

National Arbitration and Case Update January 2018

With 2017 behind us I first want to wish you all a Happy New Year. I hope you share some great times with your families and friends. 2017 was a successful year for national cases. Not because we were successful in every case that was heard in arbitration but because a good amount of cases was heard, decisions rendered, and if not arbitrated settlements and agreements reached. We delivered to our members and all those we represent closure and movement on some of the issues that they face.

Recently Issued Decisions

Subcontracting of APPS Installation (Q00T-4Q-C 06175320)—On November 7, 2017 Arbitrator Goldberg denied this case. He agreed with the Service’s argument that there was a consistent past practice of the newly-manufactured equipment mail processing equipment and therefore installation of newly-designed equipment was not bargaining unit work. He also ruled that the Service did not violate Article 32.1.A or 32.1.B. More information and a copy of the complete decision can be found on the APWU website.

Violation of Global Remedy Settlement Agreement (End of Day) (Q10C-4Q-C 16050516)—On December 8, 2017, Arbitrator Das found that the “End of Day” button--a function the Postal Service added into the Retail System Software (RSS) point-of-sale system allowing postmasters to enter and exit the system without fully closing out – did not satisfy the requirement in the Global Settlement Remedy Agreement that postmasters are allowed to perform bargaining unit work for only 15 hours per week, to be counted from the start to the “end of day.” Arbitrator Das ordered that the Service cease and use of this End of Day button unless the APWU agrees to permit its continued use. He also ordered that the Service enact appropriate software changes to disable the button as soon as practicable. Additional information and a copy of the decision can be found on the website.

To Recap:

SPSS Jurisdictional Procedural Issues—late in 2016 Arbitrator Sharnoff ruled that the Service had the right to change a jurisdictional decision they had previously made on this machine. Currently the work remains with the Clerk Craft as the jurisdictional issues were not ruled upon. The status quo will remain in effect until the merits of the case are heard or a tripartite agreement is reached on the staffing of the SPSS machine.

VER Severance Pay Case (Q06C-4Q-C 08268987)—Arbitrator Das denied the Severance Pay cases for employees who accepted *Voluntary Early Retirements* (VER) from 2003-2009 in January 2017.

SEAM Cas (Q10C-4Q-V 13265789, Q10V-4Q-C 13184778)—Denied by Arbitrator Goldberg on February 3, 2017.

Clerk Craft Jobs MOU (Q10C-4Q-C 15174956)—In April 2017 Arbitrator Goldberg awarded 362 administrative and technical duty assignments to be posted and filled in the Clerk Craft. He

also ordered remedy all the way down to the employees affected by the “ripple effect” of the filling of these new jobs.

Use of Administrative Leave to Attend Political Caucuses (Q11N-4Q-C 16398841)—The case filed by the NALC resolved a dispute that the NALC, APWU, and the NPMHU had with the Service because they denied employees administrative leave to participate in political caucuses where voting for presidential candidates took place. In June 2017 Arbitrator Das ruled that these events do fall under the ELM provisions that allow paid administrative leave for voting. A MOU was also signed by the parties solidifying the ability to use this type of leave for political caucuses.

POSTplan Office Custodial Staffing Case (Q10T-4Q-C 15206030)—In June 2017 Arbitrator Goldberg ruled that POSTplan office clusters are installations as defined by Article 38.2.B and that the Service must use the custodial staffing formula outlined in the *Subcontracting Cleaning Services MOU*.

MVS Schedule Examiner Vehicle Runs Case (Q10V-4Q-C 15292655)—Arbitrator Das ruled in June 2017 that this case was not arbitrable as the APWU and the USPS did not have an interpretive dispute of the general application over the assignment of the Schedule Examiner work. Specifically, the Service stated the work is bargaining unit work. Locals should contact the MVS department to determine how any local cases should be handled.

204b Usage Case (Q10C-4Q-C 14054054)—Arbitrator Das denied this grievance in July of 2017 and ruled that absences of supervisors/manages due to leave were not the only kind of “absences” that could be covered (like a supervisor detailed to cover a manager’s job). It is worth noting that no other 204b issues were addressed or modified by this decision.

POSTplan MOU Staffing Case (Q10C-4Q-C 15206043)—In June 2017 ordered the Service “to make whole all employees who have been denied Clerk Craft work as a result of the Postal Service’s failure to comply in a timely fashion with the POSTplan MOU” where they did not replace PMRs or 81-8 PSEs with career employees by the agreed upon date. Remedy is still being finalized by the parties.

MPI-LAN Case (Q00C-4Q-C 04003182)—Arbitrator Das denied this case in August 2017. This was a maintenance subcontracting case that was denied because the contracting out of the Mail Processing Infrastructure-Local Area Network installation by a contractor did not have “significant impact” on the bargaining unit.

Sales Retention Team (SRT) Case and Remedy (Q10C-4Q-C 14011344)—this ongoing case was originally decided in December 2016. Arbitrator Goldberg awarded the work to the Clerk Craft. In April 2017 the parties presented the remedy portion of their case. In September 2017 he ruled in an interim award that additional information was needed to determine the applicability of Article 7.2 and that he was going to allow the USPS to present evidence as to when remedy should start. The hearing for that portion of this case is scheduled for January 16-17, 2018.

MS-1 Case (Q10T-4Q-C 14171644, 16481407)—Arbitrator Das ruled in September 2017 that the Service’s change to the MS-1 manual did not violate Articles 19 or 34 and granted the Service additional discretion to transfer work in the stations and branches to the FMO. The arbitrator then remanded a portion of the case dealing with the Article 19 issues surrounding preventative maintenance time allowances, frequencies, space adjustments, and miscellaneous work time allowances back to the parties for discussion.

NLRB Case on Postal Regulations on Recording, Photographing, or Videotaping on Postal Property (NLRB 18-CA-142795)—An Administrative Law Judge (ALJ) for the NLRB ruled that the USPS’s regulations on this issue are “overly broad” and a violation of the NLRA. Currently the USPS is appealing this ruling through the courts. Recently, the National Labor Relations Board heard *The Boeing Co., 365 NLRB No. 154 (2017)*. This case was the case law cited by the ALJ when he ruled in our favor in 2017. However, the Board in a 3-2 decision recently overturned the *Boeing Co.* case. The Board was recently filled with Trump appointees who heard the case. It should be quite obvious by now that the Trump Administration does not view worker rights as important as management rights. The *Boeing Co.* decision makes this clear because the majority Trump Appointee Board ruled that alleged business justifications outweigh the rights of workers under Article 7 of the National Labor Relations Act. The decision applied retroactively and therefore we believe our case will be remanded back to the ALJ where he will be required to apply the Trump Board’s decision. We expect the original decision to be reversed and the USPS policy on photos and video taping to be upheld. Another blow to working men and women who believe President Trump and his administration supports and cares for them. Please note that until the appeal procedure is completed and the current regulations must be considered as in effect.

Also during the year multiple settlements and agreements were reached. The various crafts and departments worked hard to reach these agreements. All settlements can be found on our website or requested through the various departments.

MVS reached settlements in the following cases:

- Q10V-4Q-C 16466169 Deployment of Scanners to Postal Vehicle Services (PVS) Drivers**
- Q00C-4Q-C 021154783 MVO/TTO Qualification Standards Case**
- Q10V-4Q-C 16106897 PSE Salary Exception Issues**
- Q00V-4Q-C 05171465 MVS Driver Instructor Examiner Position Case**
- Q15V-4Q-C 16974121 Changes to MVS bidding procedures**
- Q10V-4Q-C 16481354 Creation of Transportation Dispatch Coordinator (P7-07)**

The Clerk Craft reached settlements in the following cases:

- Q15C-4Q-C 17013062 Probationary Clerks: Clerks on Probation when July 2016 Q and A was Signed**
- Q10C-4Q-C 16064139 RMPO Status Counting Toward Lead Clerk Staffing**
- Q15C-4Q-C 17300101POSTPlan Office Clerk Craft Uniform Allowance**

Maintenance reached agreements in the following cases:

Q15T-4Q-C 17274095 Custodial Hours Line H Case

Q15T-4Q-C 17340479 & 17340522 MMO 152-16 NST Leave and Overtime Authorization Policy
(a subsequent LMOU for NSTs was also signed)

Also, as noted earlier a MOU was signed by the parties involving **Q11N-4Q-C 16398841 Administrative Leave for Political Caucuses**. The APWU case number Q15T-4Q-C 17287884 was settled with the MOU solidifying the usage of Administrative leave for Political Caucuses for the 19 states that hold these caucuses.

Cases Awaiting Decisions

MMO-057-12 MOS Clerk Staffing (Q10T-4Q-C 13332310)—this case was heard October 25-26, 2017 and involves the staffing of Maintenance Operations Support Clerks (MOS Clerks). MMO-057-12 is a staffing procedure that determines how many MOS Clerks were to be established in each unit based on the number of other maintenance employees the MOS Clerks would support. Even though it is apparent that the MOS Clerks perform tasks in support of maintenance administration (i.e. the maintenance managers and supervisors) the Postal Service has taken the position that these EAS employees should not be counted towards the MOS Clerk staffing. If we prevail we could add a substantial number of bargaining unit positions in the Maintenance Craft. Briefs are due in December 2017.

Usage of the Workforce Benefits Fund (Q10C-4Q-C 15215794)—this case was heard November 15-16, 2017. This fund was established in the 2010-2015 Collective Bargaining Agreement. The monies in this fund were to be used to pay for PSE health benefits—namely the employer share of PSE health insurance. After the fund had been used for this purpose it could be spent for other items. It is our position that before this money could be spent the Service had to meet with the Union, discuss how to use the remaining funds, and reach agreement on that usage. In this case, the Service unilaterally spent the money without APWU input and agreement for startup costs for the Call Centers. We are seeking the funds used improperly and without the consent of the APWU be returned to the fund. Briefs are due in January 2018.

Recent Settlements

MVS Driver Instructor Examiner Position Case (Q00V-4Q-C 05171465)—this case was earlier scheduled for arbitration in March 2017 and then again for December 2017. The dispute was over the level of the Driver Safety Instructor (DSI) that the Service classified as a Level-7 position. The agreement signed on November 22, 2017 calls for a 1-level upgrade of the position and lump sum payments of \$5000 (if an employee was placed into DSI position between 2007 and 2012) and \$2500 (if an employee was placed into DSI position between 2013 and 2017).

Changes to the MVS Craft Bidding Procedures (Q15V-4Q-C 16974121)—this case involved the alleged attempt by the Service to change the MVS Craft bidding procedures and adapt practices similar to those found in Article 37.3 of the Clerk Craft. The parties agreed on November 27, 2017

there were no changes and the current MVS Craft bidding procedures as outlined in Article 39 are still in place.

Establishment of Transportation Dispatch Coordinator Position (Q10V-4Q-C 16481354)—this case involved the establishment of the position based on the Motor Vehicle Craft Jobs MOU from the 2010-2015 CBA. However, in Arbitrator Goldberg’s Interest Arbitration Decision and Award that settled the terms of the 2015-2018 CBA Sections 1, 3, and 4 of the MOU were terminated. The parties agreed on November 27, 2017 that the position is not being created at this time.

Cases Scheduled to be Heard

Sales Retention Team (SRT) Case and Remedy (Q10C-4Q-C 14011344)—as mentioned earlier this ongoing case will have additional hearing days on January 16-17, 2018.

Intervention into NPMHU Article 12 Severance Pay for Involuntary Reassignment (J11M-1J-C 14310985, E11M-1E-C 14375279)—the APWU is intervening in a case regarding severance pay for employees who chose to not accept an offer of reassignment outside the commuting area. The NPMHU argues that employees who receive notice they are to be involuntarily reassigned or excessed out of their installation and outside of their commuting area, and who decide they cannot accept their new assignment, are entitled to receive severance pay in accordance with ELM 435.1. This case is scheduled for February 9, 2018 before Arbitrator Das.

POSTplan MOU Staffing Case—PMR Remedy Case (Q10C-4Q-C 15206043)—This is the remedy portion of this case. This case will be heard on February 13-14, 2018 before Arbitrator Goldberg. In his original decision he wrote, “The matter is remanded to the parties in order that they may determine the number of hours to which Clerk Craft employees are entitled, as well as the appropriate payment to each affected employee. This determination is to take place at the National level, except to the extent the parties agree to utilize local resources and personnel to assist them.” Because agreement could not be reached the parties are seeking the arbitrator to determine what remedy will be.

It has been a busy and successful year for all departments and division. We look forward to another successful and busy year in 2018. As we continue to schedule cases for arbitration in 2018 we are also moving forward on preparations for contract negotiations. It will be an exciting year! I wish you all a wonderful Holiday Season and a Happy New Year!

Solidarity!