative Schedule employees.

THIRD DEFENSE

The Complaint should be dismissed because Plaintiff failed to exhaust its claims under the PRA by requesting the creation of a panel to review the effectiveness of the

procedures and the other provisions of 39 U.S.C. §§ 1003 and 1004 and to make recommendations to Congress for changes in the PRA, as it finds appropriate.

FOURTH DEFENSE

The Postal Service asserts and incorporates all defenses raised in its previously filed motion to dismiss (including the reply filed in support of that motion) to the extent not precluded by the D.C. Circuit's decision in *Nat'l Ass'n of Postal Supervisors v. United States Postal Serv.*, 26 F. 4th 960 (D.C. Cir. 2022).

The unnumbered introductory paragraph contains NAPS' characterization of the Complaint and conclusions of law to which no response is required. To the extent a response is required, the Postal Service denies the allegations in the unnumbered introductory paragraph.

RESPONSES TO NUMBERED PARAGRAPHS¹

INTRODUCTION

1. Paragraph 1 sets forth legal conclusions to which no response is required. To the extent a response is required, the Postal Service avers that in or around July 2018, NAPS sought and obtained review of the Postal Service's proposed pay package for field Executive and Administrative Schedule employees for Fiscal Years 2016-2019 by a factfinding panel, which issued a report in or around April 2019. To the extent this paragraph purports to characterize the content of the factfinding panel report, the Postal Service refers the Court to the factfinding panel report for a complete and accurate

¹ For ease of reference, Defendant repeats the headings contained in the Complaint. Although no response is required to such headings, to the extent a response is required because those headings and titles could be construed as containing factual allegations, those allegations are denied.

statement of its contents. The Postal Service further avers that it gave the report, and the recommendations therein, full and fair consideration, and issued in or around May 2019, a final pay package decision for field EAS employees for Fiscal Years 2016-2019.

Defendant refers the Court to the final decision for a complete and accurate statement of its contents, and denies the allegations in this paragraph to the extent inconsistent with the content of the pay package. The Postal Service denies the remaining allegations in this paragraph.

PARTIES

2. In response to the first sentence of this paragraph, the Postal Service avers that NAPS is a recognized organization of supervisory and other managerial personnel employed by the Postal Service and that 39 U.S.C. 1004 requires the Postal Service to provide “a program of consultation with recognized organizations of supervisory and other managerial personnel who are not subject to collective bargaining agreements under chapter 12 of this title.” The Postal Service denies the remaining allegations in the first sentence of this paragraph. The Postal Service lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of this paragraph.

3. In response to the first sentence of Paragraph 3, the Postal Service avers that it is an independent establishment of the executive branch of the Government of the United States, that it processes and delivers approximately 46% of the world’s mail volume, and that it delivered to over 163 million delivery points in fiscal year 2021. In response to the second sentence of this paragraph, the Postal Service avers that it had approximately 653,000 employees and revenue exceeding \$70 billion in fiscal year

2021. The Postal Service admits the allegations in the third sentence of this paragraph. The Postal Service denies the remaining allegations in this paragraph.

JURISDICTION AND VENUE

4. Paragraph 4 sets forth legal conclusions to which no response is required.

5. The first sentence of Paragraph 5 sets forth a legal conclusion to which no response is required. To the extent a response is required, the Postal Service admits that venue is proper in this District. As to the second sentence of Paragraph 5, the Postal Service admits that the Postal Service's headquarters is located in the District of Columbia and that decisions challenged in this case were made at the headquarters. The Postal Service lacks knowledge or information sufficient to form a belief as to the truth of the allegation that "a substantial number of NAPS members affected by those decisions work or reside in the District."

STATEMENT OF FACTS

6. In response to Paragraph 6, the Postal Service avers that as of October 20, 2022, it had approximately 635,853 employees and approximately 46,811 Executive and Administrative Schedule ("EAS") employees – managers, supervisors, postmasters, and other professionals and administrative employees – who are under the direction of the organization's approximately 608 executives. The Postal Service further avers that a portion of its EAS employees supervise its career and non-career (carriers, clerks, and others who are represented by four bargaining units) workforce. The Postal Service denies the remaining allegations in this paragraph.

7. In response to Paragraph 7, the Postal Service admits only that EAS employees are distributed among over 1,000 job titles and denies the remaining allegations in this paragraph.

8-15. Paragraphs 8-15 set forth legal conclusions to which no response is required. To the extent a response is required, the Postal Service refers the Court to the referenced sections of the PRA and denies the allegations in these paragraphs to the extent inconsistent with the content of the PRA.

16. The Postal Service admits the allegations in this paragraph.

17. In response to Paragraph 17, the Postal Service avers that the EAS Pay Package Proposal, Fiscal Years 2016-2019, for Field EAS Employees covered five (5) areas: Pay for Performance, Pay for Performance (NPA Composite Weights), Salary Ranges, Health Benefit Contribution, and Promotion Pay Policies. The Postal Service denies the remaining allegations in this paragraph.

18. The Postal Service admits the allegations in this paragraph.

19. In response to Paragraph 19, the Postal Service avers that on or about June 28, 2018, it issued a final decision concerning changes in pay policies, schedules, and fringe benefit programs for Field EAS employees and that on or about July 20, 2018, it made modifications to that pay package. The Postal Service denies the remaining allegations in this paragraph.

20. The Postal Service admits the allegations in this paragraph.

21. The Postal Service denies the allegations in this paragraph.

22. The Postal Service denies the allegations in this paragraph.

23. The Postal Service denies the first sentence of this paragraph. As to the second sentence of this paragraph, the Postal Service avers that prior to the December 2018 factfinding hearing the Postal Service commissioned a study comparing pay ranges and average salaries of EAS positions with comparable private sector positions, that the eight EAS positions utilized in the study represent over 21,000 EAS jobs, that the study utilized nationwide market salary data, and that the study found that EAS salary ranges and actual pay levels are “more than competitive” with comparable private sector jobs. The Postal Service denies the remaining allegations in this paragraph.

24. In response to the first sentence of paragraph 24, the Postal Service admits only that it does not provide for locality pay as that concept applies to the GS-pay scale applicable to government agencies. The Postal Service lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

25. In response to Paragraph 25, the Postal Service denies that EAS employees receive no pay increase tied to increases in market rates of pay or inflation. The Postal Service lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

26. The Postal Service denies the first sentence of this paragraph. In response to the remaining allegations in this paragraph, the Postal Service refers the Court to the factfinding panel report for a complete and accurate statement of its contents and denies the allegations in this paragraph characterizing the content of that report to the extent inconsistent with the report’s content. The Postal Service further denies any implication in this paragraph that any “findings” in the factfinding panel report are deemed conclusive under applicable law.

27. The Postal Service admits only that in 2012 and 2013, EAS employees did not receive a pay increase under the PFP program due to severe financial difficulties, and that under the PFP program in 2014, all EAS employees received a 1% pay increase. The Postal Service denies the remaining allegations in this paragraph

28. The Postal Service admits only that under the PFP program the average increase for EAS salaries was below 2% in 2019; that in 2019 under the PFP program 18.5% of EAS employees received a 2.5% raise, 38.2% received a 2.0% raise, and 38.5% (over 16,500 EAS employees) received no pay increase; and that under the PFP program less than 5% of EAS employees received a raise greater than 2.5% in 2019. The Postal Service denies the remaining allegations in this paragraph.

29. The Postal Service denies the allegations in this paragraph.

30. The Postal Service lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

31. The Postal Service admits that EAS employees do not earn bonuses of seven-to-ten percent of their salary. The Postal Service lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

32. The Postal Service denies the allegations in Paragraph 32.

33. The Postal Service admits that under the PFP program, EAS employees at the top of the salary ranges for their pay grades are eligible for a lump sum payment rather than an increase in base salary and avers that EAS employees at the top of the salary ranges for their pay grades receive an increase in base salary when the salary ranges increase. The Postal Service denies the remaining allegations in this paragraph.

34. The Postal Service denies the allegations in this paragraph.

35. The first sentence of this paragraph asserts a conclusion of law to which no response is required. To the extent a response is required, the Postal Service admits only that certain EAS employees may supervise craft employees whose compensation exceeds their supervisors' compensation and otherwise denies the allegations in this sentence. The Postal Service denies the remaining allegations in this paragraph.

36. In response to Paragraph 36, the Postal Service admits only that it uses a Supervisory Differential Adjustment ("SDA") and otherwise denies the allegations in this paragraph.

37. In response to the allegations in this paragraph, the Postal Service admits only that for the 2016-2019 Field EAS Pay Package, it used a clerk position as a benchmark position in calculating the SDA Minimum for the "all other" category of EAS positions. The Postal Service otherwise denies the allegations in this paragraph.

38. In response to the allegations in this paragraph, the Postal Service refers the Court to the referenced factfinding panel report for a complete and accurate statement of its contents and denies the allegations characterizing the content of that report to the extent inconsistent with the report's content. The Postal Service further denies any implication in this paragraph that any "findings" in the factfinding panel report are deemed conclusive under applicable law. In further response to the allegations in this paragraph, the Postal Service avers that its calculation of the SDA has changed over the years in pay consultation with NAPS and other management associations. The Postal Service further avers that the "All Other Eligible" group includes a range of EAS positions. The Postal Service further avers that on or about May 26, 2005, it began calculating the SDA for EAS employees among the four position groups, including the

“All Other Eligible” group, by adding 5% to the salary of established benchmark, bargaining unit positions. The Postal Service denies the remaining allegations in this paragraph.

39. In response to Paragraph 39, the Postal Service avers that for the 2016-2019 Field EAS Pay Package, the salary for Supervisors of Customer Service was calculated by adding 5% to the salary of the benchmark Level 6, Step O clerk position, which was \$60,737, as of September 2018. The Postal Service admits that as of November 2018, there were 105,000 city carriers, Step O, making it the most populous position and step in the Postal Service at that time. The Postal Service denies the remaining allegations in this paragraph.

40. In response to Paragraph 40, the Postal Service avers that craft employees are generally entitled to time-and-a-half pay for overtime after eight hours and double-pay after 10 hours. The Postal Service lacks knowledge or information sufficient to form a belief regarding whether “private employers typically maintain considerably higher pay differentials between front-line supervisors and the workers they supervise (generally 20-30% or more) that leaves an adequate differential even if the workers earn substantial overtime.” The Postal Service denies the remaining allegations in this paragraph.

41. The Postal Service denies the allegations in this paragraph.

42. The Postal Service denies the allegations in Paragraph 42.

43. In response to the first sentence of Paragraph 43, the Postal Service admits only that a May 2018 Gallup survey of the Postal Service workforce, including craft employees, categorized 75% as “Not Engaged” or “Actively Disengaged.” As to the

second sentence of this paragraph, the Postal Service avers that Gallup surveys in March 2015, February 2016 and October 2016 placed the Postal Service in the first percentile of Gallup's survey of "GrandMean Company-Level Engagement." The Postal Service further avers that subsequent Gallup surveys have determined that Postal Service employee engagement has gradually increased since 2015, except for a decline in 2020 that was consistent with other organizations. The Postal Service denies the remaining allegations in this paragraph.

44. The Postal Service denies the allegations in this paragraph.

45. The Postal Service denies the characterization of the generic term "Gallup survey" used in this paragraph and thus lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

46. In response to Paragraph 46, the Postal Service admits that the PFP program determines the maximum amount of a pay increase that EAS employees may receive but denies Plaintiff's characterization of the methodology utilized by that program. In response to the remaining allegations in this paragraph, the Postal Service refers the Court to the factfinding panel report for a complete and accurate statement of its contents and denies the allegations in this paragraph characterizing the content of that report to the extent inconsistent with the report's content. The Postal Service further denies any implication in this paragraph that any "findings" in the factfinding panel report are deemed conclusive under applicable law. The Postal Service denies any remaining allegations in this paragraph.

47. The Postal Service denies the allegations in this paragraph.

48. In response to Paragraph 48, the Postal Service avers that from fiscal year 2015 through fiscal year 2018, approximately 21 percent of EAS-17 jobs were not filled within 90 days of being posted. The Postal Service denies the remaining allegations in this paragraph.

49. The Postal Service lacks knowledge or information sufficient to form a belief as to the truth of the allegations as to the reasons qualified craft employees may or may not apply for supervisor jobs.

50. The Postal Service denies the allegations in this paragraph.

51. This paragraph asserts a conclusion of law to which no response is required. To the extent any response is required, the Postal Service denies the allegations in this paragraph.

52. This paragraph asserts a conclusion of law to which no response is required. To the extent any response is required, the Postal Service denies the allegations in this paragraph.

53. The Postal Service denies the allegations in this paragraph.

54. The Postal Service denies the allegations in this paragraph.

55. The Postal Service denies the allegations in this paragraph.

56. The Postal Service admits the allegations in this paragraph.

57. In response to the allegations in this paragraph, the Postal Service avers that NAPS represents some employees categorized as “Headquarters” or “Area” EAS employees who perform supervisory and managerial responsibilities with a range of functions. The Postal Service denies the remaining allegations in this paragraph.

58. The Postal Service denies the allegations in this paragraph.

59. The Postal Service denies the allegations in this paragraph.

60. In response to Paragraph 60, the Postal Service admits that the proposed pay package for fiscal years 2016-2019 was titled “EAS Pay Package Proposal Fiscal Years 2016-2019 Field EAS Employees.” The Postal Service refers the Court to that pay package for a complete and accurate statement of its contents and denies the allegations in this paragraph to the extent inconsistent with the content of that pay package.

61. In response to the allegations in the first sentence of this paragraph, the Postal Service admits that it received a letter from NAPS dated September 4, 2018, which stated in part that “To date, the Postal Service has not provided NAPS with its FY 2016-19 pay package proposal for the thousands of EAS employees in positions other than those described by the Postal Service as ‘field EAS.’” The Postal Service refers the Court to that letter for a complete and accurate statement of its contents and denies the allegations in the first sentence of this paragraph to the extent inconsistent with the content of that letter. In response to the allegations in the second sentence of this paragraph, the Postal Service refers the Court to NAPS’s pre-hearing briefing submitted to the factfinding panel for a complete and accurate statement of its contents. The Postal Service denies the remaining allegations in this paragraph, including any allegation inconsistent with the content of the referenced letter or pre-hearing briefing.

62. In response to the allegations in this paragraph, the Postal Service admits that on or about December 28, 2018, it issued a document titled “Area and Headquarters EAS and Pay-Band Pay Package Through Fiscal Year 2019” without consulting with NAPS. The Postal Service refers the Court to that document for a complete and accurate

statement of its contents and denies the allegations in this paragraph to the extent inconsistent with the content of that document. The Postal Service denies the remaining allegations in this paragraph.

63. The Postal Service denies the allegations in this paragraph.

64. The Postal Service admits the allegations in this paragraph.

65. The Postal Service admits the allegations in this paragraph.

66. The Postal Service admits the allegations in this paragraph.

67. In response to the allegations in this paragraph, the Postal Service refers the Court to the factfinding panel report for a complete and accurate statement of its contents and denies the allegations in this paragraph characterizing the content of that report to the extent inconsistent with the report's content. The Postal Service further denies any implication in this paragraph that any "findings" in the factfinding panel report are deemed conclusive under applicable law.

68. In response to the allegations in this paragraph, the Postal Service refers the Court to the factfinding panel report for a complete and accurate statement of its contents and denies the allegations in this paragraph characterizing the content of that report to the extent inconsistent with the report's content. The Postal Service further denies any implication in this paragraph that any "recommendations" in the factfinding panel report are deemed conclusive under applicable law

69. The Postal Service admits that on or about May 15, 2019, it issued its final decision concerning changes in pay policies, schedules, and fringe benefit programs for Field EAS employees for fiscal years 2016 through 2019. The Postal Service denies the remaining allegations in this paragraph.

70. The Postal Service denies the allegations in this paragraph.

71. The Postal Service admits the allegations in this paragraph.

72. The Postal Service admits the allegations in this paragraph.

73. In response to the allegations in this paragraph, the Postal Service avers that it did make a number of retroactive changes, including increases to salary ranges retroactive to January 5, 2019. The Postal Service denies the remaining allegations in this paragraph.

74. In response to the allegations in this paragraph, the Postal Service avers that it agreed to create a joint work team for the purpose of exploring and resolving issues regarding Field EAS salaries and grades. The Postal Service further avers that it agreed that the work group would examine the issues of locality pay, the supervisor differential adjustment, Pay-for-Performance, and salary minimums and maximums. The Postal Service admits that it did not agree to engage a mediator or compensation expert for the work group and otherwise denies the allegations in this paragraph.

75. The Postal Service admits the allegations in this paragraph.

76. The Postal Service admits the allegations in this paragraph.

77. In response to the allegations in this paragraph, the Postal Service admits only that the majority of postmasters have no supervisors who report to them. The Postal Service denies the remaining allegations in this paragraph.

78. The Postal Service admits the allegations in this paragraph.

79. The Postal Service admits that it submitted a formal response to NAPS on February 25, 2019, where it stated that, among other things, “the Postal Service cannot

lawfully recognize NAPS as a representative of postmasters in addition to supervisors.”
The Postal Service denies the remaining allegations in this paragraph.

COUNT I

80. The Postal Service repeats and realleges its responses to the numbered Paragraphs 1 through 79, inclusive, as though fully set forth herein.

81. Paragraph 81 sets forth a legal conclusion to which no response is required. To the extent a response is required, the Postal Service refers the Court to the referenced provisions of the PRA and denies the allegations in this paragraph to the extent inconsistent with the content of the PRA.

82. Paragraph 82 sets forth a legal conclusion to which no response is required. To the extent a response is required, the Postal Service refers the Court to the referenced provisions of the PRA and denies the allegations in this paragraph to the extent inconsistent with the content of the PRA.

83. The Postal Service denies the allegations in this paragraph.

84. The Postal Service denies the allegations in this paragraph.

85. The Postal Service denies the allegations in this paragraph.

86. The Postal Service admits only that it does not provide locality pay to its EAS employees and otherwise denies the remaining allegations in this paragraph.

87. The Postal Service denies the allegations in this paragraph.

COUNT II

88. The Postal Service repeats and realleges its responses to the numbered Paragraphs 1 through 87, inclusive, as though fully set forth herein.

89. Paragraph 89 sets forth a legal conclusion to which no response is required. To the extent a response is required, the Postal Service refers the Court to the referenced provision of the PRA for a complete and accurate statement of its contents and denies the allegations to the extent inconsistent with the content of the PRA.

90. In response to Paragraph 90, the Postal Service avers that it adds 5% to the salaries of benchmark bargaining unit positions to establish Supervisory Differential Adjustments (SDAs) for its EAS employees. The Postal Service lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

91. The Postal Service denies the allegations in this paragraph.

92. The Postal Service denies the allegations in this paragraph.

COUNT III

93-99. This Court dismissed Count III in its memorandum opinion dated July 17, 2020, and NAPS did not appeal the dismissal of that count and has confirmed that it no longer is pursuing that count. (ECF No. 30 at n.1). Accordingly, no response is required to paragraphs 93 to 99 of the Complaint.

COUNT IV

100. The Postal Service repeats and realleges its responses to the numbered Paragraphs 1 through 99, inclusive, as though fully set forth herein.

101. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is required, the Postal Service denies the allegations in this paragraph.

102. The Postal Service denies the allegations in this paragraph.

103. The Postal Service denies the allegations in this paragraph.

104. The Postal Service denies the allegations in this paragraph.

105. The Postal Service denies the allegations in this paragraph.

106. The Postal Service denies the allegations in this paragraph.

COUNT V

107. The Postal Service repeats and realleges its responses to the numbered Paragraphs 1 through 106, inclusive, as though fully set forth herein.

108. Paragraph 108 sets forth legal conclusions to which no response is required. To the extent a response is required, the Postal Service refers the Court to the referenced statutory provision for a complete and accurate statement of its contents and denies the allegations to the extent inconsistent with the content of that statutory provision.

109. In response to Paragraph 109, the Postal Service avers that NAPS is a supervisory organization that represents a majority of supervisors. The remaining allegations in Paragraph 109 set forth a legal conclusion to which no response is required. To the extent a response is required, the Postal Service denies those allegations.

110. Paragraph 110 sets forth legal conclusions to which no response is required. To the extent a response is required, the Postal Service denies the allegations in Paragraph 110.

111. Paragraph 111 sets forth legal conclusions to which no response is required. To the extent a response is required, the Postal Service admits only that postmasters are within the scope of employees that NAPS may represent.

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