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

National Association of Postal Supervisors,

Petitioner,

v.

United States Postal Service,

Respondent.

NATIONAL ASSOCIATION OF POSTAL SUPERVISORS'

PRE-HEARING BRIEF

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I. Introduction

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

That 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 unilaterally imposing a flawed compensation system for the fiscal years 2016-2019 for its "Field EAS [Executive & Administrative Schedule] Employees," the Postal Service violated each of these requirements:

1. USPS did not even attempt to determine what comparable private sector jobs paid, resulting in salaries that are substantially below market (and it willfully ignored the fact that the private sector – and the federal government – pay substantially more in high-wage locations such as New York, Washington, D.C., and San Francisco).

2. Its "Supervisory Differential Adjustment" leaves many supervisors earning less than the craft employees they supervise, especially after overtime is taken into account. This lack of a 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).

3. Over one-fifth (21.7%) 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 (66.4%) 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.

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 is badly hurt by the pay system.

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, and refused to engage in substantive

discussions. It also failed entirely to consult with NAPS regarding a second group of EAS employees – those whom the Postal Service does not categorize as "Field" EAS.

Compared to supervisors, managers, and professionals in comparable jobs at comparable employers (even those only a fraction of the size of the Postal Service), postal supervisors, managers, and professionals have long been underpaid – typically by more than 10%, and by 20% or more in high-wage cities. Inadequate raises in recent years have worsened that gap. Approximately 16,000 EAS employees – almost 40% of supervisors, managers, and professionals, including almost all of those in New York, Washington, D.C., and Los Angeles – will receive no pay increase at all for 2019. In several recent years, no EAS employees received a pay increase, in one year they all received a 1% increase, and in only one year in the last ten did the average increase slightly exceed 2%. Meanwhile, the clerks and carriers whom EAS employees supervise have received both raises and cost-of-living increases that have narrowed (and, with overtime pay, often eliminated) the already-small pay differential between supervisors and craft employees. All of these problems are exacerbated in high-wage cities because of the Postal Service's refusal to implement locality pay (which is offered by every other federal agency) despite evidence that market rates of pay are substantially higher in those cities.

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, multiplies through the workforce. The Postal Service's own consultant on employee morale, Gallup, ranks the organization as one of the worst in the country. Gallup points out 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.

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 and productivity), the Postal Service should immediately increase EAS salaries, 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

The overarching question for the factfinding panel is whether the Postal Service's final pack package decision for the period FY 2016 through FY 2019[1] complies with the

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

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?
    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. Does the Postal Service provide adequate compensation to its EAS employees sufficient to maintain a well-motivated workforce, as required by 39 U.S.C. § 1004(a)?
4. 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)?
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. 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 Pay for Performance (PFP) system and its lack of locality pay, and recommend improvements?

   a. 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?

   b. Is the 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?

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

III. Background Facts

A. The U.S. Postal Service

The United States Postal Service is a large, complex, and important company, with approximately 634,000 employees who operate approximately 31,000 Post Offices and over 230,000 vehicles and deliver approximately 150 billion pieces of mail per year to approximately 157 million addresses.[2] It has annual revenues of over $70 billion – which, if it were a private corporation, would place USPS in the Fortune 40 (in line with companies such as Target, Johnson& Johnson, and Procter & Gamble); indeed, with average annual revenues of $10 billion, each of the Postal Service's seven Areas, standing alone, would place in the Fortune 300.

[2] These statistics, and the others in this paragraph, come from the United States Postal Service's Form 10-K for the year ending September 30, 2018, *available at* https://about.usps.com/who-we-are/financials/10k-reports/fy2018.pdf, and from information that the Postal Service publishes about itself at https://facts.usps.com/.

The Postal Service's Executive Administrative Schedule (EAS) employees are its middle management – the 49,000 managers, supervisors, professionals, and postmasters who, under the direction of the organization's 600 executives, manage its 508,000 career and 70,000 non-career employees who are members of bargaining units (carriers, clerks, etc.). As of September 2018, the EAS employee workforce included 13,272 Supervisors of Customer Service; 13,174 Postmasters (3,840 of whom are represented by NAPS, while others are represented by the United Postmasters and Managers of America (UPMA)); 3,480 Supervisors of Distribution Operations; and 1,486 Supervisors of Maintenance Operations, as well as thousands of managers and professionals (such as accountants, nurses, paralegals, sales representatives, and safety specialists). 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.

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.[3] In Gallup's May 2018 survey, 65% of field supervisors and 61% of all USPS managers are either "not engaged" or "actively disengaged." 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.

B. The Postal Service's Pay for EAS Employees

Despite the extensive responsibilities placed on Postal Service managers, supervisors, and professionals, they are paid significantly less than their peers in the private sector. This under-payment is particularly large in high-wage cities, as the Postal Service (uniquely among large companies and the federal government) has no locality adjustment for its salaries.

Over the past decade, pay for the craft unions (as well as for other government employees) has increased substantially faster than has pay for EAS members. Since 2007, the average NALC member's pay has increased by a total of approximately 32.5%, the average APWU employee's by 30%, and the average federal GS-11 employee (the equivalent of a Postal Service line supervisor) by 43%, while pay for an average EAS employee has increased by only 23%.[4] The Postal Service's craft unions receive general

[3] Gallup, "Engagement in the U.S. Postal Service: Survey 5 Postal Pulse Analysis" (Oct. 2018) at 50, attached as Ex. 3B.

[4] Calculated by NAPS's compensation expert, Howard Risher, Ph.D.

wage increases, cost of living increases, and, for the first approximately 15 years of work in any given job, regular step increases – none of which are received by EAS employees.

Under both the EAS pay program for FY2012-15 (which has remained in effect for three additional years) and in the Postal Service's July 2018 "final decision" for its EAS Pay Package Through FY 2019, EAS employees receive no pay increases tied to increases in market rates of pay or to inflation, and 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 increase was only 1.3%, and over 5,000 EAS employees (16%) did not receive any increase.[5] And for 2019, the average increase will again be under 2% and over 16,000 EAS employees (38%) will receive no increase at all.[6] In contrast, in recent years large private sector employers have budgeted 3% or more each year for pay increases.

The Postal Service's "Pay for Performance" (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.[7] 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).[8] Almost no one ever reaches Box 10 or above, and only a very small number – usually under 1% – even reach Box 8 (which provides for a 4.5% increase). 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.[9] 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 for FY2019. 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).

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

[6] *See* Employee Status – NPA Composite Performance Summary Scores – FY 2018 – Sept., attached as Ex. 5.

[7] *See* Table of PFP Rating Distributions, 2013-2018, attached as Ex. 6.

[8] *See* USPS National Performance Assessment (NPA) Indicators (2018), attached as Ex. 7.

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

When NAPS asks for fair pay for EAS employees, the Postal Service sometimes pleads poverty (often hiding behind accounting losses that result from a Congressional mandate regarding accounting for retirement obligations that is unique to the Postal Service). But it had no trouble coming up with the additional hundreds of millions of dollars for craft union increases, which USPS Labor Vice President Doug Tulino, characterized as, "a fair, responsible agreement that serves the best interests of our employees, customers and other stakeholders."[10] Relative to the considerably larger raises given to hundreds of thousands of craft workers, the small additional raises that NAPS seeks are insignificant. Raises and retroactive payments for EAS members would pay for themselves by improving morale, which, in turn, would increase productivity and decrease accidents and absenteeism. Moreover, the Postal Service's financial circumstances are not a factor in the statutory requirements that apply to pay increases for postal supervisors and managers.

C. USPS Pay Consultation with NAPS

In July 2016, an arbitrated contract was awarded that established a collective bargaining agreement between the Postal Service and the American Postal Workers Union (APWU). That contract includes general wage increases totaling 3.8% over three years (1.2% of which was retroactive to November 2015, another 1.3% effective November 2016, and another 1.3% effective November 2017). In addition, it provides for semiannual cost of living adjustments (COLAs) equal to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (retroactive to September 2016), which amounted to $21 per career employee in 2016, $603 in 2017, and $1,165 in 2018.[11]

In May 2017, the Postal Service reached an agreement with the 203,000-member National Association of Letter Carriers (NALC), which was ratified in August 2017. That contract provides general wage increases totaling 2.5% over the life of the contract (1.2% of which was retroactive to November 2016, another 1.3% effective November 2017), plus an upgrade/pay schedule consolidation that results in average increases of 2.1% effective November 2018. In addition, it provides for semiannual COLAs equal to the CPI-W (retroactive to September 2016), which have been equal to $21 per career employee in 2016, $603 in 2017, and $1,165 in 2018.[12]

The Postal Service sent a pay proposal to NAPS in September 2017 (after members of the NALC, the largest craft union, ratified their retroactive pay agreement), but did not finalize the new "EAS Field Pay Package" until July 2018. The pay talks proceeded as follows: On September 21, 2017, the Postal Service sent an initial pay package proposal to NAPS (Ex. 9A). In response, NAPS sent a September 26, 2017, letter acknowledging receipt

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[10] "New Labor Deal," USPS Link (May 12, 2017), attached as Ex. 8.

[11] *See* USPS Form 10-K for FY 2018 at 11, 73, note 2, *supra*.

[12] *See* Letter Carrier Pay Schedule: City Carrier Wage Schedule: Effective Sept. 1, 2018, *available at* https://www.nalc.org/news/research-and-economics/body/paychart-08-13-18-1.pdf.

(Ex. 9B), followed by "NAPS Talking Points for Initial EAS Pay Talk Meeting October 19, 2017," which NAPS provided to the Postal Service by email the day before that meeting (Ex. 9C). On November 3, 2017, NAPS sent an email and cover letter along with its "Official Pay Talk Alternate Proposal" (Ex. 9D), all in advance of the second pay talks meeting held November 6. On November 15, there was a third meeting. On December 21, 2017, the Postal Service asked to extend the pay talks, to which NAPS agreed. Further meetings were held on February 7, March 1, and April 6, 2018. At the April 6 meeting, the Postal Service provided a new Draft EAS Pay Package Decision (Ex. 9E), to which NAPS responded by letter dated April 17 (Ex. 9F). Along with its April 17, 2018, letter, NAPS enclosed an "Analysis of Market Pay Comparability for EAS Positions in the U.S. Postal Service" (Ex. 10) and a "Survey of NAPS Members Regarding Engagement" (Ex. 11). On May 15, another meeting took place, at which the Postal Service provided another Draft EAS Pay Package Decision (Ex. 9G). NAPS responded by letter dated May 29 (Ex. 9H). On June 28, 2018, the Postal Service provided NAPS with its "final" "EAS Pay Package Decision Through Fiscal Year 2019: Field EAS Employees" (Ex. 9I). On July 6, NAPS wrote to the Federal Mediation and Conciliation Service, requesting the factfinding process provided under 39 U.S.C. § 1004(f), pursuant to which this panel was convened. On July 20, the Postal Service provided a "modified" final decision (Ex. 1). On September 4, 2018, NAPS wrote to the Postal Service to point out that it had never received any proposed pay package for the non-field EAS employees it represents (Ex. 9J). In response to NAPS requesting this factfinding, the Postal Service has refused to implement the modest increases to pay ranges called for in its July 2018 pay decision (Ex. 9K).

IV. 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. 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**." 39 U.S.C. § 1003(a) (emphasis added).[13] (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," 39 U.S.C. § 101(c).)[14]

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,**"

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[13] Attached as Ex. 2.

[14] *Id.*

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

39 U.S.C. § 1004(a) (emphasis added).[15]

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." 39 U.S.C. § 1004(b) (emphasis added).

Copies of 39 U.S.C. §§ 101, 1003, and 1004 are attached as Exhibit _.

V. Arguments

1. The Postal Service's compensation and benefits for EAS employees are not comparable to the pay and benefits for comparable jobs in the private sector, as required by 39 U.S.C. § 1003(a).

The Postal Service has admitted that it conducted no surveys or studies regarding private sector pay at any point from 2012 through its final pay determination. In May 2018, NAPS sent a request for information to the Postal Service, in which it requested "Any reports or analyses that the Postal Service has prepared or obtained since 2010 regarding: (a) market comparability (other than the May 2012 Sullivan Cotter report provided to us in 2016); and (b) supervisory pay differentials."[16] The Postal Service confirmed that it had no responsive documents.

As explained below, the Postal Service's compensation for supervisors, managers, and professionals is significantly below what comparable private sector companies pay for comparable jobs.

Attached as Exhibit 10 is an Analysis of Market Pay Comparability for EAS Positions in the U.S. Postal Service, prepared for NAPS by Howard Risher, Ph.D. in October 2017.[17] Attached as Exhibit 12 is an updated Market Comparability Analysis, using the most recent available data from two widely used commercial salary surveys – Economic Research Institute (ERI) and Willis Towers Watson CompSource. Dr. Risher, a compensation expert, used these surveys to compare the salaries that the Postal Service pays for EAS jobs with the U.S. average for those jobs. The CompSource data also allowed comparisons with the

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[15] *Id.*

[16] Letter from B. Wagner to B. Nicholson (May 30, 2018), attached as Ex. 13.

[17] Dr. Risher's resume is attached as Exibit 10A.

25th and 75th percentile of pay for those jobs – a reasonable range around the midpoint – as well as the average total cash compensation for those jobs (which adds cash bonuses, but not stock options, both of which are common in the private sector but are not paid to EAS employees, with the exception of small cash awards for a small number of employees).

As demonstrated by Dr. Risher's reports, private sector employers typically pay 10% or more in cash incentive payments, such as bonuses, and many large employers also provide managers, supervisors, and professionals with stock options. While stock options are not easily valued, cash incentives are, and are included in the "total cash" payments in the CompSource survey. Because the Postal Service generally does not pay its employees cash bonuses, its salaries should be adjusted to allow its EAS employees to receive compensation comparable to the private sector.

As Dr. Risher describes, the standard practice throughout the United States is to set the midpoint of a salary range at the average for the local market for that position. At the Postal Service, which has not bothered to conduct or purchase such a survey since 2012, the midpoint of salary ranges is almost always below the national average; it is farther behind if the average of approximately 10% additional cash compensation is added; and it is much farther behind in high-wage cities.

Just 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 Service is $67,017 nationwide. *See* Ex. 12 at 6. Yet the average total cash compensation for that benchmark job in the private sector is $73,100 nationally, while in New York City the average market salary for the job is $75,321, in Boston it is $73,058, and in San Francisco it is $78,030. *Id.* 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 the average salary in New York City comes in at $104,178, in Boston at $94,036, and in San Francisco at $102,790. *Id.* A similar pattern holds true for an EAS grade 21 Management Analyst, who has a midpoint salary of $84,594 nationwide. *Id.* The average total cash compensation for a comparable private sector job is $100,900; in New York City the average market salary for the job is $103,397, in Boston it is $99,175, and in San Francisco it is $106,807. *Id.*

Faced with these numbers, NAPS anticipates that the Postal Service may contract for a last-minute, post-hoc survey to justify its pay decision. As noted above, the Postal Service has admitted that it neither conducted nor purchased any studies or surveys regarding compensation in the private sector for comparable jobs prior to setting salary levels for its EAS jobs in 2018. When the Postal Service contracted for a last-minute survey for the 2012 fact-finding, that survey included all supervisors nationwide – including those who supervise a handful of employees at a mom-and-pop corner store or a few more at a fast-food restaurant. The relatively low wages paid at the nation's many small businesses are not comparable to pay for supervisors or managers of scores or hundreds of employees at the far-fewer large, unionized employers that are more comparable to the Postal Service.

A. The Postal Service should 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 such as New York, Washington, D.C., and San Francisco. In the alternative, it should it raise all salaries to competitive levels in those high-pay cities.

The ERI data includes geographic breakdowns, which has allowed Dr. Risher to include data for over 50 jobs in the salary survey, for all of which the salaries in New York and San Francisco are on the order of 25% higher than the U.S. average. The surveys show that the midpoints of USPS salaries are generally below the average U.S. salary for a comparable private-sector job.

For example, Maintenance Engineers, who are classified by the Postal Service as Grade 19, with a proposed 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 – and they are paid an average of $111,555 in New York and $107,741 in San Francisco. A Supervisor, Transportation, who earns an average of $71,289 nationally, earns an average of $88,335 in New York and $86,911 in San Francisco, but the midpoint salary for a similar EAS employee is only $67,017.

Despite the fact that it is almost a universal practice to pay more in high-wage localities – a reality that has been recognized and adopted by all other federal agencies – the Postal Service pays its EAS employees on the same schedule throughout the country, whether they live in West Virginia or New York City, in Bakersfield or San Francisco, in North Dakota or Washington, D.C. While there is no statutory requirement to pay locality pay, there is a statutory requirement to pay comparably to the private sector. In New York, San Francisco, and D.C., the Postal Service's compensation is more than 25% below what comparable companies pay for comparable jobs. In order to comply with the requirement of 39 U.S.C. § 1003(a) to pay comparably to the compensation and benefits paid by the private sector for comparable work, the Postal Service must either institute a system of locality pay or raise all employees' salaries nationwide.

2. The Postal Service does not provide an adequate differential between what it pays clerks and carriers and what it pays their supervisors and managers, as required by 39 U.S.C. § 1004(a).

A. The amount of the Supervisory Differential Adjustment should 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.

Typical private-sector employers pay front-line supervisors approximately 15 to 20% more than the workers they supervise. The Postal Service purports to pay a far lower supervisory differential – just 5% – and then calculates that 5% in a manner that results in many of its supervisors earning little more (and sometimes less) than some of the workers they supervise, despite the fact that the supervisors generally work the same or greater hours.

Even if the craft employee whose base pay is used as the basis for calculation of the SDA is the highest-paid employee under a particular supervisor, it is frequently the case that the 5% differential is surmounted by the craft employee's overtime pay. Craft employees are entitled to time-and-a-half pay for overtime (2x after 10 hours), while supervisors are, at most, paid for extra hours (called "t-time") at their usual hourly rate, and some supervisors and managers get no overtime pay at all.

In addition, while providing for both cost of living adjustments (COLAs) and wage increases retroactive to 2015 and 2016 for its union workers (who make up 92% of its workforce and almost that much of its payroll), the Postal Service has refused to provide any COLAs for its supervisors and managers and refused to provide them with any retroactive wage increase – despite the fact that the current pay package is supposed to cover the period beginning in October 2015. Thus, a supervisory differential that was inadequate five years ago is even smaller (or nonexistent) today.

On November 21, 2018, a NAPS member in New Jersey, unsolicited, sent the following email to a NAPS official:

> I know I sound like a broken record, but effective Nov 24th the carriers get a raise to $64,413, while my salary is $64,521. A whopping $108 difference. Top T6 are getting a 2.1% raise on their hourly base, so basically I'm going to be supervising people who make more than me. How in the world is that fair? I mean seriously, a new delivery supervisor is making $63+k a year to start and I've been a Form 50 for almost 5 years. It's so frustrating. Give me a lousy 2% raise and think I'm supposed to do backflips while I'm running a delivery zone of 37 routes. Is there any talks of them adjusting supervisors pay? Thanks for letting me vent and have a nice Thanksgiving.

As this email illustrates, not only does the current EAS pay system fail to provide for an adequate SDA, as required by law, but that failure directly contributes to the abysmal morale that Gallup has identified at the Postal Service, discussed below in Section 3.

B. The Supervisory Differential Adjustment for a group of supervisors should be set based on the highest paid craft level and step of employees supervised by those supervisors.

Because the Postal Service pegs its (too-small) supervisory differential to just one craft job for tens of thousands of EAS members who supervise employees in scores of different jobs, it is often the case that EAS members supervise line employees earning close to or more than what they do. For over a decade, the Postal Service has calculated its SDA by grouping its front-line supervisors into four categories (Plant Maintenance, Vehicle Services, Postal Police, and All Other Eligible) and then, supposedly, adding 5% to the salary of the most populous craft position supervised by supervisors in each category.[18] The first three categories are relatively small, though undoubtedly, many of the EAS employees in those categories supervise some employees who earn more than the supervisor does.

The bigger problem is the fourth category, "All Other Eligible" EAS employees. The Postal Service has chosen to lump 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 one category and provide that all of them should receive a minimum salary equal to 5% above the most common craft position that any of them supervises. At the time the previous USPS-NAPS pay package was adopted, the Postal Service pegged the SDA to 5% above the most populous craft position, which for the "All Other Eligible" group was then APWU Clerks, PS-06, Step O.

The most populous craft position is now RSC Q Grade 1, Step O (which covers 96,699 NALC city carriers at the top of their pay grade, who now earn $62,499 base salary per year), rather than PS-06, Step 23 (currently 61,737 APWU Clerks at the top step of their pay grade, who now earn a base salary of $60,092 per year). The Postal Service has refused to take even the minimum step of switching the benchmark craft job to the new most populous position, so that the SDA for "All Other Eligible" EAS employees (which sets a floor for approximately 5,600 supervisors and postmasters) would be 5% above $62,499 rather than 5% above $60,092.

Many other craft positions earn even more. There are 5,940 APWU clerks in Grade 9, Step O, who earn a base salary of $64,802, and 4,846 in Grade 10, Step O, who earn a base salary of $69,847. There are also 9,153 NALC city carriers in Grade 2, Level O, who earn a base salary of $63,768. None of the supervisors of those almost-20,000 employees have their supervisory differential pegged to those line employees they supervise.

Any EAS job that supervises any of these positions should have its minimum salary pegged to the salary of the best-paid craft position it supervises that has more than a *de minimus* number of employees and should be paid a differential above that craft position of substantially more than 5%.

All of these increases should be retroactive, recalculated back to the beginning of the current pay package period – i.e., October 2015. At the least, they should be recalculated back to

[18] *See* 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; *see also* Occupation Codes Eligible for SDA, 3/3/18, attached as Ex. 14.

C. The approximately 5,600 supervisors who received a Supervisory Differential Adjustment for 2015 should receive a retroactive adjustment to their pay, effective November 2015, to maintain the promised differential above the craft employees, who received a retroactive salary increase effective as of that date.

As noted above, in July 2016 the Postal Service gave hundreds of thousands of craft workers a retroactive raise – with APWU members receiving a retroactive raise of 1.2% effective November 2015. The approximately 5,600 supervisors whose salary is adjusted by the SDA to 5% above APWU salaries are therefore entitled to that same 1.2% retroactive increase. The Postal Service has acknowledged as much,[19] but it has dragged its feet on implementation. It should do so immediately.

3. The Postal Service does not provide adequate compensation to its EAS employees sufficient to maintain a well-motivated workforce, as required by 39 U.S.C. § 1004(a).

The Postal Service has among the worst morale of any large organization in the country. According to its own internal surveys, the most recent of which was conducted by Gallup in May 2018, only 25% of postal employees are "Engaged," while 75% are either "Not Engaged" (40%) or "Actively Disengaged" (35%). Those numbers place the Postal Service in the first percentile (the worst possible) of Gallup's "GrandMean Company-Level Engagement." The actual numbers are almost certainly much worse, as only 42% of employees responded to the survey (compared to 88% at the median company surveyed by Gallup), and non-response is yet another sign of lack of engagement.[20]

The survey data for Field EAS employees tracks the poor engagement of Postal Service employees overall. Sixty-five percent of the 9,645 Field Supervisors who responded to the Gallup survey were either "Not Engaged" (40%) or "Actively Disengaged" (25%). Similarly, 61% of the 2,442 Field Managers were either "Not Engaged" (39%) or "Actively Disengaged" (22%). And 54% of the 1,897 Senior Field Managers were either "Not Engaged" (37%) or "Actively Disengaged" (17%). These numbers put the level of engagement among Field Supervisors in the Postal Service's seven Areas between the 10th and 13th percentile of managers nationwide.[21]

Additionally, the low engagement levels among supervisors have ripple effects throughout the Postal Service. According to Gallup (based only on the managers who responded, which appears to have been less than half of all managers), 20% of USPS employees are managed by an "Actively Disengaged" manager and 37% are managed by a "Not Engaged" manager. Gallup reported that "[k]ey leaders, such as Plant Managers,

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[19] *See* emails from B. Nicholson to B. Wagner re Pending Issue SDA Back Pay, June 7, 2018, attached as Ex. 15.

[20] *See* Ex. 3A, Gallup, "Engagement at USPS Dashboard Report" (2018) at 3.

[21] Ex. 3B, Gallup, "Engagement in the U.S. Postal Service: Survey 5 Postal Pulse Analysis" (Oct. 2018).

Postmasters and Field Supervisors lack the support they need to create successful teams." It also reported that "[d]isengaged managers take a major toll on USPS service, safety and budget," and that "many managers are under high levels of stress themselves, and lack leaders who model positive leadership."[22]

Whereas the average company surveyed by Gallup has a ratio of four Engaged employees for every one employee Actively Disengaged, the Postal Service has a ratio of 0.7 Engaged employees for every Actively Disengaged employee. This abysmal performance places the Postal Service in the 11th percentile of all American companies when it comes to employee engagement – again, given the very low response rate, it is almost certainly even lower.

As Gallup has repeatedly informed the Postal Service, employee disengagement and poor morale translate into higher accident rates, higher costs, and lost revenue. According to Gallup, "disengagement accounts for an estimated 10,000 'extra' safety incidents annually," and "USPS could save $500 million annually in workers comp alone by engaging employees." [23] It also causes decreased productivity; increased absenteeism, mistakes, and theft; reluctance to work "extra" time when necessary; and slower response to problems.

In 2017, NAPS conducted its own survey of member engagement that confirms the poor results from the Gallup survey. Because Gallup's survey is copyrighted, the NAPS survey used questions from the 2016 Federal Employee Viewpoint Survey (FEVS). The responses from NAPS members were consistently lower than the FEVS responses, and the frequency of negative responses from NAPS members was worse than in any other federal agency (a low bar, which USPS fails to cross). See Exhibit 11 for a detailed overview and analysis of the NAPS member survey.

The Gallup and NAPS survey results demonstrate how the Postal Service's EAS pay policies (both base salary levels and annual adjustments in pay or lack thereof) translate into a poorly motivated workforce. Thus, not only do the EAS pay policies violate the law, they lead directly to some of the USPS performance issues that affect the agency's productivity and financial solvency. This is bad for employees, bad for the organization, and bad for the country.

4. The Postal Service does not 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).

In part because of the Postal Service's inadequate compensation, it often has difficulty filling EAS positions. Over one-fifth (21.7%) of EAS 17 jobs (the jobs that most frequently directly supervise clerks and carriers) nationwide are not filled within 90 days of being

[22] *Id.*

[23] *Id.* at 2.

posted.[24] In Washington, D.C., almost two-thirds (66.4%) of those jobs are not filled within 90 days.[25] Qualified craft employees are not interested in applying for supervisory jobs that come with greater stress and the same or less pay. As witnesses will testify at the hearing, craft employees who are asked to apply for supervisory jobs usually respond along the lines of, "why would I apply for a job with longer hours, more stress, and less money?" Some who do take supervisory jobs quickly ask to return to their previous craft job. And the difficulty recruiting for supervisory positions is particularly acute in high-wage cities such as D.C. and San Francisco.

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 (which NAPS set out in letters dated Nov. 3, 2017 (Ex. 9D), April 17, 2018 (Ex. 9F), and May 29, 2018 (Ex. 9H) and provided NAPS with its draft and then final decisions, with no explanation or support (see Exs. 1, 9A, 9E, and 9I).

B. The Postal Service has violated its obligation to consult with NAPS regarding compensation for "Headquarters" and "Area" employees (approximately 7,645 employees located throughout the country who report directly to USPS headquarters or to Area Vice Presidents).

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."[26] 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"

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[24] *See* USPS report on "Time to fill EAS 17 Positions," attached as Ex. 16.

[25] *Id.*

[26] 39 U.S.C. § 1004(b).

functions. The Postal Service acknowledges that NAPS represents EAS employees in the sales and vehicle maintenance divisions, 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" (Ex. 1) (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.

6. The Postal Service should convene a study group that includes representatives of the USPS and NAPS, together with a compensation expert, to study the Postal Service's compensation program for its EAS employees, including its Pay for Performance (PFP) system and its lack of locality pay.

A. The Postal Service has 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.

Item 8 of the Postal Service's July 20, 2018 final EAS Pay Package Decision (identical to Item 7 of the June 28, 2018 final decision) provides:

> USPS/NAPS Work Groups: The Postal Service and the National Association of Postal Supervisors have agreed to create a joint work team for the purpose of exploring and resolving issues regarding Field EAS salaries and grades. The intent is to complete work on this so that any changes will be implemented in FY 2019. In the event the work team is unable to conclude their work on the pay issues in question prior to September 4, 2018, the parties will reconvene to determine increases to the salary ranges for FY 2019.[27]

Despite this provision, the Postal Service has not convened any "joint work team" or otherwise invited NAPS to join it in studying the EAS pay and pay-for-performance systems. FY 2019 began on October 1, 2018. NAPS stands ready, willing, and able to work with the Postal Service (and any qualified compensation expert the Postal Service will engage) to study ways to bring the pay system for EAS employees into the 21st Century.

[27] Ex. 1 at ¶ 8.

B. 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 top EAS employees receiving no pay increase – is not consistent with the statutory mandates or best practices in employee compensation.

The PFP system is based on a complicated set of 30 factors (plus numerous sub-factors), weighted 60% to corporate performance and 40% to unit performance, over which individual supervisors and managers have very little control.[28] Because an individual has little to no control over whether he or she will receive a pay increase under the PFP system, that system provides no incentive to improve performance and instead contributes to a culture of feeling passive and lacking control. Even if it were more within individuals' control, 30 factors are too many for an individual to focus on and be motivated by. Thus, other than its name, the Pay for Performance system does nothing to enhance performance. Rather, it results in poor morale that undermines performance. The Postal Service's own Office of Inspector General has repeatedly criticized its PFP system.[29]

The upper levels of the 15-box PFP matrix are a sham. It is rare for even 1% of employees to make it into Box 8, let alone higher. In 2018, less than 300 out of 44,000 EAS employees (0.6%) even made it to Box 7.[30]

On the other hand, even high-performing employees frequently find themselves with no pay increase because the combination of the Postal Service's overall performance and their district's performance make it impossible. In FY 2017, that system resulted in 5,047 Field EAS employees (over 12% of those employees) being in Box 3 or below and so receiving no pay increase in 2018.[31] In FY 2018, approximately 16,000 Field EAS

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[28] *See* Ex. 7, NPA Indicators (2018).

[29] *See* U.S. Postal Service Pay for Performance Program (June 3, 2013), *available at* https://www.uspsoig.gov/document/us-postal-service-pay-performance-program (OIG found that then-current Postal Service PFP metrics do not directly support all of the agency's strategic goals or the Postmaster General's four core business strategies and sub-objectives created to return the Postal Service to profitability, and if the Postal Service addressed this issue, it could increase productivity towards its strategic goals); USPS 2009 Pay for Performance Program – OIG-USPS Audit Report (Aug. 8, 2011), *available at* https://www.uspsoig.gov/sites/default/files/document-library-files/2015/ft-ar-15-009_0.pdf (OIG found that USPS managers "lowered core requirement ratings in a manner inconsistent with PFP policies and procedures" and in ways that did not correspond with employee individual achievement); OIG-USPS Blog on Pay for Performance (Sept. 6, 2010), *available at* https://www.uspsoig.gov/blog/pay-performance (containing over 100 mostly negative comments by USPS employees regarding lack of confidence in a fair, balanced, and understandable PFP system).

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

[31] *See* Ex. 6, Table of PFP Rating Distributions, 2013-2018.

employees (over 38% of those employees) are in Box 3 or below, so received no pay increase for FY 2019.[32]

The Postal Service's failure to appropriately adjust the maximum pay level of salary ranges also affects high-performing employees' ability to succeed under the PFP system. 4,065 EAS employees received a lump sum PFP payment in 2018, meaning that they are at the maximum pay level for their pay grade and, under the Postal Service's final decision, will receive no pay increase for 2019 (or future years), even if their PFP score warrants an increase. Other EAS employees who were not eligible for a PFP payment in 2018 are also at the top of their pay grade and therefore will receive no future pay increases, unless the Postal Service increases the maximum pay levels for their grade.

The current PFP system is not consistent with the statutory mandates or best practices in employee compensation. Because EAS employees routinely receive raises of 2% or less (or none at all) using the PFP matrix, while the craft unions receive annual COLAs and general wage scales, the SDA becomes narrower and narrower. EAS salaries also continue to fall out of step with those for comparable private sector jobs and other federal agencies, where COLAs and yearly salary adjustments are the norm. Moreover, as discussed above, it is routine for private sector employers to offer a combination of yearly salary raises and cash incentives, but under the PFP as currently structured, many EAS employees receive neither. It is only by replacing PFP with a new system that separates COLAs and adjustment of pay scales from annual bonuses that reward and motivate employees that the Postal Service will ensure that it is abiding by the requirements of 39 U.S.C. §§ 1003 and 1004 while creating an engaged and motivated workforce.

7. Remedies.

To be competitive with private sector compensation, the Postal Service must increase pay for EAS employees across the board by using annual pay comparability surveys to match the total cash compensation for EAS jobs to the total cash compensation for comparable jobs nationally. Those national averages should be used annually to set the midpoint of salary ranges for each group of EAS jobs, with a range of salaries of x% above and below each midpoint. It does no good to raise salaries without also raising the maximum amount of the applicable salary range.

Because of the substantially higher salaries paid for comparable jobs in high-wage cities, the Postal Service should either adopt the locality adjustments used by the federal government or develop its own. If it chooses to do neither, it must increase EAS salaries nationwide to the point at which its salaries are competitive in high-wage cities.

To assure that there is an adequate and reasonable differential in pay between supervisors and the craft employees they supervise, the Supervisory Differential Adjustment for each group of supervisors needs to be pegged to the salaries of the highest-

[32] *Id.*

paid craft employees that those supervisors supervise. Thus, for example, all supervisors who supervise city carriers should have their SDA calculated based on what the most populous group of city carriers earns (not based on lower-paid clerks). If the Postal Service chooses to group large numbers of supervisors into one category, it should base the differential on the more-highly paid craft employees supervised by any subgroup of those supervisors.

To make the EAS members whole for their losses as a result of several of the statutory violations, USPS should implement retroactive pay adjustments and/or lump sum payments to compensate EAS employees for the Postal Service's delay or failure to:

(a) provide pay adjustments for the period FY2016-FY2018 (i.e., beginning as of October 1, 2015);
(b) implement its final decision effective as of the same date as the pay increases granted to its craft employees (i.e., as of November 7, 2015 for APWU), particularly for EAS employees whose SDA was calculated based on APWU salaries; and
(c) implement its final decision with respect to minimum and maximum salaries as stated in its decision (i.e., as of September 29, 2018, the Saturday before the start of the fiscal year on October 1).

More fundamentally, the Postal Service's entire Pay for Performance system, as it is currently designed, needs to be replaced with one that meets statutory requirements regarding market comparability and supervisory differentials, promotes morale and productivity, and provides adequate pay to recruit qualified supervisors, managers, and professionals to work for the Postal Service. To do that will require the Postal Service to convene a work group at which it, together with NAPS and supported by a neutral compensation expert, develops 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.