

NATIONAL ARBITRATION PANEL

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In the Matter of the Arbitration                          )  
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between    )  
    )  
UNITED STATES POSTAL SERVICE                        )    Case No. Q06R-4Q-C 10397613  
    )  
and    )  
    )  
NATIONAL RURAL LETTER                                )  
CARRIERS' ASSOCIATION                                )  
    )  
    )

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BEFORE: Shyam Das

APPEARANCES:

For the Postal Service: Brian M. Reimer, Esquire

For the NRLCA: Jean Marc Favreau, Esquire  
Michael J. Gan, Esquire

Place of Hearing: Washington, D.C.

Dates of Hearing: November 6, 2014

Award: August 20, 2015

Relevant Contract Provisions: Articles 5, 19 and Various MOUs

Contract Year: 2006-2010

Type of Grievance: Contract Interpretation

**Award Summary:**

The grievance is dismissed for lack of jurisdiction as set forth in  
the above Findings.

A handwritten signature in black ink, appearing to read "Shyam Das".

Shyam Das, Arbitrator

BACKGROUND

Q06R-4Q-C 10397613

The Postal Service agreed at arbitration that the following statement of the issue proposed by the NRLCA (Union) is a fair characterization of the issues raised by the Union in this Step 4 grievance filed on September 16, 2010:

Whether the Postal Service violated the USPS-NRLCA National Agreement - including Postal Service handbooks and manuals and the USPS/NRLCA/NALC Tripartite MOU and Guidelines - by converting or assigning deliveries pursuant to the 2008 USPS-NALC "Assignment of City Delivery" MOU.

The Postal Service insists, however, that as a national arbitrator under the NRLCA/Postal Service collective bargaining agreement I lack jurisdiction to decide the merits of this grievance. It seeks to have the arbitrability issue decided first, but did not request bifurcation in this particular case.

Craft jurisdictional disputes over whether city (NALC) or rural (NRLCA) carriers would deliver mail to particular delivery points historically were handled in the bilateral grievance procedures provided for in each union's respective collective bargaining agreement. Resolution of a dispute with one craft did not preclude the other craft from pursuing a grievance to achieve a different outcome. Many grievances remained unresolved. Following tripartite arbitration awards issued in 1994 by Arbitrators Mittenthal and Zumas and by Arbitrator Nolan in 1998 and 2001 the three parties entered into the following tripartite Memorandum of Understanding on May 9, 2003 (2003 MOU):

**Re: City v. Rural Delivery**

The parties recognize that there are a number of disputes pending at various steps of the grievance procedures regarding city v. rural delivery. Recently, the parties resolved case S1N-3P-C 41285 at the national level. That case dealt with the conversion of deliveries previously served by city letter carriers to rural delivery.

In an effort to resolve these and other work jurisdiction disputes between city and rural delivery, the parties have agreed to establish guidelines based on agreed upon principles. The parties also agree to establish a process to apply these guidelines to resolve the backlog of city/rural grievances and to significantly reduce, if not eliminate, future jurisdictional disputes regarding

city/rural delivery. The national parties will convene within (60) days to establish guidelines and a process to facilitate resolution of outstanding grievances. A report will be issued not later than six months from the date this memorandum is signed.

The task force will be comprised of two members from the NALC, two members from the NRLCA, and two members from the Postal Service. The Task Force will report to the NALC President, NRLCA President and the Postal Service Vice President, Labor Relations, or designees.

This agreement is made without precedent or prejudice to any parties' position, and may not be cited by any party in any forum, except for the enforcement of this memorandum.

A year later, on May 4, 2004, the three parties entered into a second MOU (2004 MOU) which set forth a process and guidelines developed by the National Joint City/Rural Task Force (Task Force) to review all outstanding city/rural issues in the grievance procedures.

The process set forth in the 2004 MOU included the following provisions:

UNITED STATES POSTAL SERVICE  
NATIONAL ASSOCIATION OF LETTER CARRIERS  
NATIONAL RURAL LETTER CARRIERS' ASSOCIATION  
NATIONAL JOINT CITY/RURAL TASK FORCE

CITY/RURAL PROCESS AGREEMENT

Pursuant to the attached Memorandum of Understanding dated May 9, 2003, the National Joint City/Rural Task Force has developed the following process and guidelines to review all outstanding city/rural issues in the grievance procedures:

- 1) The task force members will establish committees to review all outstanding city/rural cases....

\* \* \*

- 3) Decisions of the committee are final and binding on all parties, and will be forwarded to the task force members for processing at the national level. If necessary, the task force will establish a process to address unresolved issues, including tripartite arbitration for any interpretive issues.

The guidelines in the 2004 MOU addressed certain categories of claims:

1. Claims that rural delivery should be converted to city delivery because it has the characteristics of city carrier work.
2. Claims that established rural delivery was improperly converted to city delivery.
3. Claims that established city delivery was improperly converted to rural delivery.
4. Other jurisdictional boundary claims including assignment of new deliveries.

The guidelines for category 2 and category 4 claims state as follows:

2. *Claims that established rural delivery was improperly converted to city delivery:*

As cited in the case #H7N-NA-C-42 (Mittenthal and Zumas), management may consider conversion from rural to city delivery when any of the matters set forth in POM Section 611.321 are present, and management has a large measure of discretion on this subject. These provisions are now found in POM Section 654.21 as follows:

"The fact that a given area is fully developed and/or adjacent to city delivery service does not, of itself, constitute sufficient justification for conversion.

As a general rule, conversions from rural to city delivery shall be considered only for the following reasons:

- a. To provide relief for overburdened rural routes when all other alternatives are impractical.
- b. To establish clear-cut boundaries between rural and city delivery territory and eliminate overlapping and commingling of service.
- c. To provide adequate service to highly industrial areas or apartment house complexes on rural routes.

- d. To provide service to areas where city delivery service will be more cost effective.

Note: An area review is required when cost is the basis for conversion."

The POM Section 654.22 states:

"Areas considered for conversion from rural delivery service to city delivery service must:

- a. Meet all the requirements for extension of city delivery service (see 642).
- b. Be contiguous to existing city delivery service."

Section 654.23 provides other guidelines when considering conversion of rural delivery service.

Therefore, the parties agree that established rural delivery may be converted to city delivery pursuant to the appropriate provisions of the POM.

\* \* \*

**4. *Other jurisdictional boundary claims including assignment of new deliveries:***

The parties agree that the following factors should be considered and applied when relevant, to resolve jurisdictional/boundary disputes, including the assignment of new deliveries:

- a. Is there a boundary agreement that has been agreed to by all parties?
- b. Are there co-mingling and/or squaring off issues?
- c. Does the situation involve in-growth?
- d. Are delivery assignments consistent with POM regulations?

However, the parties at this time are unable to reach complete agreement on other jurisdictional boundary claims including assignment of new deliveries.

Arbitrator Nolan stated in case #S1N-3P-C-41285, "The Postal Service has broad discretion when assigning new deliveries, but that discretion is not unlimited." The parties are not in agreement regarding application of this cite to the assignment of new deliveries.

In case #H7N-NA-C-42, Arbitrators Mittenthal and Zumas accepted Arbitrator Garrett's concept in case #N-C-4120 that held that the jurisdiction of a craft "can only be found in established practice in each given Post Office in assigning work to one or the other of the craft bargaining units". Arbitrators Mittenthal and Zumas further state that they "accept this concept because, given the maturity that characterizes the collective bargaining relationships of these parties, the customary way of doing things is the most realistic guide to jurisdiction". The parties are not in agreement regarding application of this cite to the assignment of new deliveries.

While the parties are not in agreement regarding application of these cites to the assignment of new deliveries, the parties do agree that this does not preclude resolution of new delivery disputes involving these two issues on a case by case basis.

Following the 2004 MOU, tripartite committees established thereunder were able to resolve a great many of the pending claims, and were utilized as new disputes arose. To date, the Task Force has not established tripartite arbitration or other procedures to resolve disputes that the committees or Task Force have not been able to resolve.

On March 8, 2006, the Postal Service, NALC and NRLCA entered into another tripartite MOU, which provided as follows:

**Re: City v. Rural Delivery**

In an effort to facilitate the processing of future city/rural disputes, the parties agree that new disputes involving the assignment or conversion of city or rural deliveries will be handled in the following manner:

If a grievance concerning the assignment or conversion of city and/or rural deliveries is filed, the representatives at the initial step will complete the joint grievance form and document the file. If the parties propose to settle the grievance at Step 1 or Step 2

(USPS/NRLCA Agreement) or Step A (USPS/NALC Agreement) in a manner which would result in the reassignment of deliveries or the assignment of future deliveries, such settlement will require agreement by authorized representatives of the NALC, the NRLCA and the Postal Service. If the grievance is not settled, and appealed to Step B (USPS/NALC) or Step 3 (USPS/NRLCA), the representatives at that Step will:

\* \* \*

2. Prepare a written joint recommendation regarding their proposed adjudication of the grievance....
3. Forward the joint grievance file...to the appropriate union and management offices...for review and adjudication by the national city/rural committee.

The parties agree that nothing in this memorandum adds to or detracts from the management or union rights as found in their respective National Agreements. Any party to this memorandum may unilaterally end this procedure for handling jurisdictional disputes with 30 days notice to the other parties. Absent such action, this memorandum will expire one year from the date signed if its duration is not extended by agreement of the parties.

On March 23, 2007, the parties agreed to renew this MOU for another year. On April 29, 2008, they again renewed this MOU, but deleted the provision for the MOU to expire at the end of one year from the date of signing. Any party was still able to unilaterally end the procedure with 30 days' notice. The Postal Service exercised this option effective November 22, 2010 following the filing of the present NRLCA Step 4 grievance. (The 2006, 2007 and 2008 MOUs are collectively referred to herein as the "2006 MOU.")

On October 22, 2008, the Postal Service and the NALC entered into a bilateral MOU (2008 Assignment of City Delivery MOU) providing as follows:

Re: Assignment of City Delivery

\* \* \*

In offices with both city and rural delivery, new deliveries will be assigned in keeping with the following:

- Growth will be assigned in accordance with boundaries that have been established by agreement of the Postal Service, National Association of Letter Carriers, and National Rural Letter Carriers' Association.
- Absent such agreement, the city letter carrier craft will be assigned all new growth (i.e., new deliveries that are not in-growth on an existing route assigned to another form of delivery), subject to the following. The Postal Service may assign new growth to another form of delivery only if assigning the work to the city letter carrier craft would result in inefficiencies. In such case, the appropriate NALC National Business Agent must be provided notice. If the union disagrees with such assignment, the National Business Agent may directly refer the matter to a national-level task force. This task force will consist of two members appointed by the Postal Service Vice President, Labor Relations, and two members appointed by the President of the NALC. The task force will promptly determine whether assignment of such deliveries to the city letter carrier craft will result in inefficiencies.

\* \* \*

However, the duration of this agreement is also subject to the parties' implementation of the October 22, 2008 Memorandum of Understanding, Re: *Interim Alternate Route Adjustment Process....*

(Underlining added.)

The Postal Service asserts that this bilateral MOU applies to new deliveries which it has discretion to assign to city, rather than rural carriers, subject to the NRLCA's right to dispute such an assignment under the tripartite process. In its view, the Postal Service was giving up some of its discretion by agreeing to assign certain new deliveries to city carriers in return for the NALC's agreement to another MOU cited in the final paragraph quoted above, which facilitated adjustments to city deliveries in response to declining mail volume.

Postal Service Manager of Contract Administration Bill Daigneault (now retired) testified that the NRLCA was provided a copy of the 2008 Assignment of City Delivery MOU at a meeting on October 27, 2008, at which the Postal Service reviewed the MOU's provisions with

the NRLCA President and Vice President. Daigneault said he explained to them that the term "inefficiencies" was not defined in the MOU, but that the Postal Service and NALC had agreed that this would not be based on a cost comparison, but on application of a 12 boxes or more per mile density standard.

Joey Johnson, NRLCA Director of Labor Relations, testified that at a November 14, 2008 Task Force meeting the NRLCA was told that the 2008 Assignment of City Delivery MOU strictly applied to the assignment of new deliveries and that once assigned any issues would be resolved through the tripartite process in the 2004 MOU. Following that meeting, the NRLCA wrote to the Postal Service requesting a written explanation as to how it interpreted the word "inefficiencies" in the 2008 Assignment of City Delivery MOU. The NRLCA states it did not receive a reply.

Subsequently, Johnson related, his office started to hear from the field about conversions of deliveries that had been assigned to the rural craft to city delivery and received copies of documents signed by national-level NALC and Postal Service officials resolving cases by converting deliveries from rural delivery to city delivery. This was discussed at a Task Force meeting in May 2010, at which, according to Johnson, the NRLCA first heard the Postal Service's assertion that these were "corrections" of errors the Postal Service made in assigning deliveries under its MOU with the NALC, rather than conversions. Johnson said the NRLCA took issue with that -- insisting they constituted conversions -- and that Daigneault agreed that the conversions needed to stop and indicated there were only a handful of such cases. Daigneault testified that he pointed out that the corrections were based on a bilateral Postal Service-NALC task force determination, not a grievance settlement, but if the NRLCA wanted to take the position they were grievance settlements then the Postal Service could back out of the 2006 MOU. According to Daigneault, NALC president Fredric Rolando proposed that the Postal Service correct the assignments on its own -- not based on a Postal Service-NALC task force agreement. Daigneault said that was acceptable to the NRLCA, with the understanding it could dispute the Postal Service's action by going to the tripartite committee. Daigneault also explained that the need for corrections arose because postal management in the field evidently had been making assignments without knowing of the 12 boxes per mile standard agreed to by

the Postal Service and NALC until a Q & A document -- developed in consultation with the NALC -- was issued by Postal Service headquarters to the field in April 2010.

At a subsequent Task Force meeting on July 22, 2010, Johnson testified, the NRLCA again was assured that there were only a small number of cases, and the NRLCA agreed that if these conversions stopped they would handle the existing handful of cases through the tripartite 2004 MOU process and move forward.<sup>1</sup> It was at this meeting, according to Daigneault, that the Postal Service and NALC representatives agreed that resolving actual NALC grievances -- as opposed to entering into the task force level agreements that had resulted in the corrections -- was wrong under the 2006 MOU, and that to the extent that had happened it would be taken care of.

The next day, July 23, 2010, according to Johnson, Daigneault informed him that there might actually be as many as 300,000 affected deliveries. Daigneault testified that he learned that some 300,000 deliveries were being reviewed to see if the 12 boxes per mile standard properly had been applied, and therefore the number of deliveries that likely would have to be corrected would be more than what he originally thought. He does not believe he implied there were 300,000 deliveries at stake. To his knowledge, at the time he retired in August 2012, there were some 7,000 deliveries that had been determined to have been incorrectly assigned to rural carriers and possibly another 7,000 that might fall into that category.

The Union filed this Step 4 grievance on September 16, 2010. It also filed an Unfair Labor Practice (ULP) charge with the National Labor Relations Board (NLRB) on November 9, 2010. As amended, the charge alleged a violation of Section 8(a)(5) of the National Labor Relations Act, citing the Postal Service's failure and refusal to adhere to the tripartite procedures for resolving work jurisdiction disputes, as required under the 2006 MOU. The ULP charge subsequently was deferred to arbitration by the NLRB.

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<sup>1</sup> Then NRLCA President Don Cantriel testified that NALC President Rolando stated that if management thought it had made a mistake in assigning new deliveries to rural carriers, it was too late to change it and they would have to go through the tripartite process.

### POSTAL SERVICE POSITION

The Postal Service argues that the issues raised in this NRLCA grievance properly have been raised before the tripartite Task Force that includes the Postal Service, the NRLCA and the NALC. The Postal Service contends that this arbitrator, as a member of the NRLCA/Postal Service National Panel, does not have jurisdiction to interpret the tripartite MOUs or to order the Postal Service to change deliveries between city and rural delivery.

The Postal Service asserts that the NRLCA has asked the arbitrator to decide if the 2008 Assignment of City Delivery MOU, or its application, violated the 2003 and 2004 tripartite MOUs, which is in essence seeking an interpretation of those tripartite agreements.<sup>2</sup> According to the Postal Service, the NRLCA needs to ask the Task Force for an interpretation. It points out that, as former NRLCA President Gus Baffa testified, there are some 200 grievances that raise, or can raise, identical issues already at the Task Force. The Task Force can address these issues with all three parties present and can decide to appoint a committee, if need be, or to select an arbitrator to hear the case in tripartite arbitration.

The Postal Service stresses that the NRLCA's requested remedy -- an order that addresses served by city delivery change to rural delivery -- is under the jurisdiction of the tripartite process. The NRLCA also asks the arbitrator to confirm that only the tripartite MOUs and guidelines and the associated Postal rules and regulations be utilized when a dispute arises between the rural and city crafts related to the assignment of new deliveries or the conversion of deliveries. The Postal Service argues that this eliminates the 2008 Assignment of City Delivery MOU from consideration, and likely would result in most of the 14,000 deliveries at issue going back to rural delivery. Moreover, this remedy would moot the 200 grievances pending before the Task Force. The issue of whether or not the Postal Service violated the tripartite MOUs

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<sup>2</sup> The Postal Service points out that, while the NRLCA asserts that the tripartite MOUs are incorporated into the parties' National Agreement under Article 19, the NRLCA has not explained how Article 19 applies as those MOUs are not included in any postal handbooks, manuals or published regulations.

must be decided by the tripartite process. Therefore, this arbitrator should dismiss this grievance for lack of jurisdiction.

In the event the arbitrator determines that he does have jurisdiction over this matter, the Postal Service argues that it did not violate the tripartite MOUs because the 2008 Assignment of City Delivery MOU does not conflict with any of those earlier tripartite MOUs. The Postal Service stresses that the only new deliveries the NALC would receive under the bilateral MOU are those where the Postal Service already had discretion to decide between city delivery and rural delivery. The Postal Service points out that when the NRLCA initially learned about the 2008 Assignment of City Delivery MOU it did not grieve or question its legality. The present grievance, the Postal Service points out, does not cover initial assignments to city delivery under that MOU, only corrections the Postal Service later made to comply with the 2008 Assignment of City Delivery MOU. Even if the NRLCA is correct in stating that the 14,000 changes from rural delivery to city delivery did not meet the criteria for "conversions" under Postal handbooks and manuals, the Postal Service never processed them as such. It processed the 14,000 changes as corrections of its own mistakes. There is nothing in any manual or handbook that forbids the Postal Service from correcting an error.

The Postal Service notes that whether it changes delivery from rural to city or city to rural to correct a mistake it is taking a risk because the other union can grieve the decision and bring it to the Task Force or tripartite arbitration, just as it may with the original assignment. The Postal Service submits that, until a grievance is resolved in the tripartite process, it, as management, must have the authority to take what it thinks is a corrective action. Until a tripartite arbitrator rules to the contrary, the Postal Service's calculation of how to minimize its exposure should be honored. The Postal Service also asserts that there has been no irreparable harm to the rural delivery bargaining unit. Manager Daigneault testified that the Postal Service eventually looked at 300,000 deliveries and that 7,000 were corrected to city delivery before he retired and that another 7,000 corrections were possible.<sup>3</sup>

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<sup>3</sup> The Postal Service provided a calculation showing that 14,000 deliveries is roughly the equivalent of 28 rural routes, whereas there are over 70,000 rural routes in the country. Moreover, it stresses that in every fiscal year from 1997 to 2014 the overall percentage of

Finally, the Postal Service argues that the NRLCA's claims that are based on signed USPS/NALC agreements to reassign deliveries from rural to city craft employees were untimely. Those agreements were signed between November 2009 and January 2010, and were discussed in May 2010 by all three parties at a Task Force meeting. The NRLCA did not file this grievance until September 16, 2010, which is outside of the 14-day time period provided under the USPS/NRLCA grievance procedure. Furthermore, for those NRLCA claims that were timely, they all date from after the Postal Service's November 2010 termination of the 2006 MOU. Absent that MOU, the Postal Service was free to settle grievances with either union. Indeed, it has reached at least five such agreements with the NRLCA whereby deliveries that the Postal Service incorrectly assigned to city delivery were corrected and assigned to rural delivery. The Postal Service points out that the NRLCA has not claimed that these settlements violated the 2003 and 2004 tripartite MOUs, and it should not be heard to say that the USPS and NALC violated those same MOUs in the agreements they reached.

Most importantly, the Postal Service contends, the NRLCA will suffer no harm if this grievance is dismissed because the tripartite committee can hear all of its claims, and take action if appropriate.

#### NRLCA POSITION

The NRLCA argues that the Postal Service has violated the National Agreement, the NLRA, and the negotiated 2003 and 2004 tripartite MOUs. Article 5 of the National Agreement and the NLRA require the Postal Service to comply with its negotiated agreements with the NRLCA. Since the Postal Service compensates rural letter carriers based upon an evaluated system that determines carriers' salaries by measuring and counting numerous factors on each rural route—including number of delivery points—any Postal Service action that changes the number of deliveries on rural routes clearly impacts rural letter carrier wages, hours, and working conditions. The Postal Service recognized this fact as well as its legal and

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deliveries provided by rural delivery has increased and the percentage of deliveries provided by city delivery has decreased.

contractual obligations when it negotiated the tripartite agreements with the NRLCA and NALC to jointly develop a process for addressing disputes concerning the assignment and conversion of deliveries. However, the NRLCA asserts that the Postal Service later ignored these obligations by going outside the tripartite process to develop a side-deal with the NALC that instituted rules that affect the assignment and conversion of delivery points, as well as the process for addressing disputes over those actions.

The tripartite process developed and implemented in 2003 and 2004 dictates how the parties must resolve all city-rural jurisdictional disputes. Moreover, the 2004 MOU required the tripartite task force to establish committees with representatives from each party and gave those committees the authority to review and investigate jurisdictional disputes and to issue final and binding decisions based on established guidelines. Per the MOUs, unresolved issues may be addressed through tripartite arbitration. The NRLCA points out that despite the provision for tripartite arbitration and hundreds of pending unresolved cases, tripartite arbitration has never occurred because the NALC has refused to select an arbitrator.

The NRLCA asserts that the guidelines establish explicit rules that the Task Force must apply when one craft claims that the Postal Service improperly converted or assigned delivery. Guidelines 1-3 specifically deal with conversions—when the Postal Service assigns delivery to one craft and subsequently reassigns it to the other. Guideline 4 addresses the assignment of new deliveries. Each guideline requires that assignments and conversions must be consistent with Postal handbooks and regulations, such as the POM, and prior national arbitration awards. Article 19 of the National Agreement incorporates these provisions into the National Agreement and provides that the Postal Service may not enter into any agreements or implement any regulations that conflict with the National Agreement. Although, as the guidelines indicate, the parties may not agree on the degree of discretion that the Postal Service may exercise in assigning new deliveries, they do agree that such disputes must go through the tripartite process and that the committees should consider four unambiguous questions when assigning new deliveries:

- a. Is there a boundary agreement that has been agreed to by all three parties?

- b. Are there commingling and/or squaring off issues?
- c. Does the situation involve in-growth?
- d. Are delivery assignments consistent with POM regulations?

The parties also have specific criteria to apply when the NRLCA challenges the Postal Service's decision to convert deliveries from rural to city. The Postal Service may consider such conversions only for one of four enumerated reasons, and conversions must be consistent with POM section 654. Therefore, the NRLCA argues that while the parties must resolve individual jurisdictional disputes on a case-by-case basis, they must do so in accordance with the 2004 MOU and guidelines.

Prior to the 2006 MOU, the Postal Service was free to enter into bilateral settlements to resolve city-rural jurisdictional disputes before the disputes reached the committees. For example, if the NALC believed that the Postal Service improperly assigned deliveries to the rural craft, it could challenge the assignment and the Postal Service could settle the dispute and convert the deliveries back to the city craft even if its decision violated the 2003 and 2004 MOUs. If the NRLCA disputed the conversion, the tripartite committee would review the case and make a final and binding decision based upon the established, agreed-upon criteria. In the 2006 MOU, the parties agreed that bilateral agreements were counterproductive and that any interim settlements of disputed assignments or conversions must be trilateral. According to the NRLCA, once jurisdiction over a delivery became disputed, everything was paused until all three parties signed a settlement or the tripartite committee reached a decision. Although the Postal Service withdrew from this procedural requirement effective November 22, 2010, it remains obligated to utilize the tripartite process for any jurisdictional disputes.

The 2006 MOU prohibited bilateral agreements to convert deliveries; therefore, the NRLCA asserts that the dispute in this matter is whether the Postal Service's actions constituted conversions or something else. Although the Postal Service has attempted to re-characterize its conversion of the disputed deliveries from rural to city as corrections, the NRLCA argues that they are conversions. When it first learned of the 2008 Assignment of City

Delivery MOU, the NRLCA acknowledged that the Postal Service had the discretion to make initial assignments of deliveries so long as it (NRLCA) could challenge those decisions through the tripartite process. The NALC and the Postal Service assured the NRLCA that the MOU only applied to the Postal Service's assignment of new deliveries and that the tripartite guidelines still applied. However, the NRLCA soon learned that the NALC was challenging the Postal Service's decisions to assign deliveries to the rural craft and entering into agreements to convert those deliveries to the city craft pursuant to the 2008 Assignment of City Delivery MOU.

The NRLCA argues that grievance documents confirm that these were improper bilateral conversions. Additionally, it provided examples at the hearing that demonstrated how the Postal Service used the 2008 Assignment of City Delivery MOU to circumvent the 2003 and 2004 MOUs. Some of the conversions were even inconsistent with the 2008 Assignment of City Delivery MOU. The NRLCA points out that, regardless of whether the Postal Service's actions violated that 2008 bilateral Agreement, once it became clear that the Postal Service and the NALC had settled jurisdictional disputes outside of the tripartite process, the NRLCA clearly and repeatedly indicated to the Postal Service that these disputes needed to go through the tripartite process.

The NRLCA asserts that the Postal Service does not challenge the NRLCA's position that the 2006 MOU required tripartite agreements to convert disputed deliveries, but rather argues that the reassessments in question constituted corrections, not conversions. However, the NRLCA cites print and online dictionary definitions of the term "conversion,"<sup>4</sup> as well as the Postal Service's own manual's, which define conversion as "the replacement of rural delivery service with another form of delivery service." The NRLCA contends that by any definition, what the Postal Service did was a conversion because it changed or replaced the form of delivery from rural to city. The NRLCA asserts that the Postal Service is asking the Arbitrator to ignore the plain definition of conversion and to focus upon the purported reason for

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<sup>4</sup> Black's Law Dictionary "...[t]he act of changing from one form to another..." Garner, Bryan, ed. Black's Law Dictionary (7th ed. 1999). Miriam Webster's Online Dictionary: "the act or process of changing from one form, state, etc. to another." [Http://www.merriam-webster.com/dictionary/conversion](http://www.merriam-webster.com/dictionary/conversion).

the reassessments, which is allegedly to correct the assignment of deliveries because it believed that the initial assignment violated its bilateral agreement with the NALC. The NRLCA urges that this argument distracts from the real analysis—whether the reassignment constituted a conversion. The parties never agreed to a separate process for correcting deliveries, but did agree to resolve all jurisdictional disputes in accordance with the Tripartite MOUs.

By ignoring the definition of conversion and following the logic that corrections are not conversions, the NRLCA stresses, the Postal Service would have unlimited unilateral authority to convert deliveries by simply declaring its actions corrections. The NRLCA argues that once the Postal Service assigns delivery to one craft, any change—regardless of the reason—constitutes a conversion and may not be accomplished bilaterally.<sup>5</sup> Regardless of whether you call it a correction or conversion the Postal Service changed the form of delivery and should have done so in accordance with the tripartite process.

The NRLCA also rejects the Postal Service's argument that the 2006 MOU applied only to official grievances and that the conversions at issue involved "disputes" rather than grievances, citing its bilateral agreement with the NALC to justify its position. The NRLCA was not a party to this separate bilateral agreement and never agreed to treat certain jurisdictional disputes as "non-grievances." Rather, the NRLCA contends that it agreed with the other parties that all city-rural jurisdictional disputes would be subject to the tripartite process and the 2006 MOU prohibiting bilateral settlements. The NRLCA stresses that the NALC's "disputes" fall under the contractual definition of "grievance," irrespective of some other bilateral process created for the sole purpose of evading the tripartite process. The clear intent of all three parties was to create a mutually agreeable, efficient, effective and consistent mechanism for resolving such city-rural jurisdictional disputes.

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<sup>5</sup> The NRLCA points out that all but one of the jurisdictional dispute settlements between it and the Postal Service which the Postal Service introduced were entered into in 2011 and 2012, after the Postal Service had already pulled out of the 2006 MOU and its extensions. The one bilateral settlement that occurred before the Postal Service withdrew from the agreement involved an NRLCA grievance over deliveries in Chanhassen, Minnesota that the Postal Service converted to city delivery pursuant to a bilateral agreement with the NALC. The NRLCA points out that in that settlement the Postal Service agreed to what the NRLCA is arguing in this case:

The NRLCA further insists that it did not consent to a new process to handle conversions. When, at first, the Postal Service and NALC represented that they had reached bilateral agreements in only a handful of cases and agreed to stop, the NRLCA agreed that it would grieve the existing cases. But it did not agree to an alternative process to deal with thousands of disputed conversions. When Manager Daigneault notified Director Johnson that potentially hundreds of thousands of deliveries were at stake, the NRLCA put him on notice that it was no longer in agreement with how to handle disputes and that it would be filing a national-level grievance and NLRB charge.

The NRLCA contends that this matter is properly before the parties' National Arbitrator and that the tripartite process does not govern the instant dispute. The NRLCA is requesting that the arbitrator enforce the Postal Service's contractual and legal obligations to the NRLCA. The NRLCA contends that it is not asking the arbitrator to apply or interpret the tripartite MOUs and guidelines, rather the grievance explicitly challenges the Postal Service's decision to unilaterally implement a process to convert rural delivery to city delivery in violation of the National Agreement, the tripartite MOUs, Postal handbooks and manuals, and federal labor law. The NRLCA points out that the remedy sought requires the arbitrator to instruct the Postal Service to use the agreed upon process. The arbitrator's ruling will not determine which craft is ultimately entitled to the disputed deliveries. Rather, the ruling will confirm which process—the bilateral or trilateral process—should govern the NRLCA and Postal Service when addressing the NALC's challenges to the assignment of delivery to the rural craft. The NRLCA requests that the arbitrator require the Postal Service to adhere to the tripartite process, including retroactively prohibiting it from entering into bilateral agreements to convert deliveries through November 22, 2010, which was the effective date of the Postal Service's withdrawal from the 2006 MOU.

The NRLCA asserts that the arbitrator's conclusions in this matter may have an immediate, but not final, effect on certain deliveries that the Postal Service improperly

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that any grievance settlement regarding territory conversion requires agreement by authorized representatives of the NALC, NRLCA, and the USPS.

converted. However, it points out that there is a difference between utilizing the tripartite process and guidelines to figure out which craft is entitled to certain deliveries, as the parties must do under the applicable MOUs, and declaring that the parties must adhere to that process and guidelines, as the NRLCA requests the Arbitrator do here. Moreover, the NRLCA argues that the decision in this case does not represent the final word in any actual jurisdictional disputes. The tripartite process, which the NALC should have used in the first place, will provide those resolutions.

The NRLCA contends that the 2004 tripartite MOU does not mandate tripartite arbitration over the issues involved in this case. This case involves the Postal Service's failure to abide by its contractual and legal obligations to the NRLCA. It is not a work jurisdiction dispute. The tripartite process and Guidelines constitute a mechanism that the parties must apply to resolve actual work jurisdiction disputes when three parties dispute specific deliveries. The process created by the task force can include tripartite arbitration to resolve those jurisdictional disputes, only if the committees or task force cannot come to a decision on those specific disputes. This process is not intended to govern issues relating to the Postal Service's contractual and legal obligations to abide by its own collectively-bargained agreements.

Moreover, the NRLCA insists that the Postal Service's concern that the NALC may challenge the outcome of this case through its own grievance does not absolve the Postal Service from its contractual and legal obligations to the NRLCA.

The NRLCA rejects any claim by the Postal Service that this grievance is in any way untimely or that the time period covered by the remedy should be restricted. It was not until Daigneault's July 2010 phone call to Johnson that it became evident to the NRLCA that the Postal Service would continue converting rural deliveries to city deliveries outside of the three-party process and that the NRLCA realized that it would be unable to address the improper conversions through the MOU process and, thus, that the Union would have to file a grievance and unfair labor practice. Furthermore, the NRLCA timely filed its grievance on September 16, 2010 after learning that there could be hundreds of thousands of disputed deliveries at stake. Unlike grievances filed at Step 1, there is no set time limit for filing a national-level grievance in

the National Agreement. Finally, as a condition of the NLRB deferring the ULP charge, the Postal Service was required to "arbitrate the dispute underlying the charge" and waive any timeliness arguments.

The NRLCA requests that its grievance be granted in its entirety and that the Arbitrator award the following remedy:

1. Direct the Postal Service to immediately revert back to rural delivery any deliveries improperly converted to city delivery as a result of bilateral agreements between the Postal Service and NALC between October 22, 2008 and November 22, 2010.
2. Make whole any rural letter carriers who were affected by the Postal Service's improper conversions, including compensation for any loss in evaluated pay caused by such conversions, with interest at the Federal Judgment Rate.
3. Issue a declaratory judgment that the Postal Service must resolve all city-rural jurisdictional disputes in accordance with the 2004 tripartite MOU and guidelines. This is to include application of the guidelines and the principles contained therein. The Postal Service must be directed not to apply any other criteria that arises from the 2008 USPS-NALC bilateral agreement or any other source that has not been agreed to by the Postal Service, NALC, and NRLCA.

The NRLCA explains that its requested declaratory judgment will not result in disputed deliveries being switched from one craft to the other, but will simply require the committees and Task Force to apply the tripartite guidelines.

## FINDINGS

At issue in this grievance are new deliveries that the Postal Service first assigned to rural carriers and then subsequently assigned to city carriers between October 22, 2008 -- when the Postal Service entered into the 2008 Assignment of City Delivery MOU with the NALC -- and November 22, 2010 -- when the Postal Service unilaterally terminated the 2006 tripartite MOU. A number of these reassessments (conversions/corrections) were made on the basis of agreements made by the national-level bilateral (USPS-NALC) task force provided for in the 2008 Assignment of City Delivery MOU to resolve "disputes" referred to the task force by the NALC. Other reassessments evidently were made pursuant to a Postal Service determination -- whether or not prompted in some other fashion by the NALC -- that the original assignment was not consistent with the 2008 Assignment of City Delivery MOU. There is evidence in the record (PS-15) of one situation, in Chanhassen, Minnesota, where the Postal Service acknowledged that a rural delivery was "converted to city delivery per a NALC grievance settlement that lacked NRLCA participation" while the 2006 tripartite MOU was in effect. A grievance filed by the NRLCA resulted in a settlement under which this delivery was restored to rural delivery.

The NRLCA, of course, is entitled to grieve a specific alleged improper conversion and, if not resolved, to take the dispute to the tripartite committee for a final decision based upon the criteria agreed to in the tripartite 2004 guidelines. If the committee is unable to resolve the dispute, the 2004 MOU provides that the tripartite Task Force will establish a process for doing so including tripartite arbitration for any interpretive issues. The NRLCA, however, contends in this Step 4 grievance that I, as a national arbitrator under the NRLCA-USPS National Agreement, have authority to order the Postal Service to restore all of the deliveries at issue to rural carriers and make the latter whole, pending any ultimate jurisdictional determination under the tripartite 2004 MOU procedures. The Postal Service disagrees and seeks dismissal of this grievance on the basis that I lack jurisdiction to decide the merits of the dispute raised in the NRLCA's Step 4 grievance, and that the dispute must be resolved under the tripartite process in the 2004 MOU.

When the NRLCA first learned of the 2008 Assignment of City Delivery MOU, it acknowledged that the Postal Service had the discretion to make initial assignments of new deliveries to city carriers so long as the NRLCA could challenge those decisions through the tripartite process. As the NRLCA recognizes, it has no standing to prevent the Postal Service from entering into an agreement with the NALC -- even if that agreement appears to apply criteria to the assignment of deliveries that conflict with the 2004 tripartite guidelines and the POM, so long as the NRLCA can challenge any delivery assignments through the tripartite process.

The NRLCA also rightly acknowledges that prior to the 2006 MOU (renewed in 2007 and 2008), the Postal Service was free to enter into bilateral settlements to resolve city-rural jurisdictional disputes before the disputes reached the tripartite committee established under the 2004 MOU. As stated in the NRLCA's post-hearing brief (at page 20):

For example, if the NALC believed that the Postal Service improperly assigned deliveries to the rural craft, it could challenge the assignment and the Postal Service could settle the dispute and convert the deliveries back to the city craft even if its decision violated the 2003 and 2004 MOUs. If the NRLCA disputed the conversion, the tripartite committee would review the case and make a final and binding decision based upon the established, agreed-upon criteria.

The Postal Service clearly also had the authority to convert rural deliveries to city deliveries on its own determination, subject, of course, to the NRLCA's right to challenge such a conversion through the tripartite process as a violation of the agreed guidelines which incorporate the relevant POM provisions.

Thus, a critical and necessary component of this Step 4 grievance is the NRLCA's contention that the protested conversions -- which it asks this arbitrator to reverse -- violated the 2006 tripartite MOU, which, while it was in effect, provided that any "grievance concerning the assignment or conversion of city and/or rural deliveries" could only be settled with the consent of the other union. The NRLCA claims that the Postal Service and the NALC settled jurisdictional disputes outside of the tripartite process in violation of the 2006 MOU. That

also is the basis set forth in its amended NLRB charge for the NRLCA's claim that the Postal Service violated Section 8(a)(5) of the NLRA. The NRLCA insists it does not seek a decision from this arbitrator that requires interpretation or application of the 2006 tripartite MOU (or 2003 and 2004 tripartite MOUs). But, as discussed below, that simply is not the case.

The NRLCA asserts that the dispute in this matter is whether the Postal Service's actions constituted conversions or something else. It rejects the Postal Service's attempt to recharacterize these conversions as corrections. It maintains that the agreements entered into by the national-level bilateral Postal Service-NALC task force provided for in the 2008 Assignment of City Delivery MOU confirm that these were improper bilateral conversions. The Postal Service in its Step 4 statement and at arbitration argues that it did not violate the 2006 tripartite MOU when it decided to review the deliveries initially assigned to the rural craft to see if it had complied with its bilateral MOU with the NALC. It maintains that the 2006 MOU only applies to official grievances. There may be merit to the NRLCA's position on this matter, but there is no way I can resolve that disagreement in the NRLCA's favor and order the relief sought by the NRLCA without interpreting and applying the tripartite 2006 MOU, which the NRLCA agrees I lack authority to do as an NRLCA-Postal Service national arbitrator. As the NRLCA states in its brief (at page 36): "That is for the parties to do."<sup>6</sup>

For the foregoing reasons, I conclude that I lack authority as a national arbitrator under the USPS-NRLCA National Agreement to issue a decision resolving the issues submitted in this Step 4 NRLCA grievance and to order the remedies requested by the NRLCA. Accordingly, this grievance is dismissed.

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<sup>6</sup> The NRLCA's request for a declaratory judgment seeks a directive to the Postal Service not to apply any criteria in resolving jurisdictional disputes other than that agreed to in the tripartite 2003 and 2004 MOUs. It also explains that this simply will require the tripartite committee and Task Force to apply the 2004 tripartite guidelines. But I have no authority to tell the tripartite committee and Task Force what to do, and the NRLCA acknowledges that -- leaving aside application of the now terminated 2006 tripartite MOU discussed above -- the Postal Service can resolve jurisdictional disputes with one or the other union, even if in doing so it violates the tripartite guidelines, subject to the right of the other union to take the matter to the tripartite committee and Task Force.

AWARD

The grievance is dismissed for lack of jurisdiction as set forth in the above Findings.



Shyam Das, Arbitrator