

UNITED STATES OF AMERICA
FEDERAL MEDIATION AND CONCILIATION SERVICE

PURSUANT TO 39 U.S.C. §1004(f).

IN THE MATTER OF:)
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UNITED STATES POSTAL SERVICE)
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)
AND) ISSUED: April 30, 2019
)
)
NATIONAL ASSOCIATION OF)
POSTAL SUPERVISORS)
)
FMCS: #180706-06229)
)

FACTFINDING REPORT AND RECOMMENDATIONS

PANEL MEMBERS:

Susan E. Halperin, Neutral Chair
Robert S. Hite, Neutral Member
Joshua M. Javits, Neutral Member

APPEARANCES:

FOR THE UNITED STATES POSTAL SERVICE:

Katherine S. Attridge, Manager, Collective Bargaining & Arbitration
Bruce A. Nicholson, Manager, Labor Relations Policy Administration
Erin E. Lynch, Chief Counsel, Labor Law
Terence F. Flynn, Labor Counsel

FOR THE NATIONAL ASSOCIATION OF POSTAL SUPERVISORS:

BROWN, GOLDSTEIN & LEVY, LLP
Andrew D. Freeman
Jean M. Zachariasiewicz

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PRELIMINARY STATEMENT

This Factfinding Report, including the findings and recommendations, is a result of the National Association of Postal Supervisors (“NAPS”) request for factfinding pursuant to the Postal Reorganization Act (39 U.S.C. §101 (a) et seq.) (“PRA”) and is being provided to the United States Postal Service (“Service”) for its consideration of our Report and Recommendations.

The law requires that the Service, in the time allotted by the PRA, provide a final decision to NAPS on the matters covered by factfinding, giving full and fair consideration to this Panel’s recommendation, and explaining in writing any differences between its final decision and the Panel’s recommendation.

The Service is an independent agency of the Executive Branch of the United States Government, reorganized pursuant to the PRA. The PRA imposes on the Service the so called “universal delivery” mandate. The Service is charged with this unenviable and almost impossible task of providing “prompt, reliable, and efficient services to patrons in all areas by rendering postal services to all communities,”¹ without having control over a significant segment of its revenues and expenses. In addition, significant segments of the Service’s ability to set rates are limited by the 2006 Postal Accountability and Enhancement Act (“PAEA”) and are regulated by the Postal Regulatory Commission. These obligations and limitations have resulted in the Service operating with annual multi-billion dollar deficits for more than a decade.

Furthermore, Congress has imposed upon the Service unfunded liabilities such as the funding of pensions, retiree health benefits and workers compensation benefits.

¹ 39 U.S.C. §101(a)

It is significant that these services are provided no matter the weather conditions and despite natural disasters and other emergencies when its mission may be of the most importance.

The PRA delegated broad general powers to the Service, including the power to set the salaries of its management and supervisory employees. Under the PRA, Congress expressly excluded Postal Service supervisory and managerial employees from representation in any collective bargaining unit.² In lieu of bargaining rights, Congress afforded duly-recognized associations the ability “to participate directly in the planning and development of pay policies and schedules, fringe benefit programs, and other programs relating to supervisory and other managerial employees.”³

Currently, two such managerial associations represent supervisory and managerial personnel-- the United Postmasters and Managers of America (“UPMA”), representing Postmasters, who are the installation heads at post offices throughout the United States, and NAPS, representing approximately 31,000 Field managers, supervisors, and professional, administrative, and technical personnel in the field.⁴

NAPS and the Service are the parties in this proceeding. The parties have a long history of working collaboratively and cooperatively together on issues of mutual interest identified in the PRA.

The PRA is clear that the Service makes the final decision with regard to changes in pay policies and schedules and fringe benefits with regard to these managers and supervisors.

² 39 U.S.C. §1202(1)

³ 39 U.S.C. §1004 (b)

⁴ There were discrepancies between the number of NAPS employees set forth in Joint Exhibit 1 and the testimony of witnesses.

**COMPENSATION STANDARDS, ASSOCIATION RIGHTS, JUDICIAL
GUIDANCE AND PANEL AUTHORITY**

A. Compensation Standards

The pay policies of Title 39 are set forth in various provisions, including Sections 101, 1003 and 1004(a) and (d)(3). The PRA establishes four requirements the Service must meet when setting supervisory and managerial compensation levels. The Service must:

1. “[M]aintain compensation and benefits for all . . . employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy”;
2. “[A]ssure the attraction and retention of qualified and capable supervisory and managerial personnel”;
3. “[P]rovide adequate and reasonable differentials in rates of pay between employees in the clerk and carrier grades in the line work force and supervisory and other managerial personnel”; and
4. “[E]stablish and maintain continuously a program for all such personnel that reflects the essential importance of a well-trained and well-motivated workforce to improve the effectiveness of postal operations”.

B. Association Rights.

The rights of associations representing managerial and supervisory employees of the Service are set forth in Section 1004, which provides, among other things, that such organizations are “entitled to participate directly in the planning and development of pay policies, fringe benefit programs and other programs relating to supervisory and managerial employees.”

By way of background, in 1970, the predecessor to the Service experienced a nationwide strike that significantly disrupted the delivery of mail and mail services throughout the United

States. This strike influenced the contents of the PRA, which, among other things, guaranteed bargaining rights to members of the craft unions.⁵

Although Congress did not afford collective bargaining rights to organizations representing supervisors and managers, it did establish criteria that the Service must follow in determining its compensation program for these supervisors and managers. Congress also provided these supervisors and managers with the right to have meaningful input into the process by which their compensation is determined. This right included the right to participate directly in the planning and development of pay policies.⁶

In order to better ensure that the supervisors' and managers' input was not being ignored, Congress imposed upon the Service the obligations to give recommendations made by the associations representing the supervisors and managers "full and fair consideration" and to provide reasons if any recommendations are rejected.⁷

In *National Association of Postal Supervisors v. U.S. Postal Service*, 602 F. 2d 420⁸, the Court commented on the meaning of the term "direct participation" as that term is used in this section, finding that it is more than consultation but less than bargaining. It found that "direct participation" is a hybrid of these two processes, combining noncompulsory features of consultation with the good faith requirements of negotiation. It found that the Association must be afforded a reasonable opportunity to analyze, understand and criticize the Service's compensation programs and have its recommendations regarding desired changes given consideration.

⁵ Service Exhibit A2, p. 7; Service Exhibit B1, p. 7

⁶ Service Exhibit A1, 39 U.S.C. 1004(b)

⁷ Service Exhibit A1, 39 U.S.C. 1004(d)(1)(C)

⁸ Service Exhibit A2

Section 1004(f) provides that if an association believes that a pay decision of the Service is not in compliance with the PRA, the association may request that a factfinding panel be convened to conduct a hearing and make recommendations regarding pay disputes between the Service and the association. The undersigned constitute the factfinding panel in the instant proceeding.⁹

C. Judicial Interpretation of the PRA

In *National Association of Postal Supervisors v. U.S. Postal Service*, the Court had occasion to pass upon a challenge by NAPS and the National League of Postmasters involving the provision of section 1004(a) of the PRA that requires the service “to provide adequate and reasonable differentials in rates of pay between” unionized rank-and-file employees and their supervisors and managers. In the course of its review, the Court interpreted Sections 1003(a) and 101(c) finding, among other things, that adequacy and reasonableness must be measured in light of the other standards Congress included in the PRA to guide the Service’s compensation decisions. The Court wrote that the Service must consider a number of factors in setting the compensation and benefits of its supervisory and other managerial personnel, 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.

In finding that the Service has much discretion in establishing salary levels for management, the Court held as follows:

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 judiciary inquiry is at an end.

⁹ Factfinding has been invoked on one occasion prior to the instant proceeding, that being in 2012.

The Postal Service must show that it considered all the factors as directed by the Postal Act and that it applied such factors in establishing adequate and reasonable salary differentials for all supervisory and other managerial personnel. This showing necessarily requires the Postal Service to set out the factors it considered to explain the relationship between those factors and the statutory requirements, to describe what those factors indicated, to reveal why (and how) it resolved the tensions, if any, among the various factors, and to relate why the salary differentials resulting from these calculations are adequate and reasonable in light of the factors.

D. Panel Authority

The scope of the Panel's authority in this matter is set forth in 39 U.S.C. §1004(d)(3), which provides, in pertinent part, as follows:

(3)(A) The panel shall recommend standards for pay policies and schedules and fringe benefit programs affecting the members of the supervisors' organization for the period covered by the collective bargaining agreement specified in subsection (e)(1) of this section. The standards shall be consistent with the policies of this title, including sections 1003(a) and 1004(a) of this title.

(B) The panel shall, consistent with such standards, make appropriate recommendations concerning the differences between the parties on such policies, schedules, and programs.

The Panel reviews the Services' decision in light of the standards set forth above.

PROCEDURAL HISTORY

On August 7, 2017, the National Association of Letter Carriers ("NALC"), which became the Service's largest union, ratified a three-year collective bargaining agreement. On September 21, 2017, the Service sent NAPS its initial pay proposal for FY2016 through FY2019, pursuant to 39 U.S.C. §1004(e). The parties scheduled their first discussion on the proposal for October 19, 2017. Between October 19, 2017 and June of 2018, the parties met seven times to discuss the pay proposal, and the Postal Service revised its pay package in response to NAPS' input on April 6, 2018, and May 15, 2018, and issued its pay decision on June 28, 2018.

During its participations with NAPS, the Service made several changes to its pay decision, including the following:

- Raised all of the minimum salaries for the grades in the EAS salary structure and closed the gap in pay bands per NAPS' request;
- Agreed to maintain the status quo for the employer health benefits contribution for the duration of the pay package, with no increase in employee cost share, again as requested by NAPS;
- Upgraded the EAS-12 Administrative Assistant (Field) position to level EAS-15 and awarded a 2% salary increase, which was a compromise position to NAPS' request for broader-based position upgrades;
- Continued a 15-point rating system as part of the Pay-for-Performance (PFP) program, which represented a modification of the Postal Service's position., albeit very short of NAPS' proposal for a major overhaul of the PFP matrix;
- Allowed for greater promotional pay increases, again a compromise position, but one short of NAPS' proposal to double the percentage increases for promoted employees;
- Agreed to establish a joint work group for the purpose of exploring and resolving issues regarding Field EAS salaries and grades, a position with which NAPS agreed, although the Association also requested that the joint work group address PFP. To be completed by September 2018.¹⁰

On July 5, 2018, NAPS notified the Service that it planned to pursue factfinding in accordance with 39 U.S.C. §1004(f)(1). On July 20, 2018, the Service issued its pay decision. In its July 20, 2018 decision, the Service revised its June 28, 2018 pay package decision for NAPS-represented employees to comport with the Service's pay package decision relating to Postmasters and managers who are represented by UPMA.¹¹

¹⁰ There is no evidence in the record that the work group explored or resolved the issues concerning EAS salaries and grades during the period.

¹¹ UPMA did not seek factfinding with respect to the Service's 2018 pay decision.

NAPS was not satisfied with the Service's July 20, 2018 decision and chose to pursue the factfinding process. NAPS contacted the Federal Mediation and Conciliation Service in accordance with the PRA, and this Panel was duly convened pursuant to 39 U.S.C. 1004(f)(3).

The Panel engaged in pre-hearing discussions with regard to its responsibilities by telephone and electronically. Absent specific statutory, regulatory, and policy procedures, the Panel communicated with the Parties over a period of time culminating in rules and procedures established for the proceeding. In addition, the Parties submitted pre-hearing briefs and provided documents that were subsequently introduced into the record of the hearing. Each party presented a large binder of materials relevant to each party's presentation in order to introduce information to the Panel that would be reviewed prior to and supplemented during the hearing process.

THE HEARING

The Panel and the Parties engaged in two prolonged days of factfinding hearings at NAPS' Headquarters in Alexandria Virginia on December 10 and 11, 2018. A transcript was made of the hearing, in the course of which a voluminous record was compiled. NAPS presented statements and power point presentations and exhibits through four (4) witnesses. In the course of its presentation, NAPS entered into the record thirty-one (31) documents as exhibits. The Service presented the statements and power point presentations and exhibits through seven (7) witnesses. The Service entered into the record thirty-four (34) multi-page documents as exhibits, including five (5) sets of slides. The Parties also entered into the record two (2) multi-page documents as joint exhibits. Following the close of the hearing, the Parties submitted post-hearing briefs, and NAPS also submitted a reply brief.

By agreement, the parties waived, in writing, the pre-hearing statutory deadlines established in 39 U.S.C. §1004(f) and the 30-day requirement in 39 U.S.C. §1004(f)(4).

The Panel represents that it reviewed the entirety of the record, including the transcripts, the prehearing and post hearing submissions by the Parties, as well as considered all arguments advanced by the Parties to this Proceeding although specific items may not be addressed herein.

We are satisfied that our findings and recommendations comport with the statutory requirements as outlined herein and should be considered fully by the Service.

ISSUE PRESENTED

DOES THE SERVICE'S DECISION OF JULY 20, 2018 SATISFY
THE REQUIREMENTS OF THE PRA?¹²

DISCUSSION

As a preliminary matter, the Panel is mindful of the long-term fiscal distress that the Service has been experiencing. It is against this distressed fiscal backdrop that this Panel convened to conduct a hearing and make recommendations regarding standards for pay policies and schedules and fringe benefit programs between the Service and its Field EAS employees.

We note, at the outset, that the financial condition of the Service is not a statutory standard that is to be considered by the Panel. Rather, the appropriate standards guiding our deliberations are set forth in various provisions of Title 39 of the United States Code, summaries of which are set forth in more detail above. We believe that this conclusion is consistent with judicial interpretation of the relevant provisions of the PRA, as well as the findings of Arbitrator

¹² In its brief and presentation, NAPS identified several issues relating to the Service's July 20, 2018 decision. However, each of the issues identified by NAPS simply challenge whether certain features of the Service's decision satisfy various criteria set forth in the PRA.

Goldberg in his 2016 interest arbitration award. The Panel is cognizant of the fact that the statutory process for the interest arbitration proceeding out of which the Goldberg award arose is different from that of the instant proceeding; however, the compensation standards that Arbitrator Goldberg and his arbitration board were called upon to interpret and apply, namely 39 U.S.C. §§101 (c) and 1003(a), were identical to two (2) of the standards present in this proceeding. None of the other statutory standards that apply to this proceeding specifically require this Panel to consider the financial condition of the Service. Therefore, we have taken particular note of the following language contained in Arbitrator Goldberg's interest arbitration award:

In rendering this Award, I acknowledge the financial problems affecting the Postal Service, but accept, as I must, the primacy of the statutory comparability standard in fashioning an award on the wages and benefits of APWU-represented employees. I also note that even greater freedom on my part to determine an appropriate level of wages and benefits would be insufficient to provide a meaningful solution to the Postal Service's financial problems.¹³

Although the Service is given considerable discretion in making pay decisions, such decisions must satisfy the statutory standards of the PRA. As the Court noted in *National Association of Postal Supervisors*, the Service must show that, in making pay decisions, it "considered **all** of the factors directed by the PRA, and that it applied such factors in establishing adequate and reasonable salary differentials for all supervisors and other managerial personnel." (Emphasis added)

COMPARABILITY GENERALLY

We are required to make recommendations concerning a system of classified job titles within established salary ranges in comparison to comparable private sector employment.

¹³ Service Exhibit A13, pp. 5-6

We find, based on the record before us, that there are no comparable private sector organizations that perform all the diverse functions that the Service is required to perform. Moreover, those organizations which perform certain limited similar functions, like FedEx and UPS, do not have anything like the constraints and obligations imposed on the Service. Nor, generally, do these private sector companies have managers or supervisors operating in comparable work structures or having similar responsibilities.

We further find that the Service failed to satisfy its statutory obligation when it issued its July 20, 2018 decision without conducting any sort of market survey examining comparable levels of work in the private sector. The Service did not undertake a market analysis until after NAPS requested factfinding, which was well after it issued its pay decision. Furthermore, the record demonstrates that the Service had not done a market analysis since it presented an analysis in the context of the 2012 factfinding proceeding, which analysis also was done after the issuance of the Service's pay decision and after the request for factfinding had been filed. The Panel notes that the Service's own expert was of the opinion that a proper market analysis should be done at least every two or three years.¹⁴

SUPERVISOR DIFFERENTIAL ADJUSTMENT

The Supervisor Differential Adjustment ("SDA") formula is the mechanism by which the Service adjusts the minimum and maximum salaries within the EAS Schedule in order to maintain an adequate salary differential between rank-and-file bargaining unit employees and the Grade 15 through 19 supervisors who directly supervise two (2) or more subordinates. The practice has been to provide a minimum salary for front-line supervisor positions that is at least

¹⁴ December 11, 2018 Hearing Transcript, p. 255

5% above that of the base salary for the most populous supervised title in the appropriate SDA Position Group.¹⁵ There appear to be four (4) separate Position Groups, with one (1) of the Position Groups being a “catch all” group. Therefore, every time the benchmark bargaining unit receives a wage increase, the SDA minimum salary is increased. According to NAPS, SDA applies to approximately twenty-seven thousand (27,000) EAS employees who actually supervise two (2) or more subordinates, although it affects far fewer due to the manner in which the Postal Service calculates the SDA.

The Service used an exceedingly broad based calculus when it applied its own stated intention to establish a 5% differential between EAS and the craft groups they supervise. The Service used a single grade level from a single craft on which to base the 5% calculation. That approach results in a broad but highly inexact application of the differential. The Service justifies this approach on the basis of what can best be described as practicality and administrative convenience.¹⁶ Unfortunately, the Service’s overly broad approach has, in many instances, resulted in what we believe to be unreasonable and inadequate pay differentials when applied to individual supervisors. In order to effectuate the statutory requirement for a supervisory differential the calculation should be based on more numerous groupings of employees rather than a single group.

The Service’s approach has resulted in many thousands of Field EAS managers and supervisors receiving less than the Services’ own 5% target differential even disregarding the issue of whether the craft members’ overtime should be included in the comparison. We

¹⁵ The Panel notes that the Service’s expert stated that the supervisory differential in the private sector typically ranges between 10% and 20%, with supervisory differentials in employers with unionized work forces typically being higher than in employers with non-unionized work forces. December 11, 2018 Hearing Transcript, pp. 236, 251

¹⁶ December 10, 2018 Hearing Transcript, pp. 68-69

recognize, as the Service argues, that applying 5% to groups of employees supervised by each individual supervisor or manager would be an excessively burdensome and time-consuming task. Nor is the suggestion by NAPS that the NALC base rate simply be substituted for the Clerks' rate a reasonable solution; it is rather a results oriented change.

We believe that the statute requires a calculation that is much more precise than that which is used by the Service. Using the compensation levels of a single grade level from a single craft within one (1) of only four (4) Position Groups does not result in the differential being effectively applied to the significant number of managers and supervisors, in terms of both the minimum and maximum salaries within a range. The Panel believes that there are several ways to approach this issue,¹⁷ and that it can best be dealt with between the parties in the context of the working group that we are hereinafter recommending.

In regard to the effect of the current SDA on the maximum salaries within the ranges,¹⁸ the Panel notes that the failure to increase the maximums has the effect of compressing supervisor salaries with those of subordinates. While the result is, in all likelihood, a differential in excess of 5%, it nonetheless has the effect of limiting or eliminating salary increases to a significant number of EAS employees who are at or near the top of their respective salary ranges.¹⁹ Although the Service compensates employees who reach the maximum of their respective salary ranges with lump sum payments, this technique deprives such employees of the long term benefit of a pay raise.

¹⁷ See NAPS' Post-Hearing Brief in which it suggests separating out from the "All Other Eligible" position group the position of Supervisor Customer Services and any other EAS positions that supervise craft positions with base salaries greater than their supervisors.

¹⁸ See Joint Exhibit 1 which indicates that as of the date of the hearing, there were approximately 4,065 EAS employees at the top of their respective salary ranges.

¹⁹ December 10, 2019 Hearing Transcript, pp. 280-281

Pursuant to the Service's SDA program, an employee who receives a lump sum payment in lieu of a raise loses the benefit of compounding raises as well as the forever benefit of the raise itself, whereas, employees who are not at the maximum receive a forever benefit of a raise. Therefore, we believe that in order to maintain an adequate and reasonable salary differential and to treat all EAS employees equitably, the Service should increase the maximums within the respective ranges.

NAPS' insistence that craft overtime work should be included when making the differential calculation is a difficult issue. While craft overtime work raises craft pay and narrows the differential if not counted in the differential calculation, craft employees actually worked those additional hours whereas EAS managers and supervisors did not. Field EAS managers and supervisors would nonetheless gain the benefit of the craft overtime pay by including it in the differential calculation even though they did not actually work comparable overtime hours. Thus including craft overtime in the applying the 5% differential may not be an apples to apples comparison.

However, while certain Field EAS managers and supervisors perform overtime work (at regular pay) the opportunity and amount of overtime is not nearly that of craft employees. In this regard, the Panel is troubled by an example that was provided in which a craft employee and a NAPS represented supervisor work five (5) hours of overtime, and because of the lack of a sufficient differential and the disparity in overtime pay calculations, the craft employee would earn more for the pay period than the supervisor.²⁰

²⁰ December 10, 2018 Hearing Transcript, p. 98

Presumably, as FLSA exempt salaried employees, EAS supervisors and managers higher pay levels are set to account for the relative unavailability of overtime pay. Nonetheless, the Panel recognizes that the significant impact of overtime on total craft pay may in some instances negate any differential and undermine the statutory intention of maintaining an SDA.

It is evident to us that some refinement in the SDA calculation is required²¹ to better reflect the multitude of craft groupings under supervisors and managers to produce a reasonable and appropriate result. Moreover, it appears, based on the evidence that the Service is finding that non-career employees²² rather than experienced career employees are moving up into the supervisory and managerial ranks, another indication of the inadequacy of the differential calculation.²³ This adversely impacts the Service as it is not able to promote experienced craft employees into supervision and management.

We find, based on the record, that the Services' application of the SDA using an exceedingly broad calculus involving the most populous supervised group of titles as a benchmark has resulted in serious flaws in meeting the statutory requirement for an adequate and reasonable differential between Field EAS employees and the craft employees that they supervise. We further find that the SDA, as applied, may very well fail to attract qualified and capable supervisory staff.

²¹ See Recommendation below.

²² There was an agreement reached between the Service and craft unions to expand the use of non-career employees to address financial concerns.

²³ December 10, 2018 Hearing Transcript, p. 100

PAY FOR PERFORMANCE

The Service has adopted a “Pay For Performance” (“PFP”) program to determine the amount of a pay increases that EAS employees may receive. PFP is the sole mechanism by which EAS employees could receive wage increases each year other than through a promotion or the Supervisory Differential Adjustment (SDA).

The PFP is an extremely complex system that consists of a 15-box matrix. PFP increases are based on the National Performance Assessment (NPA), which contains a scorecard of thirty (30) or thirty-one (31) different indicators²⁴ including eleven (11) Corporate (national) indicators and nineteen (19) or twenty (20) Unit level indicators, both with multiple sub-indicators – Unit has forty (40) indicators (including sub-indicators) that measure performance at both the corporate (national) and unit (local) level.

According to the Service, unit and corporate performance indicators are aligned to improve customer service, generate revenue, manage costs and enhance a performance based culture.²⁵ The Service alone selects the Corporate indicators and sub-indicators, as well as the weight given to each indicator. Every indicator has fifteen (15) measurements. Certain indicators (i.e. Accidents which = 15%)²⁶ are applied to all employees regardless of title and job function.

At the end of a fiscal year, each unit receives an NPA score based on how the unit performed relative to its goals. In addition, a corporate score is generated based on how the organization as a whole performed relative to its goals. The overall performance rating is based

²⁴ NAPS Exhibit 7

²⁵ Service Exhibit A7 p.1

²⁶ NAPS Exhibit 7

on the NPA Composite Score (Corporate & Unit) rounded to the nearest whole number. The Service determines at what level (cell) salary increases will be paid and in what amount.

An employee's individual evaluation is no longer considered in the PFP.²⁷

The record reflects that the PFP system, as established and administered by the Service, fails to provide an effective feedback loop to its Field EAS employees. Unlike the SDA, where the Service has implemented an overly simplistic approach to its calculation, the PFP is overly complex. Moreover, it appears that the Service does not establish the indicators until well into the fiscal year.²⁸ In addition, there appears to be a fairness issue reflected in the wide disparities between geographic regions. For instance the Eastern District scored 3.4 (highest sub-district score was 5.25) while the Capitol Metro District scored 1.99 (highest sub-district was 3.4).²⁹ An additional example of the lack of fairness is the Morgan Processing Facility in New York City where only 2% of the EAS employees would receive a raise for FY2018 based upon the Service's application of the PFP.³⁰ No apparent reason was forthcoming to explain these wide disparities, generated from numerous offices and stations, beyond their score.

The problem with the lack of an effective feedback loop is compounded by the substantial number of Field EAS employees who would not receive raises under the Service's July 20, 2018 decision. According to the information provided by NAPS, for the Fiscal Year 2018, approximately 38.5% of EAS employees will not receive pay increases.³¹ This is in contrast to the craft employees, all of whom will receive pay increases.

²⁷ Joint Exhibit 1, p 7

²⁸ December 10, 2018 Hearing Transcript, pp. 88-89

²⁹ NAPS Exhibit 5

³⁰ NAPS Exhibit 5

³¹ NAPS Exhibit 6

The record further demonstrates that PFP, as applied by the Service, is not a component of pay structures in the private sector.³² The record also raises a question in the Panel's mind regarding the manner in which the Service is administering the PFP. For example, there was proof that for FY2009, the Service arbitrarily reduced the PFP after the fact.³³ This concern is compounded by the statement of the Service's expert who stated that he would have expected a higher percentage of EAS employees to be at the tops of their respective salary ranges given the more senior demographic of that work force.³⁴

The Panel finds that the PFP system, as constructed and implemented by the Service, does not satisfy the statutory criteria of comparability and the maintenance of a well-motivated workforce. The corporate and unit criteria utilized by the Service are so complex and numerous that they are disassociated and attenuated from the work of the EAS supervisors and managers. As a result the program fails to effectuate its goals, namely to motivate its supervisors and managers to effectuate the Service's mission. Evidence of this lack of motivation can be found in the results of the Postal Pulse National Dashboard Report and accompanying Analysis.³⁵

LOCALITY PAY:

This issue of locality pay should have been part of any survey of the private sector. There was evidence presented that New York City has a 23% higher cost-of-living area than other cities and regions.

³² December 10, 2018 Hearing Transcript, p.300; December 11, 2018 Hearing Transcript, p. 247

³³ December 10, 2018 Hearing Transcript, p. 111

³⁴ December 11, 2018, Hearing Transcript, p. 250

³⁵ NAPS Exhibits 3 A and B

The record establishes that federal government employees receive locality pay in three cities, San Francisco, Boston and New York City.³⁶ Yet no study was performed by the Service on this matter as part of the compensation determination process with NAPS.

The Service argues that the lack of turnover of EAS employees in high-cost cities shows that it pays market rates and does not face retention or recruitment problems for EAS employees based on where they live. However, this analysis does not take account of the reluctance of employees who come from or live in these high cost cities to change jobs in the first place, to conduct job searches, to move from their homes and to uproot their families. The age and experience level of the average EAS employee – age 50 and 19 years of experience – explains such reluctance to change jobs.

At the very least such a study should be performed and should include consideration of the burdens imposed on EAS employees in high cost areas in comparison with similarly situated EAS employees elsewhere.

We find that the Service's failure to carefully examine the issue of locality pay prior to the issuance of its July 20, 2018 decision contributed to a failure to satisfy its obligation under the statute. We further find that the lack of locality pay may adversely impact the motivation of a segment of its work force.

³⁶ December 10, 2018 Hearing Transcript p. 132

SPECIFIC RECOMMENDATIONS

After careful consideration of the parties' respective presentations and positions provided at the factfinding hearing, and in light of the analysis set forth above, the following are the recommendations of the Panel regarding the issues submitted for our consideration relating to the Postal Service's July 20, 2018 decision.

1. Supervisory Differential Adjustment (SDA).

The Panel acknowledges that the Service is accorded broad discretion in establishing pay differentials between subordinates and their supervisors. Nonetheless, it is our opinion that the broad based calculus that is utilized by the Service, although administratively convenient, does not provide adequate and reasonable differentials in rates of pay between subordinate employees and their supervisors and managers.

It is our further opinion that the manner in which the Service has established maximums within the EAS salary ranges is unfair to over four thousand (4,000) supervisors and managers, as it deprives them of the long-term benefits of raises in base pay. We believe that such disparate treatment has a negative impact on the Service's ability to attract and retain qualified and capable supervisory and managerial personnel, adversely impacts pay differentials between supervisors and craft employees, and fails to promote the maintenance of a well-motivated work force, all of which is contrary to the PRA.

In its July 20, 2018 pay decision, the Service committed itself to establishing a joint work group "for the purpose of exploring and resolving issues regarding Field EAS salaries and grades." The specific issues to be explored regarding Field EAS salaries and grades were not identified during the hearing, although the Service indicated that the PFP program was not one of

the issues that it would agree to explore. In any event, we believe that it is appropriate for the joint work group to explore, among other things, the manner in which both the salary range minimums and maximums are calculated, with particular attention being paid to the concerns raised by this Panel. The work group should make a recommendation regarding modifications to the current calculus to provide adequate and reasonable differentials in rates of pay between subordinate employees and their supervisors and managers.

2. Pay For Performance System (PFP).

As indicated above, the Panel is of the opinion that the PFP program, as currently designed and administered, is seriously flawed in that it does not accomplish its objectives or comport with the requirements of the PRA. The current PFP program does not have a comparable counterpart in the private sector. Furthermore, the Service's PFP program, as designed and implemented, is too complex to be understood by most Field EAS employees. PFP relies on indicators that are not established in timely fashion and over which most employees have much, if any, control. Moreover, the PFP program does not provide an effective feedback loop and has resulted in wide disparities among the Service's geographic regions.

Frankly, there appears to be a significant disconnect between much of the Field EAS employees' work and the indicators established by the Service, and we view this as injecting an unacceptable degree of arbitrariness into the design and implementation of the PFP program. Because of these features, we believe that there is a legitimate question regarding the comparability of compensation established under the Service's PFP program. Further, we agree with NAPS' contention that the Service's current PFP program negatively impacts the Service's ability to attract and retain qualified and capable supervisory and managerial personnel and fails to promote the maintenance of a well-motivated work force, all in contravention of the PRA.

In reaching these conclusions, we note that it is not the Panel's role to fix the PFP program. That would be an enormous undertaking for which we do not have the time or the mandate. The Panel also is mindful of the fact that the PFP affects employees other than those represented by NAPS. Nonetheless, we believe that the deficiencies in the PFP program should be addressed by the parties working jointly, as they have repeatedly agreed to do themselves. While we understand that the Service was not willing to include PFP as one of the issues to be explored and resolved by the joint work group which it agreed to establish in its July 20, 2018 pay decision, we believe that it is imperative that PFP be included among the issues to be explored and resolved by the joint work group.

In making this recommendation, we note that the 2012 factfinding panel found that a joint NAPS-management effort at reforming and revising the PFP program should be undertaken. Apparently, such an effort resulted in the elimination of the individual component of the PFP program, but no other significant changes were made to the PFP. We think it important that an objective, thorough and comprehensive examination of the PFP program be made if the Service is to continue to rely on PFP as its predominant method of determining compensation for EAS supervisors and managers.

3. Locality Pay.

The Panel believes that proof submitted during the factfinding hearing clearly demonstrated a reasonable basis for establishing locality pay in certain areas of the country. However, we further believe that there was not enough information for the Panel to make specific recommendations regarding locality pay. Therefore, we are recommending that the joint work group that we are recommending also examine this issue with the assistance of a compensation

expert and develop an equitable, efficient, transparent and statutorily compliant locality pay adjustment program, if warranted.

4. Joint Work Group.

The Panel strongly recommends that the parties establish a joint work group to examine and report on the issues of locality pay, SDA, PFP and, possibly, a permanent Cost of Living Adjustment for career, non-bargaining unit employees who are in Field EAS positions.

When addressing the issues that we have identified, the joint work group should be guided by the Court's holding in *National Association of Postal Supervisors v. U.S. Postal Service* wherein it found that in order to satisfy its statutory obligation, the Service must consider all of the statutory criteria in determining compensation for its supervisory and management personnel.

We note that the parties engaged in discussions and exchanges over compensation from September 17, 2017 until the Service issued its pay decision on July 20, 2018, and that the Service accepted several of NAPS' suggestions for improvements during that period. We commend the Service for its receptivity in this regard. However we note that these changes did not deal with the underlying compensation issues including the structure and functioning of the SDA and the PFP. While the parties agreed to establish a joint work group to discuss Field EAS salaries and grades, the Service rejected NAPS' request that PFP be addressed.

Unless the central compensation issues are addressed, the apparent fissure in the parties' relationship will continue to deepen. This can only hurt the Service. Field EAS supervisors and managers are the lynchpin-of the Service, assuring upper management's goals and policies are effectively and timely implemented. They are the vital link in the chain. The Field EAS supervisors and managers must be assured that the Service is listening to their concerns and addressing them in a way that recognizes their seriousness. The failure to address these issues as

the parties have committed to doing in the past has undermined their relationship as envisioned by Congress when enacting the PRA.

We recommend a mediation process to ensure effective direct participation in accord with the spirit and intent of the PRA. As practitioners in mediation and arbitration, we strongly recommend that the joint work group engage the services of a mutually selected mediator for the purpose of assisting the joint work group in identifying, addressing and achieving consensus regarding the issues we have identified, and thereafter making written recommendations to the Service regarding the identified issues. The work group, working with the assistance of a mediator, will go a long way toward rebuilding trust and unity.

We recommend that a mediator be chosen and directly involved in managing the process to assure that it goes forward in a timely and effective manner. The parties should be transparent in their sharing of information and, at the outset, mutually adopt a joint model for cost calculations. The mediator should set agendas and a rigorous time table for meetings, discussions and recommendations.

The mediator should assist the joint work group in engaging the services of a mutually selected compensation expert to investigate and/or conduct studies and provide information, guidance and recommendations regarding these wage issues. If the parties are not able to jointly select a compensation expert, we suggest that the mutually selected mediator be authorized to select a compensation expert.

We think it is important that the issues to be addressed by the joint work group reach finality. The joint work group should conclude its activities and issue its report and recommendations on these issues to the Service no later than six (6) months from the date when the Service renders its final decision on matters covered by factfinding and set forth in this Report and

Recommendation. Toward that end, we believe that it would be productive for the joint work group to make written recommendations to the Service regarding the issues resolved by the joint work group. With respect to any issues on which the joint work group does not agree on a recommendation, we suggest that the mediator issue a written recommendation, together with the justification therefor, which shall be incorporated into the work group's report to the Service.

Consistent with the spirit of 39 U.S.C. 1004 (d)(2)(C), we recommend that the Service provide to NAPS written reasons for not accepting and implementing any recommendations of the joint work group or the mediator.

In the course of our deliberations, the Panel considered an alternative, useful approach to resolving challenging and complex issues such as those present here. This alternative approach is known as a "Med-Arb" process under which a neutral first works intensively with the parties to reach voluntary agreement, but for those matters that are still outstanding after time and attention, the neutral assumes the role of an arbitrator and is empowered to make final and binding decisions. However, the Panel recognizes that Med-Arb is not required under the statute and would be strictly a voluntary process.

5. Retroactive Pay Raises.

The Panel recommends that all Field EAS employees receive retroactive raises in base pay and lump sums as discussed below. In so recommending, we note that the Service provided retroactive pay to the craft employees. It is also our recommendation 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.

Under the current PFP program, for fiscal years 2015, 2016, 2017 and 2018, the Service established as a target that EAS employees achieve a corporate and unit rating of 6, for which they would receive a 3% scheduled increase in base pay under the July 20, 2018 pay decision³⁷; however, the weighted average pay increase for EAS employees for all but the 2016 fiscal year was well below the 3% increase due to a significant number of EAS employees receiving ratings below 6. As previously mentioned, it is the opinion of the Panel that the failure of EAS employees to achieve ratings that would have provided for an average increase of 3% is attributable, in large part, to deficiencies in the PFP program rather than deficiencies in collective EAS employee job performance. Consequently, in addition to recommending that the joint study committee be tasked with identifying improvements to the PFP program, the Panel recommends that each NAPS-represented employee receive, in addition to raises and/or lump sum payments already received, the following retroactive increases in base salary for the following fiscal years, with the caveat that the amount by which any such increase exceeds the maximum of an employee's salary grade will be paid in the form of a lump sum payment:

FY2017 – 1.10%

FY2018 – 2.15%.

The recommended percentages are calculated by deducting the actual average salary increase received by Field EAS employees for FY2017 and FY2018 from the 3% target.³⁸ For example, for FY2017, Field EAS employees received an average pay increase (weighted) of 1.9%, which,

³⁷ See NAPS Exhibit 7

³⁸ The Panel notes that the Service's expert stated that the average annual salary increase in the private sector over the past 2 years was 3%.

when deducted from 3%, results in a recommended pay increase of 1.10% for FY2017. The average pay increase (weighted) for Field EAS employees for FY 2018 was 0.85%.³⁹

6. NAPS Representation--Headquarters and Area Employees.

It is the opinion of the Panel that the issue of compensation for “Headquarters” and “Area” employees is not one for which the Panel can or should provide a recommendation. In reaching this conclusion, the Panel is mindful of the history of representation and the Memoranda of Understanding that have been reached by the parties. The Panel also notes that a determination regarding the scope of NAPS representation is not a matter that falls within the jurisdiction of the Panel under 39 USCA §1004.

CONCLUSION

We believe that the purpose of Congress in establishing criteria for determining compensation and benefits, and affording supervisors and managers the right to participate in the planning and development of pay policies and thereafter submit pay issues to a factfinding process, was to enhance labor relations and reduce discord between the Service and those supervisory and managerial employees. Of concern to us is the following cautionary message contained in the 2012 factfinding report:

We also wish to raise a word of caution. This is a pivotal event in the NAPS-Postal Service history. As noted above it is the first time that the fact finding process provided for in the statute has been invoked. There is considerable risk that the events that precipitated use of this process and the contested nature of the facts and interest involved could lead the parties’ relationship down a more adversarial path. This would not serve the interests of the employees, executives, or the public served by the Postal Service.⁴⁰

It is the Panel’s impression that communications and trust between the Service and NAPS have broken down, and that the relationship is in dire need of assistance. The central features of

³⁹ See NAPS Exhibit 6

⁴⁰ Service Exhibit A3, p. 4

compensation, SDA and PFP, have serious flaws which have been identified herein and in the past, and which require the focus and attention of the parties in order to correct them. It is high time the parties sit down in a serious way to undertake this effort as it is jeopardizing the parties' vital relationship. We firmly believe that the recommendations set forth in this Report will provide NAPS with a means to directly participate in a meaningful way in the planning and development of pay policies that affect its members, without divesting the Service of its broad statutory authority.

We recognize the enormous challenges faced by the Service and its supervisors and managers, and we applaud them as they work together toward the fulfillment of the Service's mission.

Respectfully Submitted,

Susan E. Halperin

SUSAN E. HALPERIN, Chair

Robert S. Hite

ROBERT S. HITE, Member

Joshua M. Javits

JOSHUA M. JAVITS, Member