

NATIONAL ARBITRATION
BEFORE IMPARTIAL ARBITRATOR STEPHEN B. GOLDBERG

In the Matter of Arbitration)

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between)

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UNITED STATES POSTAL SERVICE)

Case No. Q10C-4Q-C 14011344

)

Sales Retention Team

and)

)

AMERICAN POSTAL WORKERS)

UNION, AFL-CIO)

)

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Mark A. Lippelman, Labor Counsel; Brian M. Reimer, Labor Counsel; James Lloyd, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Darryl J. Anderson, Attorney (O'Donnell, Schwartz & Anderson, PC)

Place of Hearing: United States Postal Service, 475 L'Enfant Plaza, SW, Washington, D.C.

Hearing Dates: June 30 – July 1, 2016

Date of Award: December 8, 2016

Relevant Contract Provisions: Articles 1.5 and 37.3.A.1. MOU on New Positions and New Work; MOU on Temporary Assignment, Reassignment or Reemployment in APWU Represented Crafts of Employees Injured On the Job

Contract Year: 2010-2015

Type of Grievance: Contract Interpretation

SUMMARY OF AWARD

The Postal Service violated the 2010 Agreement by failing to assign newly-created Sales Retention Team positions to the clerk craft.



Stephen B. Goldberg, Arbitrator

December 8, 2016

I. SUMMARY OF RELEVANT EVIDENCE

A. Undisputed Facts

On October 19, 2012, the Postal Service notified APWU, as well as all other craft unions and management associations, that it intended to pilot test a sales team concept in St. Petersburg, Florida. The pilot was to test a variety of sales and marketing related duties, including contacting customers for follow-up after a sale, customer retention, and telesales upselling. According to the Postal Service notice, the “Sales Solution Team”, was to be composed of EAS personnel and craft employees on the Office of Workers Compensation Programs (OWCP) periodic rolls. In fact, all members of the Sales Solution Team were bargaining unit employees on the OWCP rolls: seven city carriers, seven rural carriers, two clerks, and two mail handlers.

By subsequent letters dated June 27, 2013, July 16, 2013, October 4, 2013, November 21, 2013, and January 31, 2014, the Postal Service advised the Union that the pilot test (renamed the Sales Retention Team (SRT)) was being expanded to eleven additional sites. As of August 2015, there were 372 SRT employees, all of whom were on the OWCP rolls, working at 12 Postal Service sites. Included among these employees were 206 city carriers, 49 rural carriers, 38 mail handlers, 75 employees in crafts represented by APWU, and 4 EAS employees.

On November 3, 2013, the Union initiated a national dispute challenging the Postal Service failure to assign SRT jobs to the clerk craft and to post those jobs for clerk craft bidding.

B. Postal Service Evidence

The relevant Postal Service evidence consisted of the testimony of Cliff Rucker, Postal Service Vice President of Sales, and exhibits introduced as part of Mr. Rucker’s testimony.

According to Mr. Rucker, who designed the SRT program in 2012, the program was intended to fill a gap in the Postal Service’s dealing with its customers. Prior to 2012, Mr. Rucker testified, the Postal Service did not know why some customers were reducing their spending with the Postal Service or

ceasing to do business altogether with the Postal Service. “We had it at the very top level”, Mr. Rucker testified, “but we were never really able to get it down to the account level”.

In an effort to improve its customer retention rate, the Postal Service constructed an analytic model, composed of approximately 1,800 variables, which was designed to predict which Postal Service customers were likely to reduce or eliminate their Postal Service spending. The function of the sales retention team was to telephone those customers, and, based on a customized script developed from the analytic model, to talk to them about their likely concerns and needs, and how the Postal Service could meet those needs.

The SRT concept, Mr. Rucker testified, was to “use somebody in a call center environment type thing, not a call center, but . . . a call center environment that . . . can maybe touch way more customers a day than my direct sales force can [do] as they drive around. It’s just a much more efficient model”.

Another goal of the SRT, Mr. Rucker testified, was to bring injured employees off the OWCP roles and provide them with productive employment. This goal was suggested to him by Postmaster General Pat Donahoe in a conversation that took place some time in 2012. Mr. Donahoe asked him “to see if there was a way that we could bring [in] employees who we were paying to sit at home, and bring them into some type of environment where we could use them to grow revenue, retain revenue, or get some insight on why customers were leaving us”.

According to Mr. Rucker, bringing injured employees back to work is the primary purpose of the SRT program, and he would not have created the SRT program if it did not provide work for injured employees. Furthermore, he testified, he was uncertain whether the Postal Service would continue the SRT program if it ceased to provide work for injured employees. Mr. Rucker stated, “It would have to be the right business decision and the right return on investment . . .”

The work performed by SRT employees was characterized by Mr. Rucker as “proactive sales retention”. This work consisted, according to a document provided by the Postal Service to the Union in September 2013, of the following activities.

Sales Solutions Teams Work Activities

Customer Facing Support

- Make pro-active phone calls to customers to sell basic postal products (e.g. domestic package products and Every Door Direct Mail)
 - Promote new packaging products
 - Walk customers through EDDM website
- Guide customers how to find pertinent items on USPS.com----e.g. Click N Ship, order packaging supplies, track a package, find a zip code
- Make pro-active retention phone calls to customers after a sale is made to ensure quality service is occurring
- Coordinate service support for pertinent customers if required
- Transfer high potential opportunities to field Sales as appropriate
- Document daily activities via computer
- Small Business awareness/support for Intelligent Mail Barcode/Small Business

Non-Customer Facing Support (examples)

- Mystery Calls to Stations to improve CEM
- Single Package Look-up
 - Investigate complaints that were directed to Consumer Affairs Office
- Mail follow up cards to customers who had an eCC case (Card is asking for feedback on resolving customer's issue) eCustoms follow up (employee would call Post Office and identify reason for eCustom failure then provide the correct procedure to ensure future success).

Other Postal Service employees who perform proactive sales retention work, Mr. Rucker testified, are the approximately 800 EAS sales and account management employees under his direction. An example of such an employee,

according to Mr. Rucker, is the Field Account Representative (EAS – 18), whose Job Description provides:

FUNCTIONAL PURPOSE:

Provides proactive customer support to a portfolio of assigned medium-sized business customers to achieve revenue retention goals and identifies sales leads.

DUTIES AND RESPONSIBILITIES:

1. Fosters effective relationships with assigned business customers by learning about their mailing and shipping needs and working to ensure they are achieved through onsite customer visits, phone calls and email communications.
2. Provides support and assistance to assigned customers as needed to achieve revenue retention goals.
3. Maintains awareness of common issues across customers to identify systematic issues within the geographic area or similar portfolios.
4. Coordinates with other internal departments and stakeholders to provide support to assigned customers to retain revenue.
5. Interacts with customers to uncover potential sales opportunities. Identifies sales leads and notifies Sales representative as appropriate.
6. Establishes and maintains understanding of customer strategies, business needs and environment in relation to shipping and mailing needs to retain and generate revenue.

7. Maintains sales and retention activities, account information, marketplace and industry information, competitive information, etc., within the customer relationship management system.

The Postal Service also introduced into evidence the Job Descriptions of other EAS employees in the Sales Department. Among these were Business Service Network Representative (EAS-16) and Senior Field Account Representative (EAS-19). Their Job Descriptions are:

**BUSINESS SERVICE NETWORK REPRESENTATIVE
(EAS-16) OCCUPATION CODE: 2370-0298**

FUNCTIONAL PURPOSE:

Resolves service issues for large business customers and proactively identifies areas of concern to find solutions for customers before they contact us. Provides assistance to business customers on postal products, services and coordinates cross-functional teams for expert responses and corrective solutions. Monitors and evaluates customer satisfaction related to postal products and services; maintains customer profiles and database information. Probes and understands customer business needs. Identifies sources of revenue lead generation.

DUTIES AND RESPONSIBILITIES:

1. Provides high quality and prompt customer service, information, resolution to business customers via telephone, direct mail, email, and personal contact on classification, mailability, addressing, forwarding services, mail preparation, fees, special services, international mail, postal operations, and delivery. Coordinates customer interface with other District customer service employees when needed, ensures customer satisfaction.

2. Responds to business customer inquiries and documents service issues in approved computer application(s). Identifies appropriate postal departments to address service improvement opportunities and synchronizes efforts among operations, marketing, delivery, finance and other functional areas to ensure resolution. Provides feedback to internal stakeholders and customers.
3. Identifies opportunities based on knowledge of customer and probing, suggests appropriate postal programs, provides information and guidance, and coordinates with the Sales organization for follow-up.
4. Educates and drives customers on Postal applications to report and monitor service requests, ensures customers access appropriate computer applications, publications, brochures, and service information guides related to their requirements.
5. Coordinates corrective actions with business customers on mail preparation deficiencies identified by Postal Operations.
6. Transitions business customers for service support, including establishes contacts, understands business needs of customer, develops and maintains customer profiles using computer applications, and develops a service plan.
7. Uses information captured in Business Service Network computer applications and other postal reporting systems to identify system issues; reports them to the responsible management team in an effort to prevent loss of customer revenue.

8. Prepares information on service performance and improvement options for presentation to internal and external customers.

9. Communications orally and in writing at a level sufficient to maintain professional relationships with customers, provides technical and nontechnical guidance and recommendations to customers.

**SR FIELD ACCOUNT REPRESENTATIVE
(EAS-19) OCCUPATION CODE: 2370-0563**

FUNCTIONAL PURPOSE:

Provides proactive assistance and coordination to a portfolio of assigned medium-sized business customers who are at high risk to decrease their use of Postal products in order to achieve revenue retention goals and identifies sales leads.

DUTIES AND RESPONSIBILITIES:

1. Fosters effective relationships with assigned business customers through providing support and assistance to new customers with large retention opportunities by conducting onsite customer visits, phone calls and email communications.
2. Supports the growth and transition of new business customers into Business Service Network (BSN) customers while ensuring revenue retention.
3. Facilitates the overall onboarding of a potential BSN customer by providing support to customers from the close of sale, integration of technical systems, achievement of revenue goals onto the becoming a BSN supported account.

4. Identifies issues within assigned region that are affecting one or multiple customers. Coordinates with other internal departments and stakeholders to provide support to assigned customers to retain revenue.
5. Interacts with customers to uncover potential sales opportunities. Identifies sales leads and notifies Sales as appropriate.
6. Establishes and maintains understanding of customer strategies, business needs and the environment in relation to shipping and mailing needs to retain and generate revenue.
7. Establishes and maintains understanding of customer strategies, business needs and the environment in relations to shipping and mailing needs to retain and generate revenue.

Subsequent to its initial focus on sales retention, the SRT program expanded to include following up on customer leads generated by craft employees through the “Customer Care” program. Pursuant to this program, a craft employee may turn in a “lead” – the name of an actual or potential customer who might begin or increase its business with the Postal Service. Such a lead can be submitted to the Postal Service by clicking on the *Submit a Lead* link on the Postal Service Lite Blue website. Alternatively, the lead can be turned into a supervisor or, in the clerk craft, to a lead clerk. Then, according to Mr. Rucker, “depending on how it goes”, the lead is transferred to the Sales Department or to the Sales Retention Team. In the latter situation, an employee on the Sales Retention Team telephones the lead and, using whatever information has been turned in by the craft employee, ask a series of questions designed to determine if the lead is worth pursuing by a member of the EAS sales team. In the words of Mr. Rucker:

[T]hey gather a bunch of information and they take that data and they pass it on to my sales person who now has

a pre-qualified lead. If the lead doesn't turn out . . . the SRT side doesn't move it forward. . . The lead does not get pushed on to a sales person.

So what happened in the past is that all of these leads would go to the sales group, and then I would have my sales guys . . . calling on the phone asking people are you interested, and then getting to this point. [Using] the SRT side as an opportunity to pre-qualify, and use the better resources in the sales organization for face to face calls.

Another function added to the initial SRT role is Strategic Service Support. This SRT function was added, according to Mr. Rucker, when Nordstrom, a large, nation-wide department store, advised the Postal Service that it was dissatisfied with the level of service its customers were receiving from Postal Service call centers. In response, the Postal Service developed "white glove service" for Nordstrom customers, pursuant to which their telephone questions or complaints do not go to a call center. Instead, these calls go to an SRT site at which there are SRT employees trained to respond to the concerns of Nordstrom customers. A similar program with Best Buy, which is planned to cover every Best Buy store in the U.S., is in the pilot stage.

The sales retention program appears to have been a financial success. According to Mr. Rucker's July 2016 Linked In profile, it has resulted in "retention of over 30x more revenue to date since the program was initiated in FY 2012." According to the Linked In profile of Stephen Kearney, who served as Postal Service manager of customer retention from December 2012 to January 2014, the sales retention program has "surpassed \$1 billion in retained revenue, validated by the Finance Department". The figures submitted by the Postal Service to the Union on June 27, 2016, are more modest. They state the retained revenue amount to be \$97.2 million, and the cost saving of returning injured employees to work through the sales retention program to be approximately \$32 million, with an average of approximately \$10 million per year in savings going forward.

According to Mr. Rucker, the work of SRT employees is quite different from that of clerk craft employees working in Postal Service call centers as Tier 1 or Tier 2 Customer Care Agents. Admittedly, both clerks and SRT employees talk to

customers on the telephone, and both input information onto a computer that they collect from the customer. Additionally, SRT employees work in a call center environment that is not wholly different from a call center. The core difference between the clerk in a call center and the SRT employee, Mr. Rucker testified, is that the work of the SRT employee is proactive, while that of the call center clerk is reactive. The call center clerk does not initiate contact with the customer, but responds to customer calls. Even the Tier 2 Customer Care Agent, who may telephone a customer to deal with an issue that the Tier 1 Customer Care Agent did not resolve, is not initiating contact with the customer, but responding to the customer's initial call.

According to Mr. Rucker, bargaining unit employees have never performed proactive sales retention work. The only employees who do proactive sales retention work are in his EAS sales force or on the Sales Retention Teams.

C. APWU Evidence

The relevant APWU evidence consisted of the testimony of witnesses Linda Moss and Lorinda Miller, as well as various exhibits, mostly introduced during their testimony.¹

1. Linda Moss

Ms. Moss has been employed by the Postal Service at the Coppell, Texas, SRT site since October 2015. She testified that prior to beginning work as an SRT employee, she, as well as the other 11 SRT employees who were hired at the same time, received three days of SRT training. The training consisted of tutorials, videos, and mock telephone calls using the Genesys telephone system, which is the same telephone system used by call center employees.

Subsequently, she and the other SRT employees at the Coppell site were assigned to work on various "campaigns", each lasting approximately three

¹ The Union presented extensive testimony from Assistant Clerk Craft Director Lamont Brooks. The bulk of Mr. Brooks' testimony was that the Postal Service had assured him that all work involved in following up leads would be assigned to clerk craft employees. Contrary testimony was presented by Mr. Rucker and by Rickey Dean, Postal Service Acting Manager of Contract Administration. I have concluded that a determination of whether the Postal Service provided Mr. Brooks with the assurances about which he testified is unnecessary to reaching a decision in this case. Accordingly, none of the evidence related to that issue is set out.

months. Most of this work, she testified, consisted of telephoning small business customers to encourage them to consider the Postal Service for their shipping needs. Other work consisted of soliciting customer feedback to determine if the Postal Service was meeting their business needs. In addition to making telephone calls, the employees were inputting on a computer the information collected during those calls. Each SRT employee was expected to make 60 telephone calls per day.

Ms. Moss also testified that subsequent to their initial three-day training on sales retention work, she and her fellow SRT employees were trained for one week by Postal Service supervisors on use of the Franklin System. This system, which is also used by call center employees, provides the employee with prompts to enable the employee to answer customer questions thoroughly and accurately. The SRT employees were told by the trainers that the purpose of providing them with Franklin System training was to enable them to assist call center employees to deal with the increased volume of customer calls during the 2015 Christmas rush. According to Ms. Moss, when she and her fellow SRT employees were doing call center work, there would typically be an interval of eight seconds between finishing one call and receiving another. They performed call center work, using the Franklin system, for approximately six months.²

2. Lorinda Miller

Lorinda Miller is a Tier 2 customer care agent at the Troy, Michigan, call center. She worked previously as a Tier 1 agent, using the Genesys phone system to answer incoming calls from customers, and the Franklin system to assist her in responding to those calls. Her work as a Tier 2 agent is similar to that of a Tier 1 agent. In addition, however, as a Tier 2 agent she also initiates calls to customers whose questions or complaints were not fully dealt with by the Tier 1 agent with whom the customer originally spoke.

Prior to beginning work as a Tier 1 customer care agent, Ms. Miller received three weeks of Postal Service training. This training consisted of two weeks of

² In May 2014, the Postal Service notified the Union that SRT employees at the Dallas and San Francisco SRT sites would be assigned to “assume Customer Care responsibilities”, performing work normally performed by clerk craft employees at call centers. This assignment was anticipated by the Postal Service to continue through the October 3 end of the 2014 fiscal year. The Union protested this assignment on the ground that it constituted a cross-craft assignment of work in violation of Article 7, and advised the Postal Service that it would include the alleged Article 7 violation as part of the instant dispute.

classroom training, followed by three days of receiving and responding to mock phone calls.

II. DISCUSSION

A. Article 1.5

The Union asserts that the Postal Service violated the Agreement by assigning clerk craft bargaining unit positions and work to employees on the OWCP rolls, rather than to clerks. This assertion rests principally on Article 1.5 of the Agreement, which provides (bold face language was newly added to the Agreement in 2010):

Section 5. New Positions

- A. Each newly created or revised position which contains non-managerial and non-supervisory duties shall be assigned by the Employer to the national craft unit most appropriate for such position within thirty (30) days after its creation or revision. In addition, the Employer shall identify all new non-managerial and non-supervisory work and assign such work at the national level to the national craft unit most appropriate for performance of such work within thirty (30) days of having done so.** Before such assignment of each new **or revised** position **or non-managerial and non-supervisory work**, the Employer shall consult with the Union signatory to this Agreement for the purpose of assigning the new **or revised** position **or non-managerial and non-supervisory work** to the national craft unit most appropriate for such position.

According to the Union, SRT employees are occupying newly created positions which contain the non-managerial and non-supervisory work of telephoning Postal Service customers and prospective customers. This work is not meaningfully different from that performed by clerks in Postal service call centers. Hence, this is clerk craft work and clerk craft positions, and by not assigning this work and these positions to the clerk craft, the Postal Service violated Article 1.5.

Additionally, the Postal Service violated the last sentence of Article 1.5 by not consulting with the Union before assigning the new positions and work.

According to the Postal Service, SRT work differs fundamentally from work performed by bargaining unit clerks in Postal Service call centers. The work of bargaining unit clerks in call centers is entirely reactive. They do not initiate calls to customers, they respond to calls from customers. Even the Tier 2 clerk who follows up on a customer call is acting in a reactive fashion – reacting to the customer’s initial call that was not fully dealt with by the Tier 1 employee who received the call. Differently from clerk craft employees, SRT employees perform their sales retention and lead follow-up work in a proactive fashion. Hence, there is a fundamental difference between the work of SRT employees and that of bargaining unit clerks in a call center. Indeed, the Postal Service asserts, the work of an SRT employee is more like that of an EAS Sales Department employee than that of bargaining unit clerk.

The assertions of the Postal Service regarding clerk work and SRT work are factually accurate, but it does not follow that SRT work and positions should not be assigned to bargaining unit clerks. Apart from the fact that clerks in call centers answer customer calls, while SRT employees initiate customer calls, they do essentially the same work – talking on the telephone to customers and inputting data on computers. Additionally, they work in similar environments – clerks work in call centers, SRT employees work in a “call center environment”. (Although Mr. Rucker attempted to draw a distinction between the two in his testimony, the Postal Service introduced no evidence on how the work of employees in a “call center environment” differs from the work of employees in call centers.) Finally, both the SRT employee and the call center employee work under substantial time pressure – the SRT employee makes 60 scripted telephone calls per day; the call center employee receives a new call within eight seconds of completing the prior call.

The SRT position cannot be distinguished from the call center clerk position on the grounds that the work of the SRT employee is more complex. The Postal Service recruits SRT employees from all crafts, including letter carriers and mail handlers, neither of whom are likely to be experienced in contacting Postal Service customers for sales retention or lead follow-up. Nor do SRT employees receive more training than do call center employees. To the contrary, newly-

hired call center employees receive 13 days of training before they are placed on the job; newly-hired SRT employees receive only three days training. All things considered, there is no basis for regarding the SRT position as meaningfully different from the bargaining unit clerk position, regardless of the fact that SRT employees initiate telephone calls and clerks respond to phone calls.

The Postal Service argues, however, that the basis for analogizing SRT positions to those of EAS employees in the Sales Department, rather than to clerk craft employees in a call center, lies in history. Proactive sales retention work, according to the Postal Service, has always been assigned to EAS sales employees, not bargaining unit clerks. It is not “new” work, as that term is used in Article 1.5, but work historically performed by employees on the EAS sales team.

In support of this assertion, the Postal Service introduced position descriptions for some of the EAS positions in the Sales Department. Among these were Field Account Representative (EAS-18), Business Service Network Representative (EAS-16), and Senior Field Account Representative (EAS-19).

The Postal Service relies on these position descriptions to demonstrate that proactive customer retention work has historically been a part of many Sales Department positions. On the other hand, none of the sales positions cited by the Postal Service consists entirely of making telephone calls aimed at retaining customers. For example, the Business Service Network Representative (EAS-16) has duties and responsibilities that include (1) personal contact with customers [and] coordinating customer interface with other District customer service employees; (6) understanding the business needs of customers; and (9) communicating orally and in writing at a level sufficient to maintain professional relationships with customers.³ The Field Account Representative (EAS-18) is responsible for (1) making onsite customer visits; (3) maintaining awareness of common issues across customers to identify systemic issues within the geographic area or similar portfolios; and (6) establishing and maintaining understanding of customer strategies, business needs, and the environment. . Finally, the Senior Field Account Representative (EAS 19), (1) conducts onsite customer visits; (4) identifies issues within an assigned region that are affecting one or multiple

³ The numbers inside the parentheses coincide with the numbered paragraphs in each of the Sales Department position descriptions set out on pages 7-11.

customers; and (6) establishes and maintains understanding of customer strategies, environment, and the environment.

In sum, there is no evidence of Sales Department positions that are limited to making telephone calls for sales retention or lead qualification purposes. Each of the EAS employees in these Sales Department positions may make such calls, but they also have duties and responsibilities that are far more extensive and complex than the duties and responsibilities of SRT employees. For example, employees in each of the Sales Department positions cited by the Postal Service are responsible for personal contact with customers, including on-site customer visits; personal visits are not among the duties of SRT employees. Furthermore, each of the Sales Department positions is responsible for understanding the customer's business needs and strategies; these are not among the duties of the SRT employees. Finally, both the Field Account Representative and the Senior Field Account Representative are responsible for identifying issues that affect multiple customers in a region;⁴ these are not among the duties and responsibilities of any SRT employees.

What the Postal Service has done by developing the SRT concept is to pull out from the EAS Sales Department positions most, if not all, of the sales retention and lead generation telephone calls that are the least productive work performed by them. It has created a new position which consists solely of making such calls. In doing so, it has freed EAS Sales Department members to do more skilled and more productive work. As a result, and much to Mr. Rucker's credit, customer retention profits have increased significantly.

The greater efficiency and profitability of having an employee group outside the Sales Department which is dedicated to making sales retention and lead qualification phone calls does not, however, detract from the fact that the positions in that group are new positions which contain non-managerial and non-supervisory duties. To be sure, the work of making sales retention and lead qualification telephone calls which had previously been made by EAS Sales Department personnel is not "new" work within the meaning of Article 1.5. However, the consolidation of this work into a new position which performs solely

⁴ It is unclear whether or not this is among the duties and responsibilities of the Business Service Network Representative.

that work has resulted in a “newly created. . . position which contains non-managerial and non-supervisory duties”. Accordingly, the Postal Service was required by Article 1.5 to assign that position to the national craft unit most appropriate for such position within 30 days of its creation.

There can be little doubt that the national craft most appropriate for the newly created SRT position of making sales retention and lead qualification telephone calls to customers and potential customers is the clerk craft. As previously discussed, the work performed by employees in the SRT positions is similar to that performed by clerk craft employees in call centers, and is performed under similar conditions. Furthermore, there is no evidence that employees in other national crafts – city letter carriers, rural carriers, or mail handlers - perform similar work. As the Union pointed out (Brief, p. 34):

[T]he “Functional Purpose” of City Carrier and Rural Carrier positions is to case, deliver, and collect mail. Similarly, the “Functional Purpose” of Mail Handler positions is to load, unload, and move bulk mail, and to perform other duties incidental to the movement and processing of mail. Thus, neither letter carriers nor mail handlers provide a logical craft for the assignment of SRT work. . . . [T]his is clerk work, pure and simple.

The Postal Service not only failed to assign SRT positions to the clerk craft, it also failed to post those positions for bidding by clerk craft employees. Hence, the Postal Service violated not only Article 1.5 of the Agreement, but also Article 37.3.A.1, which provides that “All newly established Clerk Craft duty assignments shall be posted to craft employees eligible to bid within 28 days.”⁵ Additionally, though of little significance in the context of this case, the Postal Service violated the last sentence of Article 5.1 and the MOU on New Positions and New Work by failing to consult with the Union prior to assigning the SRT positions to OWCP employees.⁶

⁵ The fact that some clerk craft employees on the OWCP rolls were assigned to SRT positions does not mitigate the Postal Service violation of Article 37.3.A.1 since the clerk craft employees involved did not receive their assignments through the Article 37 bidding process.

⁶ The Union also relied on the Postal Service assignments of SRT employees to respond to the telephone questions and complaints of Nordstrom customers, and to assume Customer Care responsibilities during the 2015 Christmas rush, as further evidence that SRT employees were performing clerk work. In view of my conclusion that the core

**B. The 2012 MOU on Temporary
Assignment, Reassignment or
Reemployment in APWU Represented
Crafts of Employees Injured on the Job**

At the hearing, the Postal Service, in addition to arguing that it did not violate Article 5.1 by assigning SRT work to injured employees on the OWCP rolls, also asserted that Article 5.1 was not relevant because the Postal Service had a statutory and ELM obligation to provide work to provide work to injured employees. This argument is set out in the Postal Service brief (p. 20):

It is well established that the Federal Employees Compensation Act (“FECA”), 5 U.S.C. Section 8101 *et seq.*, does not merely require the Postal Service to compensate employees who were injured on the job; it also requires the Postal Service to provide work that injured employees can perform within their medical restrictions, when possible. As Arbitrator Shyam Das summarized, in his 1985 decision in Case No. H1C-4K-C 17373, National Arbitrator Mittenthal pointed out:

Part 540 of the ELM . . . requires the Postal Service to make “every effort” toward placing an injured employee on “limited duty” consistent with his work limitations. Management must make that “effort” even though no “request” has been submitted by the employee and even though no “light duty assignments” have been negotiated by the parties.

In the Matter of Arbitration between United States Postal Service and American Postal Workers Union and National Association of Letter Carriers (Intervenor), Case No. E90C-4E-C 95076238 (Das, Arbitrator, October 31, 2002).

Subsequent to Arbitrator Das’ 2002 decision, however, the Postal Service and the Union agreed to an MOU that overturned both Arbitrator Das’ decision

of the SRT program – assigning sales retention and lead qualification telephone calls to employees outside the clerk craft – violated Article 1.5, it is unnecessary for me to consider the Union’s reliance on the additional SRT work described above, and I do not do so.

and the decision of Arbitrator Mittenthal on which Arbitrator Das had relied. That MOU provides, in relevant part:

RE: Temporary Assignment, Reassignment or Reemployment in APWU Represented Crafts of Employees injured On the Job

The parties agree that, consistent with the parties' current collective bargaining agreement on the application of seniority, future temporary assignments, reassignments, or reemployment of fully or partially recovered employees to work in APWU represented crafts will be to residual vacancies or to uniquely created assignments consisting of duties that would otherwise be properly performed by non-career employees.⁷

The Postal Service does not here challenge its obligation to comply with the 2012 MOU. But, it asserts, (Brief, p. 21):

. . . [I]n this case, the Postal Service took non-bargaining unit work previously performed by its EAS sales force, and included that work in assignments specifically created to comply with the Agency's legal obligations under FECA. Neither the APWU nor any other unions have any right to complain about non-bargaining unit work being performed by employees on the OWCP rolls.

I have found, however, that the SRT assignments created by the Postal Service constituted "newly created positions" within the meaning of Article 1.5. Hence, they were bargaining unit positions that should have been assigned to the clerk craft and posted for bid under Article 37.3.A.1. Accordingly, the Postal Service violated the 2012 MOU by assigning the SRT positions to injured employees on the OWCP rolls.

⁷ On March 11, 2011, a draft version of this MOU, which had not yet been executed by the parties, was submitted by the Postal Service and the Union to the Office of the General Counsel (OGC) of the U.S. Department of Justice for review. The parties agreed that if the OGC found the draft MOU to be in violation of federal law dealing with the reemployment rights of federal employees injured on the job, they would not execute the draft MOU. On March 19, 2012, the OGC found the MOU to be in compliance with the Rehabilitation Act of 1973, which requires that all U.S. Government Executive Agencies, including the Postal Service, to reasonably accommodate disabled employees. The MOU was executed on September 10, 2012.

The Postal Service also argues that even if it violated the 2012 MOU, there is no basis for a back pay award. For, according to the Postal Service (Brief, p. 21):

The SRT program would not have been created but for the Postal Services's obligations under FECA. Therefore no APWU-represented employee lost any income they would have otherwise received. In addition, Article 1.5 of the various National Agreements provides the procedures for the Postal Service and its unions to follow before the Postal Service can assign work to a craft. Work associated with the SRT program cannot be assigned to a craft at this point because the Postal Service has not begun that Article 1.5 process.

Neither of these arguments is persuasive. As for the argument that the SRT program would not have been created but for the Postal Services's obligations under FECA, the Postal Service was mistaken as to its obligations under FECA. The 2012 MOU establishes that assignments of injured employees on the OWCP rolls can be only to residual vacancies or to uniquely created assignments consisting of duties that would otherwise be properly performed by non-career employees. Neither of these provisions for assignments of injured employees apply to newly created vacancies that fall within the clerk craft, as I have found to be true of SRT positions. The 2012 MOU was approved by the Justice Department on March 19, 2012, and executed by the Postal Service and the Union on September 10, 2012, both of which preceded the October 2012 notification by the Postal Service of the initial SRT site. Hence, the Postal Service may not contend that its misinterpretation of its obligations under FECA were justified by a lack of knowledge of the 2012 MOU which clarified those obligations.

The Postal Service argument that back pay to APWU- represented employees may not be awarded because the Postal Service has not yet complied with its Article 1.5 obligation to consult with the Union prior to assigning a new position which contains non-managerial and non-supervisory duties is equally without merit. It can hardly be a defense to the Postal Service violation of Article 1.5 in assigning SRT positions to persons who were not clerk craft employees that the Postal Service also violated Article 1.5 by failing to consult with the Union prior to making those erroneous assignments. To accept the Postal Service argument on this point would be to allow it to escape an appropriate remedy for

violating one provision of the Agreement on the ground that it also violated another provision of the Agreement.

C. Is Article 1.5 Inapplicable to the Postal Service's Assignment of SRT Positions to Injured Employees on the OWCP Rolls Because the SRT Program Was a Pilot Program?

The Postal Service initially took the position that the SRT program could not be challenged by the Union because it was a pilot program, and that Article 1.5 is inapplicable to pilot programs. It asserted that it had a right under Article 3, the Management Rights provision of the Agreement, to create pilot programs, and that its right to do so, and to determine the duration of such programs, had been affirmed by prior arbitration decisions, particularly that of Arbitrator Ben Aaron in Case No. A8-NA-0371 (1980).

The Union took the opposite position, asserting that the 2010 amendments to Article 1.5 overruled Arbitrator Aaron's 1980 decision, and that "pilot" or "experimental" programs are not exempt from the Article 1.5 provision that all newly created positions must be assigned to the appropriate craft within 30 days of their creation. Hence, the Union argued, the Postal Service's defense that the SRT program could not be challenged in these proceedings should be rejected.

In its post-hearing brief, the Postal Service retreated from its initial position. It now asserts (Brief, p. 23):

[T]he term of a pilot program is inherently functional and unique to each program under consideration. The term of a pilot program should be the amount of time that is reasonably necessary for management to make a decision about the program's validity. That decision necessarily depends upon unique facts regarding the particular program involved, considering the particular factors relevant to evaluating the program's operational effectiveness.

The Postal Service conceded that "under the unique facts of this individual case, evaluation of the SRT program continued for a period beyond what was necessary". Stated otherwise, the Postal Service no longer defends the SRT program from scrutiny on the grounds that it is a pilot program.

The Union requests, however, that the Arbitrator rule upon – and reject - the Postal Service’s initial argument that pilot programs do not fall within the limitations of Article 1.5. It states (Brief, p. 62):

The parties disagree on this point, and the Postal Service cannot avoid a decision simply by conceding the point for this case. There is an active dispute about the meaning of the National Agreement that is of general application, and the APWU respectfully requests that it be decided.

I am unwilling to accede to the Union’s request. Because the Postal Service no longer asserts that the SRT program is exempt from the requirements of Article 1.5, there is no active dispute in this case about the applicability of Article 1.5 to pilot programs. There may be some cases in which an Arbitrator, in the interest of expediency, will find it appropriate to rule on a question of contract interpretation that is unnecessary to resolve the case before him/her, but this is not such a case. The question of the applicability of Article 1.5 to a pilot program is an important one, and I do not believe that it has been sufficiently explored in these proceedings to warrant a ruling upon it at this time.

III. AWARD

The Union asks, as an appropriate remedy for the violation of the Agreement, that the Arbitrator issue an order directing that the Postal Service:

- Cease and desist from the violations of the National Agreement found in this case;
- Assign SRT work to Clerk craft employees;
- Post SRT work assignments for bid by clerks without delay;
- Compensate the Clerk craft bargaining unit for lost wages at appropriate rates due to these violations, measured by the work hours of employees doing SRT work since 30 days after October 12, 2012; and

- Pay interest on compensation to be provided by the remedial order in this case beginning 30 days after October 12, 2012.

This case involves a substantial Postal Service initiative that has been in effect for over five years and that has been financially successful. I have concluded that the Postal Service has violated the Agreement in staffing the SRT program, and, consistent with that conclusion, grant the first three Union requests. I am, however, unwilling to determine an appropriate financial remedy for this violation without first providing the parties with the opportunity to discuss and perhaps resolve that question.

Accordingly, my Award is limited to ordering the Postal Service to (1) cease and desist from the violations of the National Agreement found in this case; (2) assign SRT positions to clerk craft employees; (3) post SRT work assignments for bid by clerks without delay.

Additionally, I order the case remanded to the parties for a period of 60 days from the date of this Award in order that they may seek agreement on an appropriate financial remedy for the violations of the Agreement here found to have occurred. At the conclusion of those 60 days, either party may request the Arbitrator to resolve the remedy question, and the Arbitrator will do so, following such procedure as he may determine appropriate.



Stephen B. Goldberg, Arbitrator

December 8, 2016