


## American Postal Workers Union, AFL-CIO

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1300 L Street, NW, Washington, DC 20005

**To:** Local and State Presidents  
Regional Coordinators  
National Business Agents  
National Advocates  
Resident Officers

**Fr:** Greg Bell, Director   
Industrial Relations

**Date:** June 1, 2010

**Re:** Decision of Federal District Court on Address Management System Work

Enclosed you will find a copy of a recent decision of the U.S. District Court for the District of Columbia regarding the enforceability of a 2003 award by Arbitrator Snow in which he ruled that it is a violation of the National Agreement to exclude the Address Management System Specialist (AMS) position, and the disputed work, from the APWU bargaining unit. (*Q94C-4Q-C 98117564, 4/29/2003*).

The court rejected APWU's request for an order enforcing the award's finding that the AMS Specialists' work falls within the APWU bargaining unit, and instead ruled that the award was unenforceable. (*Civil Action 04-01404 (HHK), 5/24/2010*) The APWU will be appealing this ruling.

A short summary of this case's history is as follows. In 2008, the U.S. Court of Appeals for the D.C. Circuit reversed a prior decision of D.C.'s lower federal court in which the judge ruled that Snow's award only reached the issue of placement of the AMS position and not whether the work should be assigned to bargaining unit employees. (It should be noted that after Snow's award was issued, management filed a petition with the NLRB to overturn the Snow Award. To avoid further delay, the APWU agreed to clarify that the AMS Specialist position was excluded from the bargaining unit, and the Board issued that clarification. The Union thereafter pursued enforcement of the Snow Award which found that the work performed by AMS employees was bargaining unit work.) In its decision, the federal appeals court found that the arbitrator clearly determined that excluding "the work" that AMS Specialists perform from the bargaining unit violated the USPS-APWU Agreement. The court then remanded the case to the district court for a ruling on whether that finding was enforceable. The appeals court indicated that "[i]t is not immediately apparent whether the transfer of AMS Specialist duties to the bargaining unit would be an unlawful accretion [addition] under [National Labor Relations] Board precedent." (*550 F3d 27, 12/23/2008*)

On remand, the District Court noted first of all that the parties do not dispute the NLRB's determination that the AMS Specialist position "is outside the bargaining unit." Then, after reviewing several NLRB decisions with different outcomes to determine whether transfer of the work of AMS Specialists into the APWU bargaining unit is permissible under Board precedent, the court relied on two decisions in reaching a conclusion that "because the Board has determined that the AMS Specialist position is outside the bargaining unit, the arbitrator's finding that the work of AMS Specialists is within it is in 'explicit conflict' with 'legal precedents.'"

In reaching this conclusion, the court rejected APWU's argument that another NLRB decision specifically supported finding that placement of the work in the APWU bargaining unit did not amount to "an unlawful accretion [addition] in violation of the National Labor Relations Act." The District Court held that the Union's goal was to subject AMS employees to the terms of the National Agreement, which constituted an accretion. The court was wrong as a factual matter – the APWU never sought to include AMS employees in the APWU unit, but rather recover the work for the Clerk Craft. The court misapplied the NLRB precedents it cited to support its ruling. The APWU will be filing an appeal with the Court of Appeals for the D.C. Circuit.

Enclosure

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN POSTAL WORKERS  
UNION, AFL-CIO,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Civil Action 04-01404 (HHK)

MEMORANDUM OPINION

This case is before the Court on remand from a decision of the D.C. Circuit. *Am. Postal Workers Union v. U.S. Postal Serv.*, 550 F.3d 27 (D.C. Cir. 2008). Before the Court is the question of whether a particular finding in an award resulting from arbitration between the American Postal Workers Union (“Union”) and the United States Postal Service (“USPS”) is enforceable. *See id.* at 32. The parties have fully briefed the question. Upon consideration of the briefs and the record of this case, the Court concludes that the finding is unenforceable and summary judgment should be entered in favor of USPS.

I.

The facts of this case are set out in a previous opinion of this Court, *Am. Postal Workers Union v. U.S. Postal Serv.*, 422 F. Supp. 2d 240, 242-45 (D.D.C. 2006), and in the Circuit Court’s opinion, *Am. Postal Workers Union*, 550 F.3d at 28-30. The remaining issue concerns the Address Management System (“AMS”) Specialist position, a job within the USPS that has not been held by members of the Union, as well as the work AMS Specialists perform.

The Circuit Court determined that an arbitrator's award found that both the AMS Specialist position *and* the work AMS Specialists do were within the Union's bargaining unit. *Id.* at 30-31.<sup>1</sup> The National Labor Relations Board ("Board"), however, has determined that the AMS Specialist position is outside the bargaining unit, and the parties do not dispute that, consequently, the portion of the arbitration award finding otherwise is unenforceable. *Cf. Carey v. Westinghouse Elec. Corp.*, 375 U.S. 261, 272 (1964) ("Should the Board disagree with arbiter, by ruling, for example, that the employees involved in the controversy are members of one bargaining unit or another, the Board's ruling would, of course, take precedence."). This Court is now charged with determining whether the finding that the work performed by AMS Specialists is within the bargaining unit is enforceable. *Am. Postal Workers Union*, 550 F.3d at 32.

## II.

An arbitration award is unenforceable if it "is in 'explicit conflict' with 'other laws and legal precedents.'" *Am. Postal Workers Union*, 550 F.3d at 32 (quoting *United Paperworks Int'l Union v. Misco, Inc.*, 484 U.S. 29, 43 (1987)). In remanding this case, the Circuit Court noted that "[i]t is not immediately apparent whether the transfer of AMS Specialist duties to the bargaining unit would be an unlawful accretion under Board precedent," and cited two Board opinions relevant to the question: *Kaiser Foundation Hospital*, 343 N.L.R.B. 57 (2004), and *Lockheed Martin Tactical Aircraft Systems*, 331 N.L.R.B. 1407 (2000). *Id.*

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<sup>1</sup> Specifically, the portion of the arbitration award the Circuit Court interpreted states that "the 'Address Management System Specialist' *position* is a part of the [Union] bargaining unit *and* that it is a violation of Article 1.2 of the [Collective Bargaining Agreement] to exclude the position and the *disputed work* from the bargaining unit." *Am. Postal Workers Union*, 550 F.3d at 30 (emphasis and first alteration in original) (internal quotation mark omitted).

The Union argues that this case is more like *Lockheed Martin*, in which the Board held that the transfer of certain employees into a bargaining unit following a determination that their work was within that unit was not an unlawful accretion in violation of the National Labor Relations Act (“Act”), 29 U.S.C. §§ 151-69. *Lockheed Martin*, 2000 WL 1283044, at \*1-3. USPS argues this case is more like *Kaiser Foundation Hospital*, in which the Board held that movement of a class of employees into a bargaining unit did violate the Act. *Kaiser Found. Hosp.*, 343 N.L.R.B. at 57-58. The Court agrees with USPS.

The facts of this case are similar to those in *Kaiser Foundation Hospital* and different from those in *Lockheed Martin* in the same two “critical respects” in which the Board distinguished *Lockheed Martin* in making its ruling in *Kaiser Foundation Hospital*. *Id.* at 57. First, the Board noted that in *Lockheed Martin*, there was no suggestion that the union was adding an “historically excluded classification” to the bargaining unit, whereas in *Kaiser Foundation Hospital*, there was such a suggestion. *Id.* at 57-58. Like in *Kaiser Foundation Hospital*, in the case before this Court, the Union has not disputed USPS’s assertion that the AMS Specialist position has historically been excluded from the bargaining unit. Second, the *Kaiser Foundation Hospital* opinion noted that in *Lockheed Martin*, the employees in question were transferred into the relevant bargaining unit based on individual assessments of their job responsibilities, whereas in *Kaiser Foundation Hospital*, the employees were transferred as a group with no such individualized consideration. *Id.* at 58. Here, the arbitrator’s award defines the work he found to be within the bargaining unit as the work of AMS Specialists, not as particular tasks AMS Specialists may or may not currently perform. Based on these similarities to *Kaiser Foundation Hospital*, the Court concludes that the Union’s enforcement of the portion

of the arbitrator's award regarding the work of AMS Specialists would constitute an unlawful accretion to the bargaining unit.

Moreover, USPS has pointed to a case that further undercuts the Union's insistence that the arbitrator's finding relates to work responsibilities and therefore is not in conflict with the Board's conclusion as to a job classification. Although the Union is correct that the two can be distinct, *see Carey*, 375 U.S. at 263 (noting that a dispute can be "a controversy as to whether certain work should be performed by workers in one bargaining unit or those in another; or . . . a controversy as to which union should represent the employees doing particular work"), the Board previously has rejected a union's argument that a dispute about all of the work of a particular class of employees is not a question of whether that class is within a bargaining unit, *see Chauffeurs, Teamsters & Helpers Local 776*, 305 N.L.R.B. 832, 833-34. The Board held in *Chauffeurs, Teamsters & Helpers Local 776* that in attempting to transfer the work of a group of employees into the bargaining unit where those employees' positions were outside the bargaining unit, the union was unlawfully "seeking to apply its collective-bargaining agreement to employees whom the Board [had] already determined to be outside the bargaining unit." *Id.* at 834, 835.

Applying the reasoning of *Kaiser Foundation Hospital* and *Chauffeurs, Teamsters & Helpers Local 776* here, the Court can only conclude that because the Board has determined that the AMS Specialist position is outside the bargaining unit, the arbitrator's finding that the work of AMS Specialists is within it is in "explicit conflict" with "legal precedents." *Am. Postal Workers Union*, 550 F.3d at 32 (quoting *United Paperworks Int'l Union*, 484 U.S. at 43) (internal quotation marks omitted). Accordingly, the award is unenforceable and USPS is entitled to summary judgment.

**III.**

For the foregoing reasons, USPS's motion for summary judgment [#53] shall be granted.

An appropriate order accompanies this memorandum opinion.

Henry H. Kennedy, Jr.  
United States District Judge