

Why Interest Arbitration?

Binding interest arbitration is the final step in the dispute resolution process set forth in Section 1207 of Title 39 of the United States Code (the Postal Reorganization Act, as amended).

For the 2011 round of national collective bargaining, negotiations between the NPMHU and the Postal Service formally commenced on August 30, 2011. Originally scheduled to end on November 20, 2011, which was the expiration date of the previous 2006 National Agreement, negotiations were extended several times by joint agreement of the parties. It was not until late January 2012 that the Postal Service declared impasse; at the same time, the parties agreed to discuss the adoption of dispute resolution procedures.

The statute governing postal negotiations sets out a flexible process for ultimately determining the terms and conditions that will become part of the 2011 National Agreement. Most critically, the parties at the National level are given the joint statutory authority to establish dispute resolution procedures. If no agreement is reached, however, the default provisions of Section 1207 control. As it turned out, the NPMHU and the Postal Service agreed to a process that essentially followed the terms of Section 1207, albeit with a longer time frame.

Under Section 1207, if the parties are unable to reach agreement on a dispute resolution process, the statutory procedure is controlling. First, the Director of the Federal Mediation and Conciliation Service appoints a mediator of nationwide reputation and professional stature, who is also a member of the National Academy of Arbitrators. The parties are required to cooperate with the mediator in an effort to reach an agreement, and are required to meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, directs. Thereafter, if no agreement is reached with the assistance of the mediator, an arbitration board is established "consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining

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2011 National Agreement: **THE FISHGOLD ARBITRATION AWARD**

The primary focus of the NPMHU's National Office during the past six months obviously has been on the interest arbitration proceedings that were held before the Fishgold Arbitration Panel to determine the terms of the NPMHU's 2011 National Agreement with the Postal Service. That Award was dated February 15, 2013 (released on February 19, 2013), and is now being implemented by the parties.

The Fishgold Arbitration Award contains seventy-two pages of analysis and contract changes. All mail handlers are urged to review the document, which is accessible on the NPMHU website and has been mailed to all Local Union representatives. As a summary, however, the award is based on several important principles:

First, with regard to current career employees, the Award establishes a series of three general wage increases and seven COLAs or cost of living adjustments, all to be paid to career employees over the next three years, by early 2016. It also institutes an immediate upward adjustment in night differential, for the first time since the 1990s. And it provides full no-layoff protection for all career mail handlers who were hired on or before November 20, 2011.

Second, in the larger postal installations with at least 200 workyears of employment (in which more than 95% of mail handlers work), all part-time flexible employees must be converted to full-time regular status no later than 180 days after the effective date of the Award. In the future, PTFs will be allowed only in the smaller installations.

Third, with regard to workforce flexibility, the Award grants the Postal Service the authority to employ additional employees with lower salaries and no fixed schedule. In particular, the Award allows the Postal Service to hire no more than 5% casuals by installation and to hire an additional 15% by district (20% by installation) of mail handler employees into Mail Handler Assistant (MHA) positions, a new category of employee that is noncareer, but covered by the National Agreement and part of the NPMHU bargaining unit.

More details were included in the summary of the Award that was circulated by the National Union soon after its release.

The Award fully protects the jobs and careers and living standards of all 42,000 career mail handlers now employed by the Postal Service. After a two-year wage freeze, it restores, starting in November 2013 and continuing through May 2016, the historic pattern of annual general wage increases and semi-annual cost-of-living adjustments for all current mail handlers. In particular, the Award contains three general wage increases for all career employees—1.0% in November 2013, 1.5% in November 2014, and 1.0% in November 2015—as well as seven COLAs to be paid from March 2014 through March 2016. These wage and COLA increases follow the pattern previously established by the negotiated contract governing the American Postal Workers Union, and by the arbitrated contracts governing the National Rural Letter Carriers Association and the National Association of Letter Carriers.

The Award also continues the pattern, starting next year, of increasing employee contributions toward health insurance by 1% per year; and it includes, effective immediately, a small upward adjustment in night shift differential (of 7 cents per hour) and of clothing allowance. The Award also provides full no-layoff protection, consistent with prior practice, for any and all career mail handlers hired on or before November 20, 2011.

At the same time, the Award substantially changes the workforce that will be allowed to perform mail handler work in the future. In the larger facilities, all part-time flexible employees will be converted to full-time regular, the number of casuals will be reduced to 5.0%, and a new category of bargaining

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representative of the employees, and the third by the 2 thus selected.” If the members chosen by the parties fail to agree on the third person, the selection of the third person shall be made from a list of names provided by FMCS. This list would consist of at least nine names of arbitrators of nationwide reputation, who also are members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve. The arbitration board must give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims. Decisions of the arbitration panel are conclusive and binding upon the parties.

In accordance with the agreement of the parties, the dispute between the NPMHU and the Postal Service first headed to mediation. The mediation was conducted by Herbert Fishgold, who was appointed by the FMCS as the mediator for the NPMHU/USPS dispute. As required by statute, Mr. Fishgold was “a mediator of nationwide reputation and professional stature, . . . who is also a member of the National Academy of Arbitrators.” Indeed, Mr. Fishgold has served as a third-party neutral for more than 30 years, during which time he has mediated and arbitrated bargaining disputes in a wide range of industries at the national, state, and local levels.

Importantly, the mediator does not have the power to issue binding settlements or resolutions, and thus could not compel the parties to reach an agreement. Rather, the mediator serves as a facilitator of discussions, making suggestions to the parties in an effort to keep the dialogue and process of negotiations moving forward.

Efforts to reach an agreement during mediation ultimately failed, in June 2012. Thus, the parties proceeded to the arbitration phase of the process. The arbitration was conducted under the supervision of a three-member panel, with a

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unit employee will be created. More specifically, these changes include the following:

- **Within 180 days of the Award (by August 14, 2013), all current part-time flexible employees working in the larger postal installations (those with 200 or more workyears of employment) will be converted into full-time regular employees. Part-time flexible mail handlers still working in smaller facilities can apply to transfer to a larger installation, and if the application is granted, be converted automatically to full-time regular status, although the part-time flexible status will remain for mail handlers in the smaller installations.**
- **Rather than the current 12.5% casual employees who are outside the NPMHU bargaining unit, the Award establishes a workforce that is no more than 5.0% casual employees, measured and counted by installation. This reduced number of casuals will now be authorized to work without being restricted by the “in lieu of” clause under Article 7.1B of the National Agreement, with each individual casual allowed to work up to 360 days per year.**
- **The Award creates a new category of noncareer mail handler employee called the Mail Handler Assistant, or MHA. The MHA category will serve as the entry point for all future career mail handlers to be hired by the Postal Service. A maximum of 15% of mail handlers in any district may be MHAs, with a cap of 20% in any particular installation. Unlike casuals, MHAs will be members of the NPMHU bargaining unit, will be hired based on the postal exam and other routine hiring criteria, and will be eligible for conversion to career status based on their relative standing. Although MHAs will work flexible hours and may be separated for lack of work, many other provisions of the National Agreement will apply to their employment, and the Union will be able to represent them in the grievance and arbitration process. Starting pay for new MHAs has been set at \$13.75 per hour at Level 4 and \$14.50 per hour at Level 5, but those amounts will be increased by a total of 7% during the remaining years of this Agreement. MHAs also will have limited access to subsidized health insurance in accordance with the Affordable Care Act.**
- **Significantly, future career employees (those hired after February 15, 2013) will be placed on a revised pay scale that reduces entry pay, but contains seventeen step increases of more than \$1,300, providing guaranteed increases in pay every 52 weeks, with top pay at Step P being precisely the same of current career mail handlers. The wage scale governing future career employees will continue to be adjusted upward**

by general wage increases and COLA increases, although the COLA before top Step P will be proportional to Step P. The USPS demand for a permanent two-tier pay scale was rejected by the Fishgold Arbitration Award.

- **Also rejected by the arbitration panel were a series of draconian proposals from the Postal Service, including absolutely no general wage increases for career employees, no cost-of-living adjustments, and a drastic increase in employee contributions for health insurance to the current rate paid by federal employees. Another proposal from the Postal Service sought to modify, and effectively eliminate, the current no lay-off clause. In addition, the Postal Service sought the authority to hire and to utilize, without any contractual restrictions whatsoever, a total of 25% casual employees. Finally, for new career mail handlers hired in the future, the Postal Service proposed that their pay rates be 20% lower at the entry level and 20% lower at the maximum level.**

The day after the Fishgold Arbitration Award was released, National President Hegarty held a nationwide conference call with the leadership of the entire CAD and all of the Local Unions. He noted that the Arbitration Award followed from fifteen months of work by the NPMHU, including its National Officers, the National CAD, its legal staff, and a series of expert witnesses and consultants who diligently prepared the union’s case for the interest arbitration proceeding. Then, in addition to summarizing the major provisions of the seventy-two page Award, he added the following thoughts:

First, the Award is quite complicated, with significant changes to Articles 7 on workforce structure, Article 9 on wages, and Article 12 on seniority and reassignments. The Award also will change some of the routine practices of the Local Unions, including most notably the enforcement of casual restrictions and the organizing of new members at orientation programs. So this is not one of those awards that the Union, at any level, can simply say—“good, we got a bunch of wage increases and COLAs coming, and we don’t have to worry about the rest of the contract until a problem arises.”

Second, when an arbitration panel writes an Award of more than 70 pages, especially one with lots of new language, it is inevitable that there will be uncertainty about the meaning of certain provisions. We already have identified a few, and there will be others. This is especially true for this award. Indeed, the panel diverted or referred a couple of the most contentious issues to a task force or a committee. This is why

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neutral arbitrator serving as chair of the panel. The parties utilized a striking procedure to select their neutral, after obtaining a list of nine names from the FMCS; interestingly, the neutral selected under this striking procedure was none other than Herbert Fishgold, who had just completed his service as the parties' mediator. Robert Dufek was named by the Postal Service to serve as the USPS-appointed member. Dufek works in USPS Labor Relations as the Manager for Strategic Decisions, and before that was in private legal practice representing the Postal Service. The NPMHU named Robert Weinberg to serve as the NPMHU-appointed member; Weinberg is the senior member of the law firm of Bredhoff & Kaiser, PLLC, which is also the home of NPMHU General Counsel Bruce Lerner.

Hearings in the interest arbitration proceedings began in October 2012, and continued for multiple days through and including February 1, 2013. During the three and one-half months occupied by the arbitration hearing, there were several note-worthy developments. First, Congress failed to adopt any legislative solution to the dire financial circumstances facing the Postal Service, which have been caused by a combination of the electronic diversion of first-class mail and the continuing financial burdens imposed on the Postal Service by overpayments to federal pension programs and required, but unmade payments to the Retiree Health Benefits Fund. Second, in early January 2013, the Das Arbitration Panel issued its final and binding decision over the terms of the 2011 National Agreement between the National Association of Letter Carriers and the Postal Service. This Das Arbitration Award played a large role in the remaining hearings between the NPMHU and the Postal Service.

The final decision of the Fishgold Arbitration Panel was dated February 15, 2013, although it was not released until February 19, 2013. Its terms are final and binding on all parties, and establish the terms and conditions of employment for all mail handlers through at least May 20, 2016.



we have experienced union representatives, and why we have lawyers—to deal with these issues. The award undoubtedly will make all of us busier in the coming weeks and months.

Third, to understand the Award in the proper context, you have to recall the history of this round of bargaining:

a. The APWU and the Rural Carriers had contracts that expired in November 2010. During that next year, while we and the city carriers received another set of wage increases and COLA increases—for us, 1.2% plus \$998 in COLA—the APWU and the Rurals got nothing. In May 2011, the APWU reach a negotiated agreement, accepting a two-year wage freeze; a one year elimination of COLA and a one-year deferral of COLA; a continuation of 1% increases in health insurance contributions by employees; a new non-career employee called the PSE or Postal Support Employee; a two-tier wage scale for future career hires, with a large reduction in top pay; and a system of cutting hours below 40 per week for career employees in the guise of Non-Traditional Full-Time employees or NTFTs. PSEs are generally set at 20% per District, but in reality, because the Postal Service does not use its full complement of PSEs in retail operations, and the APWU contract allows that excess to be hired as mail processing clerks, the clerk craft has well more than 20% PSEs in each plant where mail handlers work. In fact, many plants are well above 30% already.

b. The Rurals followed, but went to arbitration, with a final decision issued in July 2012. The Rurals received essentially the same pattern on wages, COLAs and health insurance. They also have always had a much larger percentage of non-career employees than the other three major crafts.

c. The NALC or city carriers went to arbitration, with a decision issued by Arbitrator Das in early January 2013. It also contained the general wage and COLA and health insurance pattern,

but the NALC was able to get its arbitration panel to reject the two-tiered wage scale, along lines similar to the approach included in the Fishgold Award.

It therefore is not surprising that the NPMHU was trying in arbitration to avoid some of the most objectionable aspects of the prior contracts and awards, and I think we have been able to do so. Notably, we avoided non-traditional full-time assignments; we avoided a permanent two-tiered wage system; and we avoided the counting of non-career employees only by District.

Already, the National CAD is working diligently to implement the Fishgold Award. The parties at the National level are working on a series of Questions and Answers for release, to provide mail handlers and managers with joint interpretations of various aspects of the Award. The Article 12 Task Force is meeting to discuss the issues remanded to the parties, and the National CAD is monitoring the enforcement of the casual and MHA restrictions, including implementation of the Letter of Intent that the Fishgold Award included to govern the so-called “Transition Period” established for the 180 days ending on August 14, 2013. And all levels of the NPMHU are focusing their attention on welcoming all newly-hired MHAs into the mail handler bargaining unit.

Thus, the Fishgold Arbitration Award has provided a long-awaited end to fifteen months of work by the NPMHU, including its National Officers, the National CAD, its legal staff, and a series of expert witnesses and consultants who diligently prepared the union's case for the interest arbitration proceeding. The Award fully protects the jobs of all current mail handlers, and provides a series of wage and other improvements. At the same time, the Award has generated a new era in NPMHU history, with newly hired MHAs joining a bargaining unit of career mail handlers. These new MHAs have every expectation that they too will be given the opportunity to be full-time career employees for the remainder of their USPS careers.

The NPMHU thanks the entire membership for its continuous patience and support during this lengthy and sometimes frustrating 2011 round of negotiations.