Factfinding Proceedings Before
Susan E. Halperin (Chair), Joshua M. Javits, and Robert S. Hite

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National Association of Postal Supervisors,

Petitioner,

v.

United States Postal Service,

Respondent.

NATIONAL ASSOCIATION OF POSTAL SUPERVISORS'

POST-HEARING BRIEF

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I. Introduction

The United States Postal Service treats its supervisors, managers, and professionals as costs to be managed rather than as assets to be valued and developed. This approach is reflected in how it compensates these employees. Not only is this treatment misguided and counterproductive, resulting in terrible morale that costs the Postal Service hundreds of millions of dollars, it is also illegal, violating compensation requirements established by Congress as part of the Postal Reorganization Act of 1970 (the Postal Act), 39 U.S.C. §§ 1003 and 1004.

That Postal Act requires the Postal Service to: (1) compensate its employees comparably to the private sector; (2) provide for an adequate and reasonable pay differential between supervisors and the employees they supervise; (3) maintain a compensation system that attracts qualified and capable supervisors and managers; (4) maintain a compensation system that reflects the importance of a well-motivated workforce; and (5) allow the National Association of Postal Supervisors (NAPS), as the representative of postal supervisors and managers, to participate directly in the planning and development of pay policies and schedules. In imposing a flawed compensation system for the fiscal years 2016-2019 for its Executive and Administrative Schedule (EAS) employees, the Postal Service violated each of these requirements:

1. Compared to pay for comparable jobs at comparable private employers, the Postal Service has long underpaid its supervisors, managers, and professionals – typically by more than 10% compared to national averages for comparable jobs. USPS failed to determine pay rates for comparable private sector jobs prior to proposing or finalizing its pay package for EAS employees in 2018, despite compensation surveys being universal among large private employers. NAPS's compensation expert found that the Postal Service's salaries for the 50 EAS jobs that he surveyed were almost all below market (even before adding in private-sector bonuses, before adjusting for EAS employees' greater-than-average experience, and before adjusting for the market's higher pay for the additional complexity of supervising unionized workers). The Postal Service's own compensation expert found that three of the eight jobs he surveyed (out of the over-1,000 EAS jobs) had average salaries below the market median. He admitted that, because EAS employees are substantially older and more experienced than the average American employee, he would expect them to earn, on average, above the market median. He also admitted that private employers pay, on average, 7 to 10% in bonuses on top of their salaries – which, when added to private sector salaries for comparable jobs, results in the USPS average cash compensation for almost every job he surveyed being less than the market median. And he agreed with NAPS's expert that the private sector pays a premium of 15 to 20% to supervisors of unionized employees, over and above the national average.

In addition to higher national compensation, the private sector generally pays substantially more in high-wage locations (as does the federal government). Using a national survey that the Postal Service's expert agreed was appropriate for looking at geographical differentials, NAPS's expert demonstrated that those premiums average between 10 and 25% in cities such as New York, Boston, and San Francisco. The Postal Service did not dispute those findings. Indeed, the Postal Service's compensation expert admitted that the private sector pays an average premium of 23% in New York. Yet the Postal Service provides no locality pay in New

York, Boston, San Francisco, and other high-wage areas, leaving EAS employees even further in the hole compared to employees in comparable private sector jobs who receive higher base salaries, bonuses, a premium for supervising unionized employees, and locality pay.

Despite the Postal Service's claim that its deficient cash compensation is offset by better-then-average benefits, its benefits expert admitted that, according to the authoritative Bureau of Labor Statistics, its benefits have almost exactly the same value as those paid by private employers with over 500 employees. Thus, EAS employees' benefits do not level the uneven balance between the compensation the Postal Service pays and what is paid "for comparable levels of work in the private sector."

Inadequate raises in recent years have worsened that gap. Both parties' compensation experts testified that private sector wages have increased by approximately 3% annually for the past two years. Nonetheless, over 5,000 EAS employees received no pay increase for FY 2017 (effective beginning January 2018), and approximately 16,500 EAS employees – almost 40% of supervisors, managers, and professionals, including almost all of those in New York, Washington, D.C., and Los Angeles – received no pay increase for FY 2018 (effective beginning January 2019). According to the Postal Service's economist, in the nine years from FY 2009 through FY 2018, pay increases for non-postmaster Field EAS employees have totaled only 6%.

To avoid its obligation to comply with the law on compensation of EAS employees, the Postal Service pleads poverty, to which there are three responses: First, the law contains no exceptions based on affordability; second, despite its claim of poverty, the Postal Service was able to pay far more for increases for the unionized craft employees than is required to comply with its obligations to its EAS employees; and third, reasonable pay increases for EAS employees are likely to improve morale throughout the workforce and pay for themselves.

2. Rather than the required "adequate and reasonable pay differential" above the craft employees they supervise, thousands of postal supervisors earn salaries *less* than the base salary earned by many craft employees they supervise. After overtime pay is taken into account, thousands more EAS employees earn less per hour than the employees they supervise. NAPS witnesses testified to the widespread belief among postal supervisors that they earn less than workers they supervise, even when they work the same hours. Data on median total cash compensation for carriers and clerks that NAPS received from the Postal Service and presented at the hearing confirmed that many thousands of supervisors earn less than tens of thousands of the craft workers they supervise. The Postal Service's "Supervisory Differential Adjustment" ("SDA") of 5% above certain benchmark positions is inadequate to compensate for the facts that (a) the base salary of thousands of craft employees (such as city carriers) is above the SDA minimum for Supervisors of Customer Services who supervise them, and (b) significant numbers of additional craft employees quickly surpass their supervisors' salaries once overtime is included. The SDA for the majority of supervisors to whom it applies is improperly calculated based on a clerk's position that earns almost $4,000 less than city carrier positions also supervised by many of those supervisors. This total absence of a supervisory differential (let alone an adequate supervisory differential) is worsening as the Postal Service provides more

generous pay increases to the unionized craft employees than to their non-unionized supervisors (many of whom receive no pay increase at all).

Again neglecting to carry out its responsibilities regarding EAS pay, the Postal Service has not examined the numbers of supervisors who earn less than union employees they supervise, nor the size of that negative differential. The Postal Service produced no evidence to dispute that thousands of supervisors earn less – in total and on an hourly basis – than the workers they supervise, and it has refused to split the "All Other" SDA category to assure that each EAS position has its 5% differential calculated based on the highest-salaried group of union employees it supervises.

3. The Postal Service has significant problems attracting and retaining qualified supervisors and managers. Over one-fifth of EAS 17 jobs (the jobs that most frequently directly supervise clerks and carriers) nationwide are not filled within 90 days of being posted; in Washington, D.C., almost two-thirds of those jobs are not filled within 90 days. Qualified craft employees are not interested in applying for supervisory jobs that come with greater stress for the same or less pay. As several witnesses testified (and no witness disputed), experienced craft employees decline to apply for supervisory jobs; instead, those jobs are filled with unqualified, inexperienced, non-career employees. Over 40% of Field EAS and approximately one-third of all EAS employees hired from outside the Postal Service leave within five years. For those employees, departure remains a viable option, as the Postal Service's economist acknowledged, because these employees are well qualified and not yet shackled by a significant, vested pension.

4. The Postal Service may have the worst morale of any large company in America. Overall, the level of "engagement" among USPS employees is in the first percentile of Gallup's overall company-level database – that is, 99% of other companies have better employee engagement. Field supervisors' engagement is little better – ranking only in the 10th to 13th percentiles of all managers – and that engagement is badly hurt by the pay system. The Postal Service's inadequate EAS pay structure and its convoluted "Pay for Performance" formulas (which apply only to EAS employees and often result in supervisors and managers, despite good performance, receiving no pay increases or increases that are less than the workers they supervise) contribute to that poor morale.

The combination of non-competitive salaries, inadequate pay differentials between supervisors and the employees they supervise, lack of pay increases, and the widespread belief among EAS employees that they are not valued by their employer has resulted in terrible morale among a majority of supervisors and managers that, in turn, ripples through the workforce. The Postal Service's own consultant on employee engagement and morale, Gallup, ranks the organization as one of the worst in the country. The Postal Service admits that better morale could translate into hundreds of millions of dollars of savings in workers' compensation alone, as well as many millions more from reduced absenteeism and increased productivity.

5. The Postal Service ignored the recommendations submitted by NAPS during pay talks, including recommendations to increase the top of salary ranges, provide for locality pay, and revise the Pay for Performance system. It refused to engage in substantive discussions and

failed to provide any written explanations of either its decisions or its rejections of NAPS's recommendations. It also failed entirely to consult with NAPS regarding a second group of EAS employees represented by NAPS – the "Headquarters" and "Area" EAS employees whom the Postal Service does not categorize as "Field" EAS.

The Postal Service's compensation system and pay schedules for its EAS employees (other than postmasters) is the subject of this factfinding. As explained further below, in order to comply with the statutory mandates (as well as to improve morale, recruitment and retention, and productivity), the Postal Service should immediately increase EAS salaries by 8% (with 2% each year retroactive to FY 2016, 17, and 18), raise the top of its pay ranges, implement a locality pay adjustment, and revise the way it calculates its Supervisory Pay Adjustment. More fundamentally, the Postal Service should convene a study group together with NAPS that, with advice from a compensation expert, considers improvements to the design of the USPS Pay for Performance system.

II. Issues for Factfinding

NAPS presented the following issues for review by the panel[1]:

The overarching question for the factfinding panel is whether the Postal Service's final pack package for the period FY 2016 through FY 2019[2] complies with the statutory requirements for compensation for postal supervisors and managers. Particularized aspects of this question include:

1. Are the Postal Service's compensation and benefits for EAS employees comparable to the pay and benefits for comparable jobs in the private sector, as required by 39 U.S.C. § 1003(a)?
    a. Should the Postal Service add a locality adjustment to its salaries for EAS employees, as do most large private employers (and every other federal agency) to account for the higher market rates of pay in high-wage cities; or, in the alternative, should it raise all salaries so as to be competitive in those high-pay cities?
2. Does the Postal Service provide an adequate differential between what it pays its clerks and carriers and what it pays their supervisors and managers, as required by 39 U.S.C. § 1004(a)?
    a. Should the amount of the Supervisory Differential Adjustment (SDA) be larger to account for (1) the typical differential paid by private sector employers, and (2) the higher rates of overtime pay paid to craft employees compared to their supervisors and managers, which result in greater total cash compensation for craft employees than for their supervisors?

[1] NAPS Pre-Hearing Brief at 2-4 (in this Post-Hearing Brief, NAPS has consolidated issues 6 and 7 from its Pre-Hearing Brief).

[2] "EAS Pay Package Decision through Fiscal Year 2019, Field EAS Employees," NAPS Ex. 1.

b. Should the SDA for a group of supervisors be set based on the highest-paid craft level and step of employees supervised by those supervisors?

c. Should the approximately 5,600 supervisors who received an SDA for 2015 receive a retroactive adjustment to their pay, effective November 7, 2015, to maintain the promised differential above the craft employees they supervise, who received a retroactive salary increase effective as of that date?[3]

3. Does the Postal Service provide adequate compensation to its EAS employees sufficient to attract qualified and capable supervisory and other managerial personnel, as required by 39 U.S.C. § 1004(a)?

4. Does the Postal Service manage its EAS salary program in a manner that maintains a well-motivated workforce, as required by 39 U.S.C. § 1004(a)?

5. Did the Postal Service allow NAPS 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," as required by 39 U.S.C. § 1004(b)?

   a. Did the Postal Service fail to give NAPS the reasons for its pay decision, the information on which the decision was based, and the reasons why NAPS's recommendations were rejected, as required by 39 U.S.C. § 1004(d)?

   b. Does the Postal Service have an obligation to consult with NAPS regarding compensation for EAS employees who are not classified as "Field EAS" (approximately 7,645 EAS employees located throughout the country who report to USPS headquarters or to Area offices)?

6. What are the appropriate remedies for any and all violations of the statutory requirements?

   a. Should EAS employees receive both immediate and retroactive raises to match market pay for comparable jobs?

   b. Should EAS employees in high-wage areas receive locality pay?

   c. Should the Postal Service immediately contract for a market survey of compensation for private sector jobs comparable to EAS jobs and update that survey annually?

   d. Should the Postal Service revise its Supervisor Adjustment Differential to (a) benchmark based on the highest-salaried craft position supervised by the EAS position to which the differential applies, and (b) increase the differential to account for the higher overtime wages that craft employees receive?

   e. Has the Postal Service violated its own final decision by failing to convene a joint work team with NAPS to explore and resolve issues regarding EAS salaries and grades?

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[3] In December 2018, the Postal Service made this retroactive adjustment, so sub-issue 2(c) is now moot.

f. Is the Pay for Performance (PFP) system – which is structured such that individual supervisors and managers have very little control over whether they receive a pay increase, or for how much, and which often results in many thousands of EAS employees receiving no pay increase – consistent with the statutory mandates or best practices in employee compensation?

g. Should the Postal Service convene a study group, including representatives of the USPS and NAPS, together with a neutral compensation expert, to study the Postal Service's compensation program for its EAS employees, including its PFP system and its lack of locality pay, and recommend improvements?

III. Statutory Requirements

The Postal Reorganization Act of 1970 requires that the Postal Service compensate its employees, including its EAS employees, comparably to employees at similar jobs in the private sector.[4] Specifically, it requires the Postal Service to "maintain compensation and benefits for all officers and employees on a **standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy**."[5] It also requires the Postal Service to "achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States."[6]

The Act also requires the Postal Service to:

- "provide **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,**"

- "provide compensation . . . that will **assure the attraction** and retention **of qualified and capable supervisory and other managerial personnel;**" and

- "establish and maintain continuously a [compensation and promotion] program . . . that reflects the essential importance of . . . **a well-motivated force** to improve the effectiveness of postal operations."[7]

Under the Act, the Postal Service must consult with NAPS before establishing new pay rates: "[a] recognized organization[] of supervisory and other managerial personnel [i.e., NAPS] . . . shall be **entitled 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."[8] The Postal Service is required, "before . . . implementation" of a new

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[4] Copies of the relevant portions of the Postal Act, 39 U.S.C. §§ 101, 1003, and 1004, are NAPS Exhibit 2.

[5] 39 U.S.C. § 1003(a) (emphasis added).

[6] *Id.* § 101(c).

[7] *Id.* § 1004(a) (emphasis added).

[8] *Id.* § 1004(b) (emphasis added).

pay package (or other programs that affect NAPS members), to "give the supervisors' organization . . . the information upon which the decision is based" and "provid[e] . . . reasons to the [supervisors'] organization if any of [that organization's] recommendations are rejected."[9]

The Act also provides that, when NAPS believes that the Postal Service's final pay decision violates the Act, it may "request the Federal Mediation and Conciliation Service to convene a factfinding panel."[10] This factfinding 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" with the bargaining unit representing the largest number of employees (i.e., FY 2016 through FY 2019, the period covered by the Postal Service's collective bargaining agreement with the National Association of Letter Carriers). "The standards shall be consistent with the policies of this title, including sections 1003(a) and 1004(a) of this title;" and

- "make appropriate recommendations concerning the differences between the parties on [pay] policies, schedules, and programs."[11]

IV. Background Facts and Conclusions of Law

1. The U.S. Postal Service

The United States Postal Service is a large, complex, and important company, with approximately 625,000 employees who staff approximately 31,000 Post Offices, operate over 230,000 vehicles, and sort and deliver approximately 146 billion pieces of mail per year to approximately 159 million addresses.[12] It has an annual budget $74 billion for 2019.[13] Its employees average 50 years of age – perhaps the oldest large-company workforce in America.[14]

2. EAS employees are the Postal Service's middle management.

The Postal Service's Executive and Administrative Schedule (EAS) employees are its middle management – the 49,000 managers, supervisors, professionals, and postmasters who, under the direction of the organization's 500 executives, manage its 442,000 career and 133,000 non-career employees who are members of bargaining units (carriers, clerks, etc.).[15] As of December 2018, the EAS employee workforce included approximately 12,719 Supervisors of

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[9] *Id.* § 1004(d)(2).

[10] *Id.* § 1004(f)(1).

[11] *Id.* § 1004(f)(3)(A) & (B).

[12] United States Postal Service's Form 10-K for the year ending Sept. 30, 2018, USPS Ex. C-2, at 2, 5; "Postal Facts," *available at* https://facts.usps.com/ (last visited Jan. 6, 2019); Nickerson Power Point, "The USPS Financial Situation," Slide 3.

[13] Nickerson Test., Hrg. Day 2 Tr. 42; *see also* USPS 10-K for 2018, USPS Ex. C-2, at 16.

[14] Park Test., Hrg. Day 2 Tr. 137.

[15] "An Overview of EAS Compensation," Jt. Ex. 1, at 1.

Customer Services; 13,619 Postmasters; 3,466 Supervisors of Distribution Operations; and 1,473 Supervisors of Maintenance Operations, as well as thousands of managers and professionals (such as accountants, nurses, paralegals, sales representatives, and safety specialists).[16] Individual managers, such as plant managers or managers of customer service, may be responsible for hundreds (or even over 1,000) employees, while even low-level field supervisors often supervise dozens of carriers, clerks, or both.[17] EAS employees average 50 years old and 19 years of experience, among the oldest and most experienced of any group of employees in America.[18]

NAPS has approximately 26,000 active members who are non-postmaster EAS employees, distributed among approximately 1,000 different EAS positions.[19]

Annual pay to the 49,000 EAS employees (including postmasters, who are not a subject of this factfinding) is under $4 billion per year. The relatively small scale of EAS pay, compared to the size of the Postal Service budget, means that modest EAS pay improvements do not pose the budget threat that USPS suggests. A 1% increase in EAS pay, for example, would annually cost approximately $40 million – approximately five one-hundredths of one percent of the Postal Service's budget.[20]

3. The Postal Service's finances are legally irrelevant. In any event, they do not prevent it from paying the increased salaries that NAPS has proposed.

As discussed further below, the statutes applicable to pay for EAS employees impose requirements that are not dependent on the Postal Service's financial condition. Nonetheless, in light of the Postal Service's emphasis on its weak financial condition as a reason for not increasing EAS pay, we note the following: While the Postal Service faces significant financial challenges, it came up with over $3 billion for 6% raises for employees represented by its craft unions.[21] The Postal Service characterized those raises as "a fair, responsible agreement that serves the best interests of our employees, customers and other stakeholders."[22] It also gave large raises to its 40 top executives and paid those executives hundreds of thousands of dollars in bonuses over the past five years.[23] For example, in the four fiscal years from 2015 through 2018, the Postal Service's Chief Operating Officer received salary increases totaling 15.9% plus

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[16] List of EAS positions attached to Jt. Ex. 1.

[17] Brandt Test., Hrg. Day 1 Tr. 157-58 (as Supervisor of Customer Services, she supervised "about 30 carriers and 7 clerks").

[18] Park Test., Hrg Day 2 Tr. 137; Risher Test., Hrg. Day 1 Tr. 255, 303-04.

[19] Wagner Test., Hrg. Day 1 Tr. 80-81.

[20] Risher Test., Hrg. Day 1 Tr. 305-06; Nickerson Test., Hrg. Day 2 Tr. 57-58.

[21] Nickerson Test., Hrg. Day 2 Tr. 45-48 (unions received pay increases of 6 to 7%), multiplied times union personnel costs of over $50 billion.

[22] "New Labor Deal," USPS Link (May 12, 2017), NAPS Ex. 8.

[23] USPS 2018 10-K, USPS Ex. C-2, at 93; USPS 2017 10-K at 81, *available at* https://about.usps.com/who-we-are/financials/10k-reports/fy2017.pdf.

bonuses and other incentive payments totaling over $41,000.[24] The Postal Service also generated sufficient revenue to pay down its debt by $1.8 billion at the end of FY 2018 and to pay an additional $2.2 billion in FY 2019 and to pay hundreds of millions of dollars in grievance settlements to the craft unions.[25]

The Postal Service and its consultant recognize that improved employee morale could save the Postal Service hundreds of millions of dollars in decreased accident costs, absenteeism, and lost productivity, as well as generate significant additional revenue from increased customer satisfaction.[26] An 8% increase in EAS pay would cost the Postal Service approximately $320 million per year[27] – which, in addition to being required by law, would be offset by increased productivity and revenue.[28]

V. Findings of Fact and Conclusions of Law on Issues Presented

1. The Postal Service's compensation for EAS employees is substantially below the private sector's compensation for comparable jobs.

The Postal Service's compensation for EAS employees, including the benefits the employees receive, is substantially below the private sector's median national compensation (salary, bonuses, and benefits) for comparable jobs. Because the value of the Postal Service's benefits package is almost exactly the same as the value the benefits provided for comparable private jobs (i.e., for jobs at employers with more than 500 employees), benefits are a wash, leaving a comparison of the Postal Service's EAS salaries to private sector salaries for comparable jobs. As explained further below, most EAS salaries are between 5 and 15% below national salaries for comparable jobs. On top of that, private employers pay average bonuses of 7 to 10%, an additional 15 to 20% premium to supervisors who supervise unionized employees (as postal supervisors do), and locality premiums of up to 25% for comparable jobs in New York, San Francisco, Boston, and other high-wage areas. To be comparable to compensation (not just salary) for comparable jobs in the private sector as required by 39 U.S.C. § 1003(a), including comparability for all "types of compensation paid in the private sector" as required by 39 U.S.C. § 101(c), requires that EAS pay in total be comparable to all of these types of private sector compensation, combined, for comparable jobs.

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[24] *Id.*

[25] Nickerson Test., Hrg. Day 2 Tr. 55-56.

[26] *Id.* at 56-57 ("the Postal Service's consultants have said that improvements in engagement and morale could save hundreds of millions of dollars for the Postal Service"); Williams Test., Hrg. Day 2 Tr. 70 ("improved engagement could produce substantial cost savings as well as substantial revenue").

[27] Based on the $4 billion annual EAS pay noted above, Nickerson Test., Hrg. Day 2 Tr. 57-58.

[28] Risher Test., Hrg. Day 1 Tr. 308 ("if you [the Postal Service] spent the money to have more engaged workers, have better salaries, better pay out there [for managers], . . . the return on that investment would easily offset the cost of the increases").

The Postal Service has never explained how it sets its salary ranges or why, for example, it chose to raise the minimum, but not the maximum, of its salary ranges for 2019.[29] Private employers purchase salary surveys, update them annually (or at least every three years according to the Postal Service's expert), set the midpoint of their salary range for each job at or above the national median for that job, add a locality adjustment factor where applicable, and then set a range around that median, with the bottom typically being the entry-level wage for that job in that location.[30] Pay is increased based on market wages, and bonuses of 7 to 10% are paid on top of the salary to incentivize and reward good performance.[31] The Postal Service has never done any of that. Instead, it groups large numbers of positions into each grade, the salaries for which it set more than a decade ago and never subjected to a market survey. It then increases (or does not increase) the minimums and maximums, apparently based more on affordability than market rates required by the Postal Act. And it provides pay increases to EAS employees only through application of a complex "Pay for Performance" formula, often resulting in no pay increases at all, even for thousands of good employees.

Field manager and supervisor jobs are assigned EAS grade levels 17 through 26, and professional, administrative, and technical field positions are assigned to EAS grade levels from 12 through 26.[32] The Postal assigns each EAS position to an EAS grade, which has an accompanying salary range; for example, a Grade 17 Operations Support Specialist has a salary between $50,507 and $81,234.[33] A new postal employee hired externally into the EAS schedule is generally paid the minimum salary for the grade level of the position to which he or she is hired.[34] Once an EAS employee is assigned an initial salary, she receives a pay increase only if (1) the PFP formula awards her an increase, discussed below, (2) she is promoted to a position with a higher pay grade, or (3) she is paid the Supervisor Differential Adjustment ("SDA") minimum (discussed further below) and that minimum is increased as a result of a pay increase for the benchmark bargaining unit job.[35]

A. Average and midpoint cash compensation for EAS jobs is substantially below the national median.

Despite the extensive responsibilities placed on Postal Service managers, supervisors, and professionals, they are paid significantly less than their peers in the private sector. When Howard Risher, Ph.D., NAPS's compensation expert, was asked whether he had "a professional

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[29] After the hearing, the Postal Service informed NAPS that it would raise the maximums by 1.6% for 2019, on top of the 1.4% it had raised them for 2018 – both below the 2% per year it had initially proposed in its EAS Pay Package Proposal of September 2017, NAPS Ex. 9A at 2.

[30] Risher Test., Hrg. Day 1 Tr. 254-55.

[31] Risher Test., Hrg. Day 1 Tr. 269-70; Handler Test., Hrg. Day 2 Tr. 244.

[32] Jt. Ex. 1 at 2.

[33] *Id.*

[34] *Id.*

[35] *Id.*

opinion as to whether the Postal Service's compensation for non-postmaster EAS employees is comparable to market rates in the private sector for comparable jobs?," he responded, "I am completely convinced that they are not comparable."[36] As Dr. Risher set out in his 2017 and 2018 reports and explained at the hearing, for the vast majority of the jobs he surveyed, the EAS salary range midpoints of their pay range fell below the national average, and far below the national average total compensation;[37] he concluded that "the survey data show EAS ranges and salaries should be increased by an average of 14.6 percent. The pay gaps between EAS employees and their private-sector comparisons are as high as 30 percent in some instances; the gap is less than 5 percent for only 5 benchmark jobs" out of 23 he reviewed in his 2017 analysis.[38] As set forth in the four-color table in Dr. Risher's 2018 report, the "U.S. Average, Total Cash Compensation" for 44 of the 47 benchmark jobs that he analyzed (using data from the 2018 Willis Tower CompuSource survey) – is higher, often considerably higher, than the Postal Service's midpoint salary for that job's EAS Grade.[39]

A few comparisons from Dr. Risher's analysis demonstrate how EAS salaries have not kept pace with the market. For example, the midpoint salary of an EAS grade 17 Supervisor of Customer Services is $67,017 nationwide, yet the average total cash compensation for that benchmark job in the private sector is $73,100 nationally (and, as discussed below, considerably higher in high-wage cities).[40] An EAS grade 19 Manager of Distribution Operations has a midpoint salary of $74,411 nationally, but the average total cash compensation of a comparable job in the private sector is $81,700; and a similar pattern holds true for an EAS grade 21 Management Analyst, which has a midpoint salary of $84,594 nationwide, compared to a comparable private sector job, for which the average total cash compensation nationwide is $100,900.[41]

The Postal Service's own compensation expert, Preston Handler, admitted that, even comparing just salaries (with no adjustment for the bonuses or locality pay that the private sector typically pays), the Postal Service's pay range is too low for at least three of the eight jobs he surveyed.[42] Neither Mr. Handler nor any other Postal Service witness disputed Dr. Risher's

[36] Risher Test., Hrg. Day 1 Tr. 251-52.

[37] H. Risher, Analysis of Market Pay Comparability for EAS Positions in the U.S. Postal Service (Oct. 2017), NAPS Ex. 10, at 15, 19; H. Risher, EAS Market Comparability Analysis (Nov. 2018), NAPS Ex. 12, at 5-6; Risher Test., Hrg. Day 1 Tr. 272-73 ("The pattern is very obvious up there [in the Willis Towers CompuSource Data in table at NAPS Ex. 12 at 5-6]. Postal Service salaries are low.").

[38] H. Risher, Analysis of Market Pay Comparability for EAS Positions in the U.S. Postal Service (Oct. 2017), NAPS Ex. 10, at 8.

[39] H. Risher, EAS Market Comparability Analysis (Nov. 2018), NAPS Ex. 12, at 5-6 (compare the fourth blue column, "U.S. Average Total Cash Compensation," with the second green column, "Midpoint Salary").

[40] *Id.* at 6.

[41] *Id.*

[42] Handler Test., Hrg. Day 2 Tr. 223 (for Managers of Distribution Operations, "the Postal Service average salary trails the market by 1.4%" and "trails the proposed range by 4.5%, and the current pay range by 8.8%"), 225 (for

findings on pay comparability. Mr. Handler specifically approved of (and used himself) the Willis Towers Mercer CompuSource survey that Dr. Risher used to ascertain U.S. average total compensation to compare with Postal Service salaries.[43]

Dr. Risher testified, and Mr. Handler confirmed, that private sector employers pay bonuses and other incentive payments that average 7 to 10% of salary.[44] Mr. Handler admitted that "employees at a typical private employer would get 7 to 10% bonuses," so, "to benchmark [USPS salaries] against private compensation, we should increase somewhere between 5 to 10%."[45] And Mr. Handler further admitted that, over and above the national averages that he used in calculating pay ranges for the eight jobs he evaluated, supervisors of union employees are paid a premium of 15 to 20% over supervisors on non-union employees.[46]

B. The Postal Service's benefits are equivalent to private sector benefits for employers with more than 500 employees.

The Postal Service attempted to use its benefits expert, Tom Rand, to claim that it has better-then-average benefits that offset its deficient cash compensation. But Mr. Rand acknowledged that the Postal Service's benefits have almost exactly the same value as those paid by private employers with over 500 employees.[47] Jobs comparable to those performed by EAS employees are typically found at employers with more than 500 employees (indeed, usually with many more), excluding the many small employers that do not offer health or retirement benefits. Section 1003(a) does not call for the Postal Service to provide compensation and benefits comparable to the private sector as a whole (as Mr. Rand tried to argue), but calls for compensation and benefits comparable those provided "for comparable levels of work in the private sector of the economy." Thus, EAS employees' benefits, which are comparable to those provided to employees at other large employers (including those at companies far smaller than the Postal Service), do not even out the uneven balance between the cash compensation the Postal Service pays to EAS employees and cash compensation "for comparable levels of work in the private sector of the economy."

C. The Postal Service's compensation lags even further behind market rates in high-wage cities.

The national surveys presented by Dr. Risher establish that in high-wage areas (such as New York, Boston, and San Francisco) the private sector typically pays 15 to 25% more than the

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manager of Customer Service "You're paying 1.8% below the market, and 226 (for Supervisor of Maintenance Operations, "your actual salaries are 1.1% below").

[43] *Id.* at 206, 215.

[44] Risher Test., Hrg. Day 1 Tr. 269-70; Handler Test., Hrg. Day 2 Tr. 244; *see also id.* at 232, 250-51.

[45] Handler Test., Hrg. Day 2 Tr. 245.

[46] *Id.* at 251-52.

[47] Rand Test., Hrg. Day 2 at 273-75; *cf. id.* at 259 (postal benefits cost $17.44 an hour) with Bureau of Labor Statistics, "Employer Costs for Employee Compensation – June 2018," NAPS Ex. 20, at 16 (cost of benefits at employers with 500 workers or more is $17.10 per hour).

national median salary for jobs comparable to EAS jobs.[48] Dr. Risher testified that large private employers almost all pay "locality pay" in those areas, as does the federal government.[49]

USPS expert Mr. Handler admitted that such jobs in New York typically pay 23% more than the national average and that, as a result, EAS employees in New York are earning approximately 23% less than their peers in the private sector.[50] Although Mr. Handler visited a large mail processing facility in New York, he did not look into what comparable jobs in New York were paying.[51]

Based on geographic breakdowns provided in the ERI survey data, Dr. Risher provided locality data for over 50 EAS jobs in the salary survey, for all of which the salaries in New York and San Francisco are approximately 25% higher than the U.S. average, while Boston salaries are typically 15 to 20% above the national average.[52] For example, Maintenance Engineers, who are classified by the Postal Service as Grade 19, with a proposed EAS salary midpoint of $74,411 (and a range from $60,000 to $88,821), have a national salary average of $85,667 according to the ERI survey (which does not include bonuses) – and they are paid an average of $111,555 in New York, $107,741 in San Francisco, and $100,217 in Boston (plus bonus). A "Supervisor, Transportation," who earns an average of $71,289 nationally, earns an average of $88,335 in New York, $86,911 in San Francisco, and $83,133 in Boston, but the midpoint salary for a similar EAS employee is only $67,017. And a Supervisor of Customer Service who earns an average salary of $61,194 nationally (again, without adding in the 7-to-10% average bonus), earns an average salary of $75,321 in New York, $78,030 in San Francisco, and $73,058 in Boston (plus bonus).[53]

The vast majority of large national companies (as well as the federal government) add a "locality pay" adjustment so their salaries for jobs in high-wage areas match the local salaries.[54]

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[48] Risher Test., Hrg. Day 1 at 274-77; H. Risher, Analysis of Market Pay Comparability for EAS Positions in the U.S. Postal Service (Oct. 2017), NAPS Ex. 10, at 11; H. Risher, EAS Market Comparability Analysis (Nov. 2018), NAPS Ex. 12, at 5-6.

[49] Risher Test., Hrg. Day 1 Tr. 278.

[50] Handler Test., Hrg. Day 2 Tr. 243 (EAS employees "in New York are already making 23% less than their peers [in the private sector] and yet . . . 98% of them are getting no pay increase for 2019).

[51] Handler Test., Hrg. Day 2 Tr. at 242.

[52] Risher Test., Hrg. Day 1 Tr. 277-78; H. Risher, EAS Market Comparability Analysis, NAPS Ex. 12, at 5-6. Mr. Handler specifically approved of Dr. Risher's use of the EIR survey to evaluate geographic differentials. Handler Test., Hrg. Day 2 at 212.

[53] H. Risher, EAS Market Comparability Analysis, NAPS Ex. 12, at 5-6.

[54] Risher Test., Hrg. Day 1 Tr. 278.

D. The meager pay increases that EAS employees receive under the Pay for Performance system cause them to fall farther behind market rates of pay.

As noted above, the PFP system (discussed further below with respect to its adverse effects on morale) is, in most circumstances, the only way that EAS employees receive pay increases. For FY 2018, 16,500 – 38% – of EAS employees received no pay increases whatsoever.

The PFP system, which determines the maximum amount of a pay increase that EAS employees may receive, provides for a 15-box matrix of potential wage increases, but often results in even high-performing employees receiving no pay increase.[55] Individual employees have almost no control over which box they fall into, as that is determined 60% based on 11 corporate-level indicators and 40% on 19 unit-level factors (with multiple sub-indicators).[56] Almost no one ever reaches Box 10 or above,[57] and only a very small number – usually under 1% – even reach Box 8 (which provides for a 4.5% increase).[58] For the 2019 increases (based on FY2018 PFP scores), only 266 of the 43,945 EAS employees nationwide (0.6%), fall in Box 7; only 18 in Box 8; and no one higher.[59] In New York, only 3 EAS employees made it into Box 4 in FY 2018 (receiving a 2% pay increase), while all 490 others were placed into Boxes 2 or 3 and received no pay increase at all. Even those who are awarded a PFP pay increase do not always receive it. In some years (including 2012 and 2013), the Postal Service has refused to pay it. Even in years when PFP is paid, EAS employees at the top of the salary range for their pay grade are eligible for only a lump sum payment rather than an increase in base salary pay increase. For 2018, the approximately 4,000 EAS employees at the top of their salary ranges of their pay grade will receive no pay increase, but at most only a PFP lump sum payout (if they are in Box 4 or higher).[60]

According to the Postal Service's economist, Ms. Park, in the nine years from FY 2009 to FY 2018, the average Field EAS salary increased by a total of 6%.[61] In many years, all or a substantial portion of EAS employees receive no pay increase at all, even when market rates increase substantially. In 2012 and 2013, no EAS employee received a pay increase, and in 2014, they all received only a 1% increase. In 2015, the average increase was under 2%. In 2016, the average increase was only 1.3%, and over 11,500 EAS employees (over 38% of non-postmasters) received no pay increase. In 2017, the average increase was 2.6%; in 2018, the average pay

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[55] *See* Table of PFP Rating Distributions, 2013-2018, NAPS Ex. 6; Wagner Test., Hrg. Day 1 Tr. 82 ("Members say that the goals are unattainable, they're not realistic, that . . . they have no control of what they do in their unit because of the way Pay for Performance is structured. They also believe that they're not getting pay raises because of it, even though they do a good job and they work, come in every day, . . . 40 to 60 hours a week.").

[56] *See* USPS National Performance Assessment (NPA) Indicators (2018), NAPS Ex. 7; Mooney Test., Hrg. Day 1 Tr. 226-39.

[57] Mooney Test., Hrg. Day 1 Tr. 215.

[58] PFP Rating Distribution – FY20112 through FY2018, NAPS Ex. 6.

[59] *See* NPA Composite Performance Summary Scores, NAPS Ex. 5.

[60] Risher Test., Hrg. Day 1 Tr. 281.

[61] Park Test., Hrg. Day 2 Tr. 172-73.

increase was only 1.3%, and over 5,000 EAS employees (16%) did not receive any increase.[62] And for 2019, the average increase will again be under 2% and over 16,500 EAS employees (38%) will receive no increase at all.[63]

This compares to private sector salaries, which increased by almost 22% from 2009 to 2018 (from an Employment Cost Index of 109.8 to 133.9) according to the Bureau of Labor Statistics.[64] Dr. Risher testified that comparable private employers have increased salaries by approximately 3% annually for the last five or six years and that in the last quarter, salaries increased at an annual rate of 3.6%.[65] Mr. Handler acknowledged that private sector jobs comparable to EAS have received pay increases of 3% in 2017 and another 3% in 2018.[66] And Mr. Handler acknowledged that, by providing pay increases averaging under 2% in 2018 and 1.5% for 2019, Postal Service salaries are falling farther behind the market.[67]

2. EAS supervisors are often paid less than the craft workers they supervise.

Despite the statutory requirement "to provide 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,"[68] the Postal Service calculates its SDA in a manner that results in many thousands of its supervisors earning less, or barely more, than the tens of thousands of workers they supervise, despite the fact that the supervisors generally work the same or greater hours.[69]

Three interrelated problems with the way the Postal Service calculates its Supervisor Differential Adjustment result in thousands of EAS employees earning less than the craft workers they supervise: The first problem involves the Postal Service's use of a lower-paid clerk position (rather than a higher-paid and more populous carrier position) as the benchmark for the calculation of the SDA minimum for the "all other" category of EAS positions. The second problem involves the ability of craft employees to earn overtime at a substantially higher rate than their supervisors, quickly surpassing their supervisors in total cash compensation. The third problem involves the inadequacy of the 5% differential, which contributes to problems 1 and 2.

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[62] *See* USPS Response to NAPS Request for Information #2, NAPS Ex. 4.

[63] *See* Employee Status – NPA Composite Performance Summary Scores – FY 2018 – Sept., NAPS Ex. 5.

[64] Bureau of Labor Statistics, Employment Cost Index, Wages and salaries for Private industry workers in All industries and occupations, *available at*: https://beta.bls.gov/dataViewer/view/timeseries/CIS2020000000000I;jsessionid=9B778C28C1B07400E550EEDC5ECDB3E7

[65] Risher Test., Hrg. Day 1 Tr. 293.

[66] Handler Test., Hrg. Day 2 Tr. 246.

[67] *Id.* at 247 ("that's another 1.5% on average that their salaries are falling behind the market [for 2019]" . . . "if they continue to apply annual salaries that are below 3% they're going to erode their position relative to market").

[68] 39 U.S.C. § 1004(a).

[69] Risher Test., Hrg. Day 1 Tr. 291.

A review of the background of the Postal Service's SDA calculation is useful. For over a decade, the Postal Service has calculated its SDA by grouping its front-line supervisors into four position groups (Plant Maintenance, Vehicle Services, Postal Police, and All Other Eligible) and then (until recently) adding 5% to the salary of the most populous craft position supervised by supervisors in each position group.[70] The Postal Service lumps a wide range of jobs – occupational health nurses, managers and supervisors of distribution operations, managers and supervisors of customer services, supervisors of statistical programs, and supervisors of warehousing and district operations – into the fourth group ("All Other Eligible" EAS employees) and provides them a minimum salary equal to 5% above the most common craft position that any of them supervises.[71] At the time the previous USPS-NAPS pay package was adopted in 2012, the Postal Service used as its benchmark the most populous craft position supervised by some of the "All Other Eligible" group, which was then APWU Clerks, PS-06, Step O.[72] Even though City Carriers, Step O is now a far more populous (as well as better paid) position, the Postal Service has continued to benchmark the "All Other Eligible" SDA off of the PS-06, Step O clerks.[73]

Over 105,000 City Carriers, Step O (the most common position and step in the entire Postal Service) have an annual salary of $64,413.[74] Those City Carriers are supervised by Supervisors of Customer Services ("SCSs") for whom the Supervisory Differential Adjustment ("SDA") minimum is only $63,774 – $639 *less* than the carriers they supervise. The SDA for those SCS's is not benchmarked on the City Carriers; instead, it is based on Level 6 Clerks, Step O, whose base pay is only $60,737[75] – resulting in an SDA minimum salary of $63,774 that is paid to 4,119 Supervisors of Customer Services,[76] the vast majority of whom supervise City Carriers whose salary is more than their supervisors'.[77]

Even if a supervisor earns a base salary that is a few thousand dollars more than a craft worker she supervises (for example, if she earns more than the SDA or has no City Carrier Step O's working under her), that differential is frequently surmounted by the craft worker's overtime

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[70] Jt. Ex. 1 at 3-4; Occupation Codes Eligible for SDA, Sept. 1, 2018, NAPS Ex. 14; *see also* U.S. Postal Service Employee and Labor Relations Manual (ELM) 412.12, *available at* https://about.usps.com/manuals/elm/html/elmc4_002.htm#ep1450719.

[71] Occupation Codes Eligible for SDA, Sept. 1, 2018, NAPS Ex. 14 and Jt. Ex. 1 at 4.

[72] Jt. Ex. 1 at 3.

[73] Jt. Ex. 1 at 4; Occ. Codes Eligible for SDA Effective Sept. 1, 2018, NAPS Ex. 14.

[74] Letter Carrier Pay Sched. Effective Nov. 24, 2018, NAPS Ex. 21; for number of City Carriers, *see* NAPS Ex. 17.

[75] Occ. Codes Eligible for SDA Effective Sept. 1, 2018, NAPS Ex. 14; APWU salaries available at http://www.apwu.org/sites/apwu/files/resource-files/pay-scales/September%201%202018%20Full-Time%20Regular%20Annual%20Basic%20Rates.pdf.

[76] NAPS Ex. 14 and Jt. Ex. 1 at 4 (listing both "SDA Minimum" and "Total # at SDA Minimum").

[77] Nicholson Test., Hrg. Day 2 Tr. 305.

pay.[78] Craft employees are entitled to time-and-a-half pay for overtime after 8 hours (2x after 10 hours), while supervisors are, at most, paid for extra hours (called "t-time") at their usual hourly rate after 8.5 hours, and some supervisors and managers get no overtime pay at all.[79] Overtime rates for carriers are thus 1.5 x $31 an hour = $46.5 an hour and for clerks are 1.5 x $29.20 an hour = $43.80 an hour, compared to $32 an hour for an SCS earning $66,500 a year. The $12 to $14.50 hourly differential in overtime rates, plus the fact that clerks and carriers earn overtime after 8 hours, while their supervisors receive no additional pay for the first half hour, means that a carrier who works an hour of overtime twice a week receives an additional $4,836 per year ($46.5 x 2 x 52), while her supervisor working the same hours receives an additional $1,664 ($32 x 1 x 52).[80] Many clerks and carriers work substantial overtime and thus earn more than their supervisors who work the same hours (i.e., the clerks and carriers receive a higher rate of pay). As Dr. Risher pointed out, this is not a problem at private employers, as they have substantially higher pay differentials between front-line supervisors and the workers they supervise (typically 30% or more) that leaves an adequate differential even after the workers earn substantial overtime.[81]

The larger pay increases that craft employees receive compared to EAS employees contributes to undermining the supervisor differential. The clerks and carriers whom EAS employees supervise have received, and continue to receive, pay raises (including retroactive raises), cost-of-living increases, and step increases that have narrowed and often eliminated (particularly with overtime pay) whatever small pay differential previously existed between front-line supervisors and craft employees.

Dr. Risher used data provided by the Postal Service to compare the total cash compensation earned by Supervisors of Customer Services to the median total cash compensation paid to four different craft positions.[82] That data revealed that, in 2018, over 3,700 Supervisors of Customer Services earned less total cash compensation than the median total cash compensation for the NALC(1) letter carriers they supervised (while over 48,300 of those letter carriers earned more than that); almost 5,000 Supervisors of Customer Services earned less total cash compensation than the median total cash compensation for the NALC(2) letter carriers they supervised (while over 4,500 of those letter carriers earned more than that); over 2,200 SCSs earned less total cash compensation than the median total cash compensation for the APWU(6) clerks they supervised (while over 30,800 of those clerks earned more than that); and over 2,700 SCSs earned less total cash compensation than the median total cash

[78] Brandt Test., Hrg. Day 1 Tr. 160; Wagner Test., Hrg. Day 1 Tr. 95-97. As Mr. Wagner described, Supervisors of Bulk Mail Entry are lumped into the "all Other EAS" group and so have their SDA benchmarked against Level 6 clerks, even though they supervise higher level (and higher-paid) clerks and do not supervise Level 6 clerks. Wagner Test., Hrg. Day 1 Tr. 123.

[79] Wagner Test., Hrg. Day 1 Tr. 94-95; Brandt Test., Hrg. Day 1 Tr. 160, 187.

[80] *See* Wagner Test., Hrg. Day 1 Tr. at 96-97.

[81] Risher Test., Hrg. Day 1 Tr. 286.

[82] Risher Test., Hrg. Day 1 Tr. 286-91; "EAS Supervisors of Customer Services with 2018 total cash compensation below the median total cash compensation paid to the craft employees they supervise," NAPS Ex. 17.

compensation for the APWU(7) clerks they supervised (while almost 13,000 of those clerks earned more than that).[83] This analysis was confirmed by USPS economist Sammi Park.[84]

The Postal Service has not examined its own data on the number of its supervisors who earn less than the employees they supervise, nor at the scale of this negative differential.[85] Nor did it instruct the compensation expert it hired for this factfinding to examine this issue – despite the fact that the Postal Service had Mr. Handler visit four locations, talk to both supervisors and line employees at each, and review their job duties. It did not ask Mr. Handler (or anyone else) to inquire as to whether the line employees were earning more than the EAS employees who supervised them, and he did not do so.[86]

Unlike private-sector employers, which typically pay front-line supervisors 30% or more above the pay of the workers they supervise,[87] the Postal Service has determined that a far lower supervisor differential – just 5% – is adequate. While the D.C. Circuit has held that no *particular* differential is required (*NAPS v. USPS*, 602 F.2d 420, 436 (D.C. Cir. 1979) (reversing the 25% differential that the district court ordered to be phased in over several years, while holding that "[t]he Postal Act does require Some differential, and requires that that differential be adequate and reasonable")), the court recognized that a *reasonable* differential is required. Less than 5% – as results from the problems with the SDA and from the disparate overtime rates – is not reasonable; as noted above, an SDA of 5% is, in many cases, no differential at all in light of (a) it being applied to the wrong benchmark job, and (b) the substantially higher rates of overtime that carriers and clerks receive.

3. Postal compensation is insufficient to attract and retain qualified supervisors.

Qualified craft employees are not interested in applying for supervisory jobs that come with greater stress for the same or less pay.[88] As several witnesses testified (and no witness disputed), experienced craft employees decline to apply for supervisory jobs; instead, those jobs are filled with unqualified, inexperienced, non-career employees.[89] Over one-fifth (21.7%) of EAS 17 jobs (the jobs that most frequently directly supervise clerks and carriers) nationwide are

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[83] Risher Test. at 289-91; NAPS Ex. 17.

[84] Park Test., Hrg. Day 2 Tr. 191-93.

[85] Park Test., Hrg. Day 2 Tr. 193.

[86] Handler Test., Hrg. Day 2 Tr. 240-41.

[87] Risher Test., Hrg. Day 1 Tr. 284; H. Risher, Supervisory Differentials Across Industries Between Mechanics, Installers, and Repairers and their First-Line Supervisors, NAPS Ex. 12, at 7.

[88] Wagner Test., Hrg. Day 1 Tr. 97-100.

[89] *Id.* at 98 ("[T[he only people applying for these supervisor vacancies are what they call the city carrier assistants or the PSCs, Postal Support employees . . . . We're not seeing a clerk or a carrier with 10, 15, even 20 years of experience applying for supervisor jobs, very rare, because they know that they're going to make more money staying where they're at with less headaches . . . [y]ou're getting the people with maybe two years or a year experience supervising somebody with 25 years experience."); Brandt Test., Hrg. Day 1 Tr. 183 ("the reason usually given to me is the extra money is not worth the additional stress.").

not filled within 90 days of being posted; in Washington, D.C., almost two-thirds (66.4%) of those jobs are not filled within 90 days.[90]

The Postal Service's statistics also reflect problems with retaining well-qualified supervisors and managers. Over 40% of Field EAS and approximately one-third of all EAS employees hired from outside the Postal Service leave within five years.[91] Those are the employees whom the Postal Service's economist said "have options," because they are qualified and not shackled by their pension.[92] As Dr. Risher explained, older employees stay to collect their pensions, staying even if they are not engaged.[93]

Some who do take supervisory jobs quickly ask to return to their previous craft job.[94] And the difficulty recruiting for supervisory positions is particularly acute in high-wage cities such as D.C. and San Francisco.[95]

Locality pay would also improve recruitment in high wage areas. Ms. Brandt testified that she knew of many supervisory employees in Pittsburgh (where she previously worked) who had turned down Postal Service jobs in Washington, D.C. because of the higher cost of living. Day 1 Tr. at 176-77

4. The compensation system for EAS employees contributes to the Postal Service's terrible morale.

The Postal Service has among the worst employee morale in the federal government (and even worse compared to private companies). According to Gallup – the Postal Service's consultant on employee engagement – USPS's company-wide employee engagement ranks in the first percentile (the lowest possible) of U.S. companies surveyed. In Gallup's May 2018 survey, 65% of field supervisors and 61% of all USPS managers are either "not engaged" or "actively disengaged."[96] As Gallup points out, increasing the morale of supervisors and managers would have a significant effect on the morale of the employees they supervise, and that, in turn, could save the Postal Service hundreds of millions of dollars in workers compensation costs alone, along with many millions more in decreased absenteeism and increased productivity.[97]

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[90] USPS report on "Time to fill EAS 17 Positions," NAPS Ex. 16. The Postal Service attempted to rebut this statistic by pointing to the length of job postings, but its witness admitted that that statistic can be manipulated by taking down a job posting and then re-posting it to restart the clock. Park Test., Hrg. Day 2 Tr. 199.

[91] "External EAS Hires and Current on Rolls – Percent Departed from USPS," NAPS Ex. 19;

[92] Park Test, Hrg. Dy 2 Tr. 197.

[93] Risher Test., Hrg. Day 1 Tr. 303-05 (after a number of years, employees are "locked in" by their benefits); *see also* Wagner Day 1 Tr. 101; Park, Day 2 Tr. 193-94.

[94] Wagner Test., Hrg. Day 1 Tr. at 101.

[95] *Id.* at 109-10 (San Francisco District Manager told him, "we've got to get more money for people. I can't get people to come to San Francisco.).

[96] Gallup, Engagement in the U.S. Postal Service, Survey 5 Postal Pulse Analysis (Oct. 2018), NAPS Ex. 3B, at 17.

[97] *Id.* at 2 ("USPS could save $500 million annually in workers comp alone by engaging employees."); Risher Test.,

The PFP system is a significant contributor to poor morale among EAS employees. Rather than motivating better performance, it is complicated and confusing, with 31 factors and approximately 40 subfactors, the vast majority of which are out of the control of individual employees.[98] As Mr. Mooney testified, "[t]he PFP system . . . is just way too complicated for people to understand to get motivated and a lot of them throw up their hands because they don't know and it's very frustrating to them. And as you can see the results over the years, it hasn't [generated] much of a payout."[99] The PFP results in many EAS employees receiving no pay increase even when they work hard and well.[100] Because it is the only way in which EAS employees can receive a pay increase, the PFP system resulted in over 5,000 EAS employees receiving no pay increase for FY 2017 and over 16,500 EAS employees (38%) receiving no pay increase for FY 2018, even though many of them worked hard and well.[101]

The Postal Service's Office of the Inspector General has written a series of three reports critical of the PFP System.[102]

5. The Postal Service did not allow NAPS 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," as required by 39 U.S.C. § 1004(b).

A. The Postal Service failed to give NAPS the reasons for its pay decision, the information on which the decision was based, and the reasons why NAPS's recommendations were rejected.

Despite the requirements in 39 U.S.C. § 1004(d) to provide NAPS with the reasons for its pay decision, the information on which the decision was based, and the reasons why NAPS's recommendations were rejected, the Postal Service simply rejected NAPS's recommendations

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Hrg. Day 1 306-08 ("we're talking billions of dollars that could be saved if the disengagement problem was addressed fully and there was an engaged workforce . . . . [I]f you spent the money to have more engaged workers, have better salaries, . . . the return on investment would easily offset the cost of the increases."); Williams Test., Hrg. Day 2 Tr. 69 ("if an employee feels that he or she is being treated fairly and paid fairly, that will affect his or her morale"), 70 ("improved engagement could produce substantial cost savings as well as substantial revenue").

98 Mooney Test., Hrg. Day 1 Tr. 233-34, 237, 239; Wagner Test., Hrg. Day 1 Tr. 86; Risher at 329 ("this program is now part of the problem. . . . [Y]ou have people out there that are angry about what's happened to their pay."); Brandt at 189 ("most [people] think [the PFP system's] a joke.").

99 Mooney Test., Hrg. Day 1 Tr. 238-39.

100 Wagner Test., Hrg. Day 1 Tr. 82.

101 *Id.* at 115.

102 "Fiscal Year 2015 Pay for Performance Program," Report Number HR-AR-17-010, July 31, 2017, https://www.uspsoig.gov/sites/default/files/document-library-files/2017/HR-AR-17-010.pdf; "U.S. Postal Service Pay for Performance Program: Management Advisory," Report Number DP-MA-13-001, June 3, 2103, https://www.uspsoig.gov/sites/default/files/document-library-files/2015/dp-ma-13-001.pdf; "2009 Pay for Performance Program: Audit Report," Report Number HR-AR-11-006, Aug. 8, 2011, https://www.uspsoig.gov/sites/default/files/document-library-files/2015/HR-AR-11-006.pdf.

(which NAPS set out in letters dated Nov. 3, 2017, April 17, 2018, and May 29, 2018)[103] and provided NAPS with its draft and then final decisions, with no explanation or support.[104]

B. The Postal Service has violated its obligation to consult with NAPS regarding compensation for "Headquarters" and "Area" employees.

The Postal Service is required by law to consult regarding compensation with "recognized organizations of supervisory and other managerial personnel who are not subject to collective bargaining agreements."[105] All EAS employees, regardless of their location, are "supervisory and other managerial personnel who are not subject to collective bargaining agreements," and so are represented by NAPS. This includes thousands of "supervisory and other managerial personnel not subject to collective bargaining agreements" located throughout the country, who perform supervisory and managerial responsibilities associated with a range of functions, including vehicle maintenance, shared services, financial, sales, marketing, real estate, and other "headquarters-reporting" functions. The Postal Service acknowledges that NAPS represents EAS employees in the sales and vehicle maintenance divisions and at the Network Distribution Center and Human Resources Shared Service Center, despite those employees being "headquarters employees." Section 1004 does not distinguish between "Field EAS" and "Headquarters or Area EAS," nor are those terms even used in the law.

Thus, the Postal Service's July 20, 2018, "EAS Pay Package Decision through Fiscal Year 2019 Field EAS Employees" (as it may be modified pursuant to this panel's findings) should apply to all EAS employees, whether they are considered Field, Headquarters, or Area. The Postal Service should recognize NAPS as the representative of all EAS employees and consult with it accordingly.[106]

VI. Proposed Recommendations

The Postal Service should obtain a market survey of the median compensation for each of its EAS positions and should update that survey no less frequently than every three years.

The Postal Service should immediately increase the pay for all EAS employees by 8%. Each employee should receive a salary increase equal to 8% of his or her base salary, with 2% per year retroactively effective on January 1 of each of the following years: 2016, 2017, 2018, and 2019 (the four years of this pay package). These increases are in addition to PFP increases (if any) the employees may have received.

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[103] NAPS letters to USPS re pay talks, NAPS Exs. 9D, 9F, 9H.

[104] USPS Final and preliminary pay decisions and cover letters, NAPS Exs. 1, 9A, 9E, and 9I.

[105] 39 U.S.C. § 1004(b).

[106] On December 28, 2018, without any consultation with NAPS (or even any notice to NAPS), the Postal Service issued a document titled, "Area and Headquarters EAS and Pay-Band Pay Package Through Fiscal Year 2019" that purports to be a final pay package for "Area" and "Headquarters" EAS employees, while starting with a statement that "this pay package will not apply to those Headquarters and Area positions who are represented by the National Association of Postal Supervisors (NAPS)" and providing a list of the positions that the Postal Service recognizes as represented by NAPS.

The Postal Service should immediately increase the maximums of each of its salary ranges for EAS employees by no less than 1% (the rescinded balance of the 2% increases in January 2018 and 2019 that the Postal Service proposed in its initial pay package proposal).[107] Those increases should be applied retroactively, effective January 1, 2019. Those increases will help bring the approximately 4,000 EAS employees at the top of their salary ranges[108] a bit closer to the market rate for their jobs.

The Postal Service should adopt the standard practice of setting the midpoint of its salary range for each position at the national average for that position.

To compensate its EAS employees in high-pay areas comparably to their peers in comparable jobs in those geographic areas, the Postal Service should adopt locality pay for its EAS employees. To start, the Postal Service should adopt the federal government's General Schedule ("GS") locality pay percentage adjustments.[109] Locality pay could be phased in over two or three years, beginning in 2019.

The problem of some craft employees having base salaries greater than their supervisors should be addressed by separating out from the "All Other Eligible" position group the Supervisor of Customer Services position and any other EAS position (occupation code) that supervises craft employees with a base salary greater than their supervisors. Those EAS positions should receive an SDA minimum equal to at least 5% above the highest salary paid to a more than *de minimus* group of craft employees whom they supervise.

The problem of overtime resulting in craft employees earning more than their supervisors should be addressed by raising the 5% Supervisor Differential Adjustment to 15 or 20% (still the low end of private employers' differential) above the highest-salaried craft position that that EAS position supervises.[110]

Because the Postal Act makes no distinction among categories of EAS employees, but instead provides that the Postal Service shall consult regarding the compensation of supervisory and other managerial personnel who are not subject to collective bargaining agreement with those employees' representative organization (NAPS), the Postal Service should recognize NAPS as the representative of all EAS employees.

Perhaps the single most important recommendation that the panel can make is that the Postal Service should replace its PFP system and should convene a work group, in which NAPS

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[107] NAPS Ex. 9A at 2. USPS withdrew that offer (after NAPS accepted it) and instead raised the ranges by 1.4% for 2018 and (after initially saying that it would only increase the minimums for 2019) also increasing the maximums for 2019 by 1.6%.

[108] Risher Test., Hrg. Day 1 Tr. 280-81.

[109] *See* General Schedule (GS) Locality Pay Tables, *available at* https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/.

[110] *See* Risher Test., Hrg. Day 1 Tr. 286 (overtime is not an issue in other industries, as differential is much larger).

should participate and which should be advised by a compensation expert, to design a replacement. There is a reason why no other organization in America has a system resembling PFP and why both Dr. Risher and Mr. Handler said they had never seen anything like it – the PFP system does not provide for fair and reasonable pay increases, does not effectively provide incentives for better performance, and, instead, is a significant contributor to the Postal Service's poor morale. The workgroup should be tasked with developing a modern, effective, and statutorily compliant pay system that provides proper incentives and rewards for effective management. The benefits and savings to the Postal Service will more than outweigh the relatively small costs.

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