**FACTFINDING PROCEEDINGS BEFORE
SUSAN HALPERIN (CHAIR),
JOSHUA JAVITS, AND ROBERT HITE,
NEUTRAL FACTFINDERS**

IN THE MATTER OF:

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF
POSTAL SUPERVISORS

UNITED STATES POSTAL SERVICE'S POSTHEARING BRIEF TO THE FACTFINDING PANEL

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On December 10-11, 2018, the Postal Service and the National Association of Postal Supervisors (NAPS) engaged in factfinding before this Federal Mediation and Conciliation Service panel on the components of the Postal Service's July 20, 2018 pay decision for Field EAS employees. Pursuant to the request of the Panel, the Postal Service submits this posthearing brief to summarize the arguments and evidence presented at hearing and to respond to NAPS' claims with respect to the Postal Service's pay decision. Given the evidence presented during the factfinding proceedings, the panel should conclude that the Postal Service's pay decision meets the statutory standards set forth in 39 U.S.C. §1003(a) and §1004(a). NAPS' requests for recommendations to the contrary should be rejected.

I. BACKGROUND

In addition to its seven bargaining units, which represent approximately 92% of the Postal Service workforce, the Postal Service has two managerial associations representing non-bargaining supervisory and managerial personnel in accordance with 39 U.S.C. §1004: The United Postmasters and Managers of America ("UPMA"), representing postmasters, who serve as installation heads at post offices throughout the United States, and the National Association of Postal Supervisors ("NAPS"), representing approximately 31,000 managers, supervisors, and professional, administrative, and technical personnel in the field.[1]

[1] NAPS has asked the factfinding panel to address whether the Postal Service is required to consult with NAPS on the pay decision for approximately 7,500 Executive Administrative Schedule (EAS) employees who report directly to postal Headquarters. *See* NAPS' Pre-Hearing Brief at 4. But factfinding is not the appropriate forum to address NAPS' ability to represent these individuals, as Congress confined the panel's

Congress expressly excluded Postal Service supervisory and managerial employees from representation in any collective bargaining unit. 39 U.S.C. §1202(1). This was a conscious choice rooted in the desire to avoid a compulsory bargaining process that might polarize the interests of top management and lower level supervisors. *See Nat'l Ass'n of Postal Supervisors v. U.S. Postal Service*, 602 F.2d 420, 437 (D.C. Cir. 1979). In lieu of bargaining rights, Congress afforded duly-recognized associations representing such personnel the ability "to participate directly in the planning and development of pay policies and schedules, fringe benefit programs, and other programs relating to supervisory and other managerial employees." 39 U.S.C. §1004(b). In order to facilitate this participation, the Postal Reorganization Act outlines a framework under which the Postal Service engages in regular and ongoing consultations with duly-recognized managerial associations, such as NAPS, over a variety of subjects and programs relating to supervisory employees. 39 U.S.C. §§1004(b)-(e).

With respect to pay policies and schedules[2] and fringe benefit programs specifically, the PRA directs the Postal Service to submit any proposed changes to the association within 45 days of the date on which it reaches agreement on a collective

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jurisdiction to "recommend[ing] *standards for pay policies and schedules and fringe benefit programs* affecting the members of the supervisors' organization . . . ." 39 U.S.C. § 1004(f)(3)(A) (emphasis added). Regardless, the Postal Service and NAPS agreed in 1978 that "NAPS is not the representative of any USPS personnel employed in Washington Headquarters . . . ." PS Ex. A20 (1978 Memorandum of Understanding Re: NAPS Representation). While that agreement expired in 1981, the parties have continued to operate pursuant to its terms.

[2] An overview of the existing pay programs for Executive Administrative Schedule (EAS) employees (which includes NAPS-represented Field EAS employees) is Joint Exhibit 1.

bargaining agreement with the representative of its largest rank-and-file bargaining unit, solicit the association's input and recommendations, afford any such recommendations full and fair consideration, and then engage in efforts to resolve differences concerning the proposal prior to reaching a decision. 39 U.S.C. §§1004(d)-(e).

In reaching its FY2016-FY2019 pay decision for NAPS-represented employees, the Postal Service engaged a lengthy and productive consultative process with NAPS. On August 7, 2017, the NALC (which had become the Postal Service's largest union) ratified a three-year collective bargaining agreement. On September 21, 2017, the Postal Service sent NAPS its initial pay proposal for FY2016 through FY2019, pursuant to 39 U.S.C. §1004(e). *See* PS Ex. A14 (September 21, 2017 Initial Pay Proposal). The parties scheduled their first discussion on the proposal for October 19, 2017. Between October 19, 2017 and June of 2018, the parties met seven times to discuss the pay proposal, and the Postal Service revised its pay package on April 6, 2018, and May 15, 2018, and issued its decision on June 28, 2018. *See* PS Exs. A15 (April 2018 Revised Draft Pay Decision); A16 (May 2018 Revised Draft Pay Decision); A17 (June 28, 2018 Pay Decision); I1 (Slides – Overview of Contested Pay Decision) at 2.

During its consultations with NAPS, the Postal Service carefully considered NAPS' input and made several significant changes to its pay decision based on NAPS' feedback, including the following:

- Raised all of the minimum salaries for the grades in the EAS salary structure, in some cases dramatically (in excess of 20%), and narrowed the gap in pay bands per NAPS' request;

- Agreed to maintain the status quo for the employer health benefits contribution for the duration of the pay package, with no increase in employee cost share;
- Upgraded the EAS-12 Administrative Assistant (Field) position to level EAS-15 and awarded a 2% salary increase;
- Continued a 15-point rating system as part of the Pay-for-Performance program;
- Allowed for greater promotional pay increases;
- Agreed to establish a joint work team for the purpose of exploring and resolving issues regarding Field EAS salaries and grades.

PS Exs. A18 at 4-5; I1 at 7-13, 15-17.

On July 5, 2018, NAPS notified the Postal Service that it planned to pursue factfinding in accordance with 39 U.S.C. §1004(f)(1). PS Ex. I1 at 2. On July 20, 2018, the Postal Service again favorably revised its June 28, 2018 pay package decision for NAPS-represented employees to comport with a similar decision reached with UPMA. *See* PS Exs. A18 (July 20, 2018 Pay Decision); A19 (*UPMA Leader* Excerpt) at 8-10. UPMA accepted the Postal Service's pay package and declined to pursue factfinding; NAPS chose to continue with factfinding. *See* PS Ex. A19 at 7; Tr. Day 2 at 290 (Nicholson).

The parties engaged in two days of factfinding hearings at NAPS Headquarters on December 10 and 11, 2018.

II. STATUTORY REQUIREMENTS FOR THE PAY AND BENEFITS OF NAPS-REPRESENTED EMPLOYEES AND THE ROLE OF THE FACTFINDING PANEL

The Postal Reorganization Act sets forth four requirements the Postal Service must meet when setting supervisory and managerial compensation levels. The Postal Service must:

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

39 U.S.C. §§1003(a), 1004(a); *see also* Tr. Day 1 at 12-14 (Freeman), 63-71 (Attridge).

The role of the factfinding panel is to evaluate the Postal Service's pay decision in light of those factors, and make recommendations on "pay policies and schedules and fringe benefit programs . . . [that are] consistent with [these standards]." 39 U.S.C. §1004(f)(3)(a); *see also* PS Ex. A3 at 2 (2012 Factfinding Report) ("The overarching matter at issue in this factfinding was whether the . . . decision of the Postal Service on pay policies and fringe benefits for NAPS-represented employees is consistent with the policies of Title 39 of the U.S. Code."). Ultimately, the Panel is tasked with making "appropriate recommendations concerning the differences between the parties on such policies, schedules, and programs." 39 U.S.C. §1004(f)(3)(b).

III. THE POSTAL SERVICE'S PAY DECISION MEETS THE STATUTORY STANDARD AND IS REASONABLE IN LIGHT OF ITS FINANCIAL SITUATION

The Postal Service's pay policies and programs for NAPS-represented employees, and its pay decision continuing and enhancing those pay policies and programs, meet the standards set forth in Title 39 for supervisory and managerial pay. In addition to meeting the statutory requirements, the Postal Service's proposed pay decision is measured and responsible given the financial state of the organization. As such, the Postal Service respectfully requests that the Panel make the following findings and recommendations: First, the Panel should find that the Postal Service maintains compensation and benefits for its Field EAS employees comparable or superior to the compensation and benefits paid for similar levels of work in the private sector of the economy, and has no trouble attracting and retaining a well-qualified workforce as a result. Moreover, like the 2012 factfinding Panel, this Panel should find that developing an equitable, efficient, and transparent locality adjustment pay program would require considerable time and resources and impose dramatic costs that are unwarranted in light of the existing comparability of postal pay and benefits and almost non-existent EAS employee turnover. As such, the Postal Service's proposed EAS salary schedule should be adopted; any additional changes to salary maximums for Field EAS employees should be discussed by the workgroup on Field EAS salaries and grades proposed by the Postal Service in item 9 of its July 20, 2018 pay decision. *See* PS Ex. A18 at 5. Second, the

Panel should conclude that NAPS' request for additional across-the-board retroactive wage increases has no basis in the comparability standard and should be rejected. Third, the Panel should find that the Postal Service maintains an adequate and reasonable differential in the rates of pay between the line work force and supervisory and managerial personnel, and should recommend maintaining the Supervisor Differential Adjustment (SDA) as currently constituted. Finally, the Panel should find that the Postal Service's Pay-for-Performance (PFP) system, while perhaps imperfect, reflects the importance of a well-motivated workforce, and appropriately ties pay increases to the performance of the Postal Service against objective metrics identified by the Executive Leadership Team with input from NAPS and other stakeholders.

To assist the Panel in crafting its report, the Postal Service has included proposed draft findings and recommendations as an attachment to this brief.

A. The Postal Service Compensates NAPS-Represented Employees on a Standard of Comparability with the Private Sector and Has No Difficulty Attracting or Retaining Field EAS Employees

The evidence presented at hearing demonstrates that the Postal Service compensates NAPS-represented employees at levels comparable to the compensation paid for similar levels of work in the private sector of the economy, as required by the Postal Reorganization Act. Preston Handler, the Postal Service's compensation expert, testified that the actual salaries of NAPS-represented employees are approximately 5.7% above market. Tr. Day 2 at 230 (Handler); *see also* PS Ex. G2 (Slides – 2018 USPS Market Comparability for EAS Positions—Factfinding) at 36-37. Mr. Handler's conclusion was based on a comprehensive market study of eight positions that cover 68% of the NAPS-represented EAS population. Tr. Day 2 at 217 (Handler); PS Ex. G2 at 9.

Mr. Handler engaged in a detailed and thorough benchmarking analysis, using multiple validated and highly respected surveys, after having personally interviewed numerous supervisors and observing the work performed by subject employee groups at various postal facilities around the country.[3] Tr. Day 2 at 207-216 (Handler); PS Ex. G2 at 6-7. Notably, NAPS' compensation expert failed to conduct a similar study, though he admitted the Postal Service's method was "how it should be done," and, "the professional way of doing it." Tr. Day 1 at 266-67 (Risher)[4]. In particular, Mr. Handler found that the salary for the level 17 Supervisor Customer Services position (the most populated NAPS-represented position with over 13,000 incumbents) is 14% above market. Tr. Day 2 at 224 (Handler); PS Ex. G2 at 9, 18. Mr. Handler's findings are consistent with those of the recent report of the President's Task Force on the United States Postal System. *See* PS Ex. B2 (Report from the Task Force on the United States Postal System) at 61 ("USPS employees enjoy a pay and benefits premium over their private sector counterparts . . . .").

By contrast, NAPS' expert Dr. Risher relied on his "assumptions about what these jobs do." Tr. Day 1 at 267 (Risher). Further, Dr. Risher's analysis was premised upon only one generalized market survey, and an unreliable and unvalidated compendium of

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[3] Although NAPS faulted Mr. Handler for failing to limit his comparative analysis to large unionized employers, nothing in the statute, and no national interest arbitration decision, imposes such a narrow view of "comparable levels of work." *See* Tr. Day 2 at 274 (Rand) ("[The statute] says 'compared with the private sector,' it does not say that comparable jobs are only to be measured on the basis of the size of employers.").

[4] Dr. Risher claimed that he did not have the opportunity to conduct a similar study, though NAPS never discussed the possibility with the Postal Service and of course Dr. Risher had access to NAPS' members to the extent he wished to conduct interviews as part of his analysis.

self-reported data (ERI), which Mr. Handler testified no reputable compensation consultant would rely upon for anything other than establishing locality differentials. Tr. Day 2 at 212 (Handler) ("[I]t's not a reliable service—or source of data—for looking at a particular position and what the value is in the marketplace.") Dr. Risher conceded that he lacked access to more comprehensive and reliable surveys because of cost constraints. Tr. Day 1 at 257-258 (Risher). Dr. Risher also contradicted himself: on the one hand, he claimed NAPS-represented employees are underpaid compared to the private sector; on the other, he stated that, given their credentials, NAPS-represented employees would not be able to find better paying jobs in the private sector. Tr. Day 1 at 304-305 (Risher) ("I think . . . a Postal Service employee, regardless of how much experience he has, will find it very difficult to find a comparable paying job in the private sector.").[5]

The Postal Service also presented evidence about the substantial benefits premium that NAPS-represented employees receive. NAPS-represented employees enjoy extensive paid leave, health insurance, life insurance, and retirement benefits. Tr. Day 2 at 158-166 (Park), 256-267 (Rand); PS Ex. F1 (Slides – Demographics, Salary and Benefits of

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[5] In a similar vein, Ms. Park, a Postal Service Labor Economist testified that only 12% of Postal Service EAS employees possess a bachelor's degree or higher, a figure well below the percentage prevalent in federal and private sector management ranks. Tr. Day 2 at 138 (Park). Indeed, as the non-partisan Congressional Budget Office reported in its comprehensive 2017 report on Comparing the Compensation of Federal and Private Sector Employees, education levels are closely tied to the size of the pay disparity between federal sector and private sector employees: federal civilian workers with no more than a high school degree earned 34% more, on average, than civilians in the private sector; federal civilian workers with a college degree earned, on average, 5% more than civilian counterparts; and federal workers with a professional degree or doctorate earned, on average, 24% less than their private sector counterparts. Congressional Budget Office, *Comparing the Compensation of Federal and Private Sector Employees* (April 2017), available at www.cbo.gov/publication/52637, at 2.

NAPS-Represented Employees) at 19, 21, 23, 26. By any measure, as acknowledged by NAPS, postal fringe benefits are generous and "worth a lot." Tr. Day 1 at 303, 305 (Risher). As Tom Rand, the Postal Service's benefits expert testified, the fringe benefits package for NAPS-represented employees (without considering the additional cost and value of retiree health benefits) costs the Postal Service approximately $17.44 per work hour. Tr. Day 2 at 259 (Rand); PS Ex. H2 (Slides – NAPS and Private Sector Benefits) at 3. By contrast, the benefits package for the average private sector employee costs about $10.38 per hour, meaning NAPS employees receive an approximate 68% benefits premium over their counterparts in the private sector.[6] Tr. Day 2 at 259 (Rand); PS Ex. H2 at 3. Factoring in the value of Postal benefits drives the total average annual compensation of NAPS-represented employees to over $100,000. Tr. Day 2 at 166 (Park); PS Ex. F1 at 27.

This substantial benefits premium cannot be overlooked when evaluating the reasonableness of the total compensation of NAPS employees against the private sector comparability standard set forth in the Postal Reorganization Act. In the private sector, companies do not evaluate wages and benefits separately; rather, they are evaluated as a compensation package. *See* Tr. at Day 2 at 233-234, 245 (Handler) (explaining that organizations that do not have variable pay tend to have more generous benefit packages); Day 2 at 258 (Rand) ("[I]n judging the adequacy of total compensation the

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[6] Mr. Rand's findings are consistent with those reported by the Congressional Budget Office, which found that average benefits for federal employees with no more than a high school education were 93% higher than in the private sector, 52% higher for those with a college degree, and about the same in both sectors for those with professional or doctoral degrees. *Comparing the Compensation of Federal and Private Sector Employees, supra*, at 2.

panel must take into account the substantial contribution towards that total compensation number that's represented by benefits."); Day 1 at 12-13 (Freeman) ("[I]t's compensation and benefits as a package . . . ").[7] NAPS' contention that employees are "locked in" by the generous benefits they receive (and thus do not want to leave the Postal Service for a job elsewhere), simply underscores the fact that the overall compensation package NAPS-represented employees receive is favorable relative to the private sector. Tr. at 303, 305 (Risher) ("They would be foolish, actually, to quit at age 35 or 40 because they'd be walking away from benefits that are worth a lot . . . . It means walking away from literally what could be a couple hundred thousand dollars.").

The Postal Service's comparability evidence is bolstered by the fact that it has no trouble attracting or retaining qualified employees in NAPS-represented positions. Voluntary quit rates among NAPS-represented employees are extraordinarily low—even when compared to quit rates in the Federal sector. *See* Tr. Day 2 at 155-156 (Park); PS Exs. F1 at 13-14; G2 at 37.[8] In addition to its ability to retain existing employees, the

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[7] Again, with respect to total compensation, the testimony of Messrs. Rand and Handler is consistent with the findings of the independent Congressional Budget Office, which reports that total compensation for workers with a high school diploma or less averaged 53% more for federal employees than for their private-sector counterparts, and 21% more for those workers with a bachelor's degree. *Comparing the Compensation of Federal and Private Sector Employees, supra,* at 3. NAPS cites no equivalent independent research to support its proffered comparability data.

[8] Statistics on Postal Service employee turnover have been cited by eminent interest arbitrators (and the 2012 factfinding panel) as compelling evidence of the competitive—indeed, premium—wages and benefits offered by the Postal Service, which remains an employer of choice. *See*, *e.g.*, PS Exs. A13 (2015 Goldberg Interest Arbitration Award with the American Postal Workers Union, AFL-CIO) at 11 ("Another factor which stands out are [*sic*] the quit rate data which show that career Postal employees voluntarily leave their jobs at a rate far lower than do private sector employees. . . . I conclude that the

Postal Service has no issues attracting qualified managerial and supervisory employees to EAS jobs. Of the approximately 2,000 EAS vacancies the Postal Service currently has open across the country, 75% have been vacant for less than 90 days. PS Ex. F2 at 15. Perhaps a more salient point is the number of job postings—the jobs the Postal Service is actively trying to fill. Of 1,949 open EAS job postings, only 5% have been posted longer than 120 days, and less than 2% have been open for more than 6 months. *Id.* In other words, the Postal Service is able to fill EAS positions quickly and with no demonstrable shortage of qualified applicants.[9] This, too, supports the conclusion that EAS salaries are attractive and in line with similar opportunities in the private sector.

NAPS' arguments that the Postal Service must institute locality pay to be comparable to the private sector are unpersuasive. *See* Tr. Day 1 at 18 (Freeman). Locality pay is not universal in the private sector, nor is it required by Title 39. Tr. Day 2

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almost total unwillingness of APWU-represented employees to leave their jobs voluntarily is powerful evidence that they view their compensation and benefits as superior to what they would receive elsewhere . . . . [I]t does not suggest that the Postal Service is lagging the private sector in wages and benefits."); A3 at 9 ("The evidence presented to the Panel demonstrated that the Postal Service is not experiencing problems in attracting or retaining qualified employees in the EAS positions and that the current salaries across the country are meeting the standard of comparability for similar levels of work in the private sector.").

[9] While NAPS argued that most EAS positions are now filled with "less well-qualified" non-career employees, it presented no evidence to support its argument. Tr. Day 1 at 38 (Freeman), 98-99 (Wagner). In fact, the only data presented by NAPS with respect to turnover concerned the small sliver of EAS positions filled from outside the Service, which prides itself on promoting from within. NAPS Ex. 21; Tr. Day 1 at 146 (Wagner). The number of positions covered by the NAPS data represents less than one-fifth of one percent of the total EAS complement, and is, thus, representative of next-to-nothing. Tr. Day 1 at 146 (Wagner). Moreover, the data NAPS presented did not reflect the reason for departure, which could include a host of variables utterly unrelated to adequacy of compensation. Tr. Day 1 at 147 (Wagner).

at 234-35 (Handler); Day 1 at 18 (Freeman) ("[T]he statute doesn't require a locality adjustment."). Absent any compelling evidence that the Postal Service is having difficulty attracting and retaining employees in high-cost-of-living areas like New York and San Francisco, locality pay is a solution in search of a problem. *See* Tr. Day 2 at 155-56 (Park) (confirming the quit rate in New York and San Francisco is less than 1%). Given that locality pay would be "a very expensive proposition," and would "require considerable time and resources," it would be inappropriate to implement such a program given the Postal Service's poor financial condition. Tr. Day 2 at 235 (Handler); PS Exs. A3 at 9; C1 (Slides – The USPS Financial Situation). NAPS' requested recommendation of locality pay should be rejected.

B. The Postal Service's Proposed EAS Salary Schedule Is Consistent With the Private Sector Comparability Standard and Should be Adopted

In its pay decision, the Postal Service proposed significant raises to the minimum salaries of NAPS-represented employees. *See* PS Exs. A18 at 3; I1 at 23. In most instances, the Postal Service's proposals either met or exceeded the salary ranges offered by NAPS. Tr. Day 2 at 284-85 (Nicholson); PS Ex. I1 at 23. The proposed increases to the salary minimums are as follows:

EAS Schedule			
Grade	**OLD Minimum**	**NEW Minimum**	**% Increase**
15	$46,309	$46,500	0.4%
16	$48,360	$48,500	0.3%
17	$50,507	$52,800	4.5%
18	$52,724	$52,800	0.1%
19	$55,221	$60,000	8.7%
20	$58,217	$65,300	12.2%
21	$61,046	$71,000	16.3%
22	$64,843	$73,300	13.0%
23	$68,378	$77,300	13.0%
24	$71,764	$82,000	14.3%
25	$75,332	$93,000	23.5%
26	$79,090	$99,900	26.3%

Increasing the salary minimums as proposed will ensure that EAS salaries continue to be in line with or superior to the private sector, and NAPS does not contest these minimum increases. *See supra* Part III.A; Tr. Day 1 at 128 (Wagner). However, NAPS has proposed additional 2% increases to the salary maximums. Tr. Day 1 at 41 (Freeman), 128 (Wagner). The Postal Service's pay decision provides for a joint work group with NAPS to explore and resolve issues regarding Field EAS salaries and grades, including increases to the salary ranges for FY2019. PS Ex. A18 at 4; Tr. Day 2 at 293 (Nicholson). Rather than recommending specific increases to the salary maximums (which NAPS' compensation expert failed to justify), the Postal Service respectfully requests that the Panel recommend discussion of any salary range increases as part of a joint workgroup, as contemplated by the Postal Service's pay decision.

C. Retroactive Wage Increases for Field EAS Employees Are Unjustified and Inconsistent with Private Sector Comparability

NAPS requested that the Panel recommend across-the-board wage increases totaling 8% over a four-year period (2% per year retroactive from 2016 to 2018, and an additional 2% in 2019), but failed to demonstrate why such wage increases would be appropriate. Tr. Day 1 at 39-40 (Freeman). First, the majority of NAPS-represented employees received PFP wage increases from FY2016 to 2018. *See* NAPS Ex. 4 (PFP Paid in 2008-18) at 2; Tr. Day 1 at 141-142 (Wagner); Day 2 at 278 (Nicholson). For FY2016, nearly every NAPS employee received a wage increase: only 0.5% of NAPS-represented employees did not receive anything for PFP. NAPS Ex. 4. The average PFP increase in FY2016 was almost 3%. *Id.* In FY2017, 84% of NAPS-represented employees received a PFP increase; the average PFP increase was approximately 1.4%. *Id.* Although a larger portion of NAPS-represented employees will not receive a PFP increase in FY2018 due to lower performance outcomes, the majority of NAPS-represented employees will still receive an increase. *See* NAPS Ex. 5 (Employee Status – NPA Composite Performance Summary Scores – FY 2018 – September); PS Ex. E1 (Slides – Pay-for-Performance: An Overview) at 15. Second, the Postal Service raised the minimum and maximum salaries for each EAS grade level in 2015, 2016, 2017, and 2018. Tr. Day 1 at 140-141 (Wagner); Day 2 at 278 (Nicholson). Third, to the extent NAPS claims it deserves restitution for the years in which EAS employees' salaries were frozen, all postal employees—including bargaining unit employees and executives—experienced a wage freeze between 2010 and 2012, a fact acknowledged by the 2012 factfinding panel, which endorsed the suspension of PFP increases. PS Ex. A3 (2012 Factfinding Report) at 8; Tr. Day 2 at 140 (Park). NAPS-represented employees' salaries have thus not fallen behind those of the bargaining units, and there is thus no basis for the "catch up" increases NAPS claims are warranted. *See* PS Ex. F1 at 9; Tr. at 121 (Wagner).

Nor is NAPS' request for additional wage increases justified by private sector comparability. The Postal Service already compensates EAS employees at a level comparable to the compensation paid for similar levels of work in the private sector of the economy.[10]

Furthermore, NAPS' argument that such wage increases would "more than pay for [themselves]" is utterly without foundation. NAPS presented no evidence that increasing employees' pay would result in cost savings to the Postal Service. In fact, NAPS' own compensation expert could not commit to any particular cost savings or increased revenue that NAPS claimed would help the Postal Service pay for the salary increases. *See* Tr. at 330 (Risher) ("I'm not sure about increased revenue, but there certainly would be increased customer satisfaction after which might lead to increased revenue, that I don't know, okay?").[11] And while increased employee engagement has

[10] See discussion *supra* Part III.A.

[11] Dr. Risher also significantly understated the cost of a wage increase for NAPS-represented employees, pegging it at roughly $40 million. Tr. at 306 (Risher). Dr. Risher assumes a one-time cost for the Postal Service for every percentage point wage increase; however, wage increases are permanent and continue to cost the Postal Service additional money year over year. Tr. Day 2 at 58 (Nickerson) ("[F]orty million becomes 88 million becomes 130-something million over time."). To state that a 1% wage increase is simply a one-time $40 million cost to the Postal Service is inaccurate and misleading.

been tied to productivity and cost savings, according to Gallup (the publisher and administrator of the Postal Pulse and industry leader in measuring employee engagement), there is "no significant relationship between compensation and engagement or productivity." PS Ex. D1 (Brief Guide to the 12 Elements of Engagement) at 1; *see also* Tr. Day 2 at 67-68 (Williams). Given its dire financial situation, its virtually non-existent turnover, and its ability to promptly fill vacancies with qualified employees, the Postal Service simply cannot justify giving managerial and supervisory employees significant and unprecedented retroactive across-the-board wage increases that will compound its labor costs, and which have no basis under the private sector comparability standard.

D. The Postal Service Provides Adequate and Reasonable Differentials in the Rates of Pay Between the Line Work Force and Supervisory and Other Managerial Personnel

The Postal Reorganization Act 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." 39 U.S.C. §1004(a). As the D.C. Circuit has instructed:

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

Nat'l Ass'n of Postal Supervisors, 602 F.2d at 433. Moreover, the adequacy and reasonableness of the differential is to be assessed in light of the other standards Congress included in the PRA to guide postal compensation decisions, including: compensation paid for comparable work in the private sector, the need to attract and retain management talent, and the importance of promoting the leadership status of management personnel relative to the employees they supervise. *Id.* at 435; 39 U.S.C. §1004(a). These factors, in turn, must be balanced against "the Postal Service's overall responsibility, articulated in 39 U.S.C. §101(a), of providing 'prompt, reliable, and efficient' postal services." *Nat'l Ass'n of Postal Supervisors*, 602 F.2d at 435. Ultimately, "it is for the Postal Service and the Postal Service alone," to resolve conflicts among the standards, and so long as the Postal Service has considered the statutory factors and arrives at a good faith judgment regarding a differential that is adequate and reasonable in light of these factors, its duty is complete . . . ." *Id.*

To comply with this directive, the Postal Service developed a mechanism known as the Supervisor Differential Adjustment ("SDA"). *See* Tr. Day 2 at 279-80 (Nicholson); PS Exs. A5 at Section 412.12; I1 at 24-25. The SDA adjusts the salary of FLSA-exempt employees in positions in EAS Grade 15 through 19 who directly supervise two or more bargaining unit employees to ensure a minimum 5% salary differential between supervisors and the positions they supervise. PS Ex. A5 at Section 412.12. To establish the SDA, the Postal Service chose benchmark bargaining unit positions (APWU craft and Postal Police positions) on which to base the differential. *See* Tr. Day 2 at 279-80 (Nicholson); PS Ex. A5 at Section 412.12(b); A10 (Occupation Codes Eligible for the Supervisor Differential Adjustment). For example, under the SDA, employees in front-line supervisor positions who supervise maintenance employees are guaranteed a minimum salary 5% above that of a bargaining unit maintenance employee at Grade 10, Step P of the APWU salary schedule. *See* PS Ex. A5 at Section 412.12(b). SDA minimums for supervisors are adjusted each time the relevant bargaining unit salaries are increased, ensuring the differential is maintained. Tr. Day 2 at 280 (Nicholson).

NAPS expressed dissatisfaction with the Postal Service's chosen benchmark positions on which to base the differential. *See* NAPS' Pre-Hearing Brief at 12-13. While NAPS might prefer that the Postal Service select a position that will result in the highest salary for its members—i.e., the highest-paid position that the supervisor supervises, or at least the city carrier position—that method is unworkable; it would require the Postal Service to continually evaluate, on a supervisor by supervisor basis, the salaries of each craft employee he or she supervises. *See* Tr. Day 2 at 299-300 (Nicholson). Tying the SDA to APWU-represented positions is reasonable because virtually all managers (aside from Postal Police supervisors) supervise APWU-represented employees, while not all managers supervise NALC-represented city carriers. Tr. Day 2 at 279 (Nicholson) ("[I]t was changed again in pay consultation with the prevalent position."). For example, while all Supervisor, Customer Services supervise APWU clerks (on whom their SDA is based), not all Supervisor, Customer Services supervise city carriers. Tr. Day 2 at 305 (Nicholson).

Nothing in the statute requires the Postal Service to peg the SDA to the top grade of the most populous craft position. And even that method would not satisfy NAPS' apparent preference for establishing a differential based on total cash compensation. Tr. Day 2 at 301 (Freeman). Basing the differential on cash compensation would require the Postal Service, again on a supervisor by supervisor basis, to establish the supervisor's salary using a fluctuating figure that incorporates overtime and other forms of non-scheduled pay earned by craft employees. Tr. Day 2 at 280-81 (Nicholson). In light of the wide deference the statute affords the Postal Service in establishing both the method of calculating and the amount of the differential, the Postal Service's decision to continue to tie the SDA to designated benchmarked positions, and to base the differential on salary scales rather than fluctuating compensation, represents a "good faith judgment" based upon an assessment of the relevant statutory factors. *Nat'l Ass'n of Postal Supervisors*, 602 F.2d at 435.

In addition, the Postal Service's determination to establish the differential at 5%, does not fall short of the statutory requirements, which, as noted above, "leave the precise differential to the discretion of the agency." *Nat'l Ass'n of Postal Supervisors*, 602 F.2d at 433. Given the financial circumstances of the Postal Service, its substantial benefits premium, and the virtual absence of turnover in supervisory ranks, the differential satisfies the "adequate and reasonable" requirement.

In fact, the record reflects that the majority of NAPS-represented employees actually make more than the SDA minimum. Only 23% of NAPS-represented employees in positions eligible for the SDA make the SDA minimum; the rest earn higher base salaries, creating an even greater differential between the rate of pay of bargaining unit employees and supervisors. *See* Joint Ex. 1 (An Overview of EAS Compensation) at 3-4. In addition, Postal Service wage data reflects that the average total cash compensation of managers and supervisors exceeds that of bargaining unit employees, in part because of the Postal Service's creation of a "special-exempt" status for front-line supervisors in EAS Grades 18 and below. *See* PS Exs. I2 (Average and Median Cash Compensation); A11 (Non-bargaining Special Exempt Position Titles). These special-exempt employees are eligible for additional pay at the straight time rate if authorized to work over 8.5 hours on a scheduled day, or if requested to work any hours on a non-scheduled day. Tr. Day 1 at 95-96 (Wagner); Tr. Day 2 at 142-44 (Park): PS Ex. A5 (Excerpts from the ELM, Subchapters 410, 430, and 440) at 165 (Section 434.143). Factoring in these payments, in 2018, the average Level 17 Supervisor Customer Service (one of NAPS' most populated job categories) took home $77,740 in total cash compensation, while the average city letter carrier at the top step of the carrier salary schedule (i.e., the most senior group) took home $71,535, and the most senior APWU clerks took home $69,379 on average. Tr. Day 2 at 283-84 (Nicholson); PS Ex. I2.

Ultimately, the Postal Service has broad discretion to set the supervisory differential. *See Nat'l Ass'n of Postal Supervisors*, 602 F.2d at 435 ("Some factors, like the differential requirement, may at times conflict with others, like the comparability standard. But it is for the Postal Service and the Postal Service alone to resolve those conflicts."). The law does not contemplate a precise salary differential; it does not mandate that management personnel receive increases as much as or more than bargaining unit employees; and it does not hold the Postal Service to a particular formula for computing the salary differential. *Id.* at 433; *see also* 39 U.S.C. §1004(a). The Postal Service's existing SDA calculation is thus consistent with the statute.

E. The PFP Program, Including the Postal Service's Proposed Matrices and Composite Weights, Reflects the Importance of a Well-Motivated Workforce and Should be Maintained

The Postal Service's proposed pay decision for NAPS-represented employees maintains the Pay-for-Performance (PFP) program: it continues the existing PFP matrix for FY2018, introduces a new matrix for FY2019, and maintains the existing composite weights that ultimately determine an individual's PFP score (60% corporate, 40% unit).

See PS Ex. A18 at 2-3; Tr. Day 2 at 88-89, 91 (Chambers). The Pay-for-Performance ("PFP") system is the sole source of annual salary increases and lump sum payments for career non-bargaining unit employees. Tr. at 84 (Wagner). PFP is a performance-based system that ties pay increases to success at the organizational and unit (i.e., local) levels, consistent with the Postal Service's mandate to establish and maintain a program "that reflects the essential importance of a well-trained and well-motivated force to improve the effectiveness of postal operations." 39 U.S.C. §1004(a); *see also* Tr. Day 2 at 87-90 (Chambers).

The 2012 factfinding panel reached the conclusion that the Postal Service's PFP is "an innovative model pay-for-performance program that contributes to improved performance of the Postal Service and provides appropriate and equitable means for measuring performance and compensating NAPS members." PS Ex. A3 at 8. The Postal Service has, and continues to, devote substantial time and resources to fashioning a variable pay model to incentivize its management ranks, foster accountability, align organizational goals, and provide an objective and standardized methodology to identify, track, and report operational and functional performance. *See* Tr. Day 2 at 87-90 (Chambers).

The National Performance Assessment (NPA) establishes, based upon the input of multiple stakeholders, including NAPS, annual targets for a host of Corporate and Field performance "indicators." Tr. Day 2 at 87-88 (Chambers). Those indicators are widely communicated to all employees, and can be tracked easily by supervisory and managerial personnel over the course of the evaluation cycle. Tr. Day 2 at 89 (Chambers). The weighting of the indicators, 60% Corporate and 40% Field, was originally established in consultation with NAPS as part of the PFP work group established in the wake of the 2012 factfinding report. *See* Tr. Day 1 at 114 (Wagner); PS Ex. A3 at 8. Based upon the Postal Service's performance against these indicators, a total organizational composite score is computed at the end of the year, and pay increases for NAPS members are determined in accordance with a pay matrix that, for FY 2018, provides for increases ranging from 0.0-8.0%. *See* Tr. Day 2 at 88, 99-100 (Chambers); PS Exs. A18 at 2; E1 at 4, 13, 15. Employees who are "capped out" in their pay bands, receive all or part of the increase in the form of lump sum payments, rather than increases to their salaries. Tr. Day 2 at 99 (Chambers). Because 40% of the composite score is based upon localized Field performance indicators, different geographic units can and do receive higher composite scores, and, consequently, higher or lower pay increases. Tr. Day 2 at 100-101 (Chambers); PS Ex. E1 at 14.

For FY 2018, approximately 62% of Field EAS employees are expected to receive a PFP increase in 2019, the vast majority ranging in amounts between 2.0-2.5%.[12] Tr. Day 2 at 101 (Chambers); PS Ex. E1 at 15. From 2007-2010, the average PFP increases ranged from approximately 3-5%. *See* PS Ex. E1 at 11; NAPS Ex. 4 at 1. During the government-wide pay freeze in 2011 and 2012, no PFP increases were awarded. PS Ex. E1 at 11. In 2013, the Postal Service granted an across the board general

[12] By contrast, the President has issued an executive order freezing (non-postal) federal employee pay for 2019. *See* https://www.washingtonpost.com/politics/2018/12/29/trump-orders-pay-freeze-federal-workers/?utm_term=.97a919d74854. Even if Congress overrules that executive order, the proposed increase in the most recent House bill is capped at 1.9%. *See* https://docs.house.gov/billsthisweek/20190107/BILLS-116hrPIH-fsggApprops.pdf.

increase of 1%. *Id.* Since then, average PFP increases have ranged from approximately 1.4-2.8%. *Id.*

The Postal Service's Pay-for-Performance (PFP) system, consistent with the requirements of section 1004(a), reflects a good-faith effort to recognize the importance of a well-motivated workforce and to improve the effectiveness of postal operations. *See* Tr. Day 2 at 97-98 (Chambers) ("The goal of NPA and the transparency in all of these measurements is to drive continuous improvement . . . we should meet these standards, we should meet these targets."). The system appropriately ties pay increases to the performance of the Postal Service measured against objective metrics identified by the Executive Leadership Team with input from NAPS and other stakeholders. Tr. Day 2 at 87-88 (Chambers); PS Ex. E1 at 4-6. The pay increases awarded postal supervisory, managerial, and executive personnel, have, in fact, tracked the performance of the Postal Service against these metrics. *See* PS Ex. E1 at 4, 11.[13] Although NAPS presented anecdotal evidence of supervisory dissatisfaction with PFP, the undisputed evidence shows that the Postal Service remains an employer of choice and continues to attract and retain EAS employees at rates superior to either the private or federal sector. *See* Tr. Day 2 at 155-57 (Park); PS Ex. F1 at 13-16. Consequently, the PFP program, and the Postal Service's proposed matrices for the program, are consistent with the statute.

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[13] Despite NAPS' attempts to suggest otherwise, Postal executive salary increases are based on PFP, just like the increases of Field EAS employees. Tr. Day 2 at 61-62 (Nickerson) ("We're all graded on the same scale. It's essentially the same system for executive and non-executive employees, so on average if EAS employees got a 2% increase, executives also get a 2% increase.").

F. The Postal Service's Pay Decision is Measured and Responsible in Light of Its Financial Situation and Should be Upheld

The Postal Service is insolvent and has experienced twelve consecutive years of net losses, with a cumulative loss of $69 billion dating back to FY 2006. Tr. Day 2 at 20-21 (Nickerson); PS Ex. C1 at 13-14. The Postal Service's poor financial condition is primarily attributable to a massive and permanent decline in mail volume—a decline of 31% since 2007. Tr. Day 2 at 4 (Nickerson); PS Ex. C1 at 3. The Postal Service has sought to cut costs throughout the organization, including achieving billions of dollars of economic concessions from its unions that include two-tiered salary structures, the ability to hire a non-career workforce with substantially lower pay and benefits, reductions in the employer contribution to health care, modest wage increases, and additional operational flexibility. *See* Tr. Day 2 at 12, 59-60 (Nickerson); PS Ex. C2 (Form 10K, Annual Report of the U.S. Postal Service (2018)) at 29. Despite these efforts, the Postal Service's financial situation is not projected to improve in the near future due to a number of challenges, both economic and structural. *See* Tr. Day 2 at 32, 37-38 (Nickerson) (projected net loss of $6.6 billion in 2019); PS Ex. C1 at 16-17, 21-22, 30-31. The bottom line is that "the Postal Service needs to continue to make efforts to grow revenues, but we also need to continue to do what we can to restrain costs and keep them in line." Tr. Day 2 at 38 (Nickerson).

It was against this financial backdrop that the Postal Service made its pay decision for Field EAS supervisors and managers, understanding its responsibility to "control costs and manage the . . . agency in a manner consistent with its views of what is the economical and efficient thing to do." *Nat'l Ass'n of Postal Supervisors*, 602 F.2d at 432. The Postal Service sought to address its managerial associations' concerns, while producing a pay package that was fiscally responsible. *See* Tr. Day 2 at 289-90 (Nicholson). Although UPMA (the postmasters' association), expressed similar concerns as NAPS during pay consultations, UPMA ultimately accepted a nearly identical pay package as the one proposed to NAPS—a strong indication that the pay decision is both reasonable and fair to EAS employees. *Id.*; *see also* PS Ex. A19.

IV. CONCLUSION

The pay and benefits package proposed for NAPS-represented employees in this round of consultations is consistent with the requirements of the PRA. For that reason, the Postal Service asks that the panel make a recommendation to that effect and adopt the recommendations and findings attached to this post-hearing brief.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing brief was served by electronic mail on January 15, 2019, on:

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