

NATIONAL ARBITRATION PANEL

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In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case No. Q11M-6Q-C 14303130
	)	
and	)	Interim Award
	)	
NATIONAL POSTAL MAIL HANDLERS	)	(Threshold Issue)
UNION, AFL-CIO	)	
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS	)	
UNION, AFL-CIO - INTERVENOR	)	

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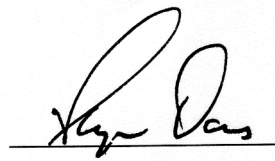
BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Julienne W. Bramesco, Esq.
For the NPMHU:	Bruce R. Lerner, Esq.
For the APWU:	Melinda K. Holmes, Esq.
Place of Hearing:	Washington, D.C.
Date of Hearing:	April 9, 2015
Date of Award:	December 3, 2015
Relevant Contract Provisions:	Article 19
Contract Year:	2011 - 2016
Type of Grievance:	Contract Interpretation

## Interim Award Summary:

Article 19 incorporates Handbook PO-408 into the National Agreement. The parties should proceed to schedule a hearing on the merits of the grievance.

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Shyam Das, Arbitrator

The National Postal Mail Handlers Union (NPMHU) filed this Step 4 level grievance on September 18, 2014 challenging the Postal Service's decision to close or consolidate approximately 82 mail processing facilities starting in January 2015. The NPMHU contends that the decision to close or consolidate these facilities was made in violation of Handbook PO-408, Area Mail Processing (AMP) Guidelines, and, therefore, violated Article 19 of the National Agreement. In particular, the NPMHU asserts that the Postal Service violated Handbook PO-408 by utilizing outdated data from a 2011-2012 AMP feasibility study. The American Postal Workers Union (APWU) filed a similar grievance under its National Agreement, and has intervened in this proceeding.

The parties agreed to bifurcation to permit an initial ruling on the threshold issue of whether Article 19 incorporates Handbook PO-408 into the National Agreement so that the Unions may grieve alleged violations of Handbook 408.

Article 19.1 of the NPMHU National Agreement provides as follows:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Article 19.1 of the APWU National Agreement includes the same relevant provision.

As Arbitrator Mittenthal stated in an APWU National Arbitration decision in Case No. H4C-NA-C 81 (1990):

Not all Postal Service regulations are subject to challenge through this clause. Only those that "directly relate to wages, hours or working conditions" can be attacked by the APWU on the ground that they are not "fair, reasonable, and equitable." A regulation not related, or only indirectly related, to "wages, hours or working conditions" cannot violate Article 19. . . . (Emphasis in original.)

The parties disagree as to whether Handbook PO-408 "directly relate[s] to wages, hours or working conditions."

#### NPMHU POSITION

The NPMHU asserts that the nature, purpose and history of Handbook PO-408 establish its direct relation to wages, hours or working conditions. As summarized in Handbook PO-408, "AMP provides opportunities for the Postal Service to reduce costs and/or improve service and operate as a leaner, more efficient organization." A key component of the AMP process is timely and meaningful communications with stakeholders which includes both "employees" and "[e]mployee organizations." Such communications must be implemented at the outset of the AMP process and continue throughout the entire AMP process described in Handbook PO-408. The NPMHU notes, for example, that there are 17 worksheets included in Appendix A of the Handbook, of which four are focused exclusively or primarily upon labor costs and staffing and another seven include employee or staffing issues. The NPMHU maintains that the impact Handbook PO-408 has on employees and their unions is confirmed -- indeed, highlighted -- by the AMP Communications Plan adopted by the Postal Service, the latest version of which is dated November 2011. In its background section, the Communications Plan acknowledges that staffing changes will be necessary and that the "focus" of the initial Plan is to communicate the need for the proposed changes "to foster understanding among employees and employee organizations."

The NPMHU stresses that there also is no dispute that the actual impact of Handbook PO-408 when implemented by the Postal Service results in decisions to consolidate or close mail processing facilities that are likely to produce dire consequences for mail handlers represented by the Union. Excessed employees may be faced with relocation, transfers and reassignments inside and outside the craft or even inside and outside the facility. The record also shows that the wages of mail handlers can be directly impacted as, for example, by a reduction in the percentage of mail processing hours that are subject to payment of night differential.

The NPMHU contends that the history and purpose of Handbook PO-408 and its unique status as a document mandated by Congress also demonstrate its direct relationship to hours, wages or working conditions. One of the primary purposes of the AMP process from the beginning has been to reduce labor costs by consolidating mail processing facilities. Most recently, in 2006, Handbook PO-408 was specifically and expressly changed by Congress in the Postal Accountability and Enhancement Act (PAEA) to ensure its provisions are implemented with particular attention to the concerns of mail handlers and other postal employees.<sup>1</sup>

The NPMHU stresses that except for this National Arbitration case and two prior regional arbitrations in 2009 and 2010 the Postal Service itself has consistently treated Handbook PO-408 as a postal handbook that plainly is incorporated through Article 19 into the National Agreement. Notably, in November 2007, when the Postal Service distributed the draft of its latest revisions to the Handbook it did so with the understanding that the Handbook is covered by Article 19. Its letter to the NPMHU, signed by a top Labor Relations Manager at Headquarters, stated:

In accordance with Article 19 of the National Agreement, enclosed is a draft copy of Handbook PO-408, Area Mail Processing Guidelines.

A similar letter was provided to the APWU at that time. (The Unions did not object to the revisions.) The NPMHU also points to a December 2005 audit report from the USPS Office of Inspector General, which criticized the then April 1995 version of Handbook PO-408 as "incomplete," "outdated," or "require[ing] additional guidance." In an obvious reference to the role played by Article 19 and its incorporation of Handbook PO-408, the report went on to explain precisely why the Postal Service had not updated the handbook for more than a decade:

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<sup>1</sup> Section 302 of the PAEA requires the Postal Service to establish and follow procedures for public notice and input from stakeholders including postal employees and unions prior to closing or consolidating postal facilities. This led to the most recent revision of Handbook PO-408 in 2008.

These conditions occurred because the AMP Guidelines have not been updated since 1995. Postal Service management was hesitant to make changes to the guidelines because they indicated they would be required to coordinate revisions with the unions.

The NPMHU further cites the following statement in a September 2, 2014 letter from another top Labor Relations Manager responding to an APWU bargaining demand relating to Network Consolidation activities:

As to the Union's demand for bargaining over the effects of the decision to continue consolidation activities in 2015, the Postal Service disagrees with the assertion that the decision to consolidate, under the established Area Mail Processing (AMP) program, as outlined in handbook PO-408 *Area Mail Processing Guidelines*, requires new or additional bargaining. Handbook PO-408, and the AMP process, are incorporated into the CBA by Article 19, and as such, have been established practice for years. The AMP process has been in place since the first guidelines appeared in Handbook M-82, *Developing Area Mail Processing Proposals* (June 1979). Handbook M-82 was replaced in May 1984 with Handbook PO-408, *Developing and Implementing Area Mail Processing*. In April 1995, Handbook PO-408 was re-issued as *Area Mail Processing Guidelines* and updates to this handbook were released in 2008.

(Emphasis added.)

The NPMHU insists that National Arbitration precedents establish that Handbook PO-408 is incorporated into Article 19 and enforceable in this arbitration. It points out that arbitrators have found handbooks, manuals and regulations (or portions thereof) to "directly relate" to the wages, hours or working conditions of covered employees in a variety of circumstances. These include, obviously, handbooks that on their face apply to wages, hours or working conditions, but also, in a variety of circumstances, handbooks which on their face do not purport to regulate working conditions.

The NPMHU cites APWU Case No. AD-NAT-0121 (1980) which involved an attempt by the Postal Service unilaterally to change the wages and job descriptions for casual

employees from those prescribed by the Employee and Labor Relations Manual (ELM). Although casuals are not employees covered by the National Agreement, Arbitrator Gamser nonetheless found Article 19 to be applicable to the extent the unions could establish that casuals' wages and working conditions had "an impact" on the hours, wages or working conditions of covered employees. Arbitrator Gamser accepted the principle that the relevant inquiry was not whether the handbook or manual at issue regulated the employment terms of covered employees, but rather whether its impact on the wages, hours or working conditions of those employees was such that the handbook, manual or regulation could be said to relate directly to their employment terms and conditions. Arbitrator Gamser reaffirmed and applied this analysis in another APWU Article 19 case involving the MS-47 Maintenance Handbook. Case No. A8-NA-0375 (1981).

In 2002, Arbitrator Das decided a similar case in which the Postal Service sought to revise certain provisions of Subchapter 530 (Maintenance) of the Administrative Support Manual, including, in particular, the circumstances under which certain maintenance services could be contracted out. APWU Case No. H0C-NA-C 19007. That decision found that the Postal Service's proposed changes in its ability to contract out maintenance services "clearly directly relate to wages, hours or working conditions." In 2006, Arbitrator Das decided another APWU case that -- like Arbitrator Gamser's 1981 award -- involved revisions to the MS-47 Handbook concerning maintenance and housekeeping operations. Noting that a "key component" of the MS-47 was "a determination of the number of work hours required to regularly maintain a facility at the appropriate level of cleanliness, Arbitrator Das followed Arbitrator Gamser's holding that the Postal Service could not unilaterally determine to depart from the standards in the MS-47, in particular, the minimum frequencies.

Arbitrator Das' 2009 award with respect to a Postal Service bulletin addressing guidelines for inspecting postal vehicles rests on the same principle. APWU Case No. Q94T-4Q-C 98099959. The Union in that case contended that the guidelines "negatively impact[ed] wages, hours and working conditions by requiring the employees to do more work . . . in the same or less time than before." Although the Arbitrator denied the Union's appeal, he implicitly

accepted the proposition that the guidelines could have come within the ambit of Article 19 if the Union had succeeded in showing the alleged impact.

Finally, in a recent decision Arbitrator Goldberg, although denying the APWU's grievance, recognized that portions of handbooks that "establish rules that employees must follow, . . . or impact existing employee rights or benefits," relate directly to wages, hours or working conditions and thus fall within Article 19. Case No. Q06C-4Q-C 10033773 (2015).

The NPMHU insists that the Postal Service's reliance on a sentence in Arbitrator Mittenthal's 1990 decision (Case No. H4C-NA-C 81), which involved regulations related to voter registration in post offices, is misplaced. Holding that an alleged effect on working conditions that was "tenuous in the extreme" was insufficient to invoke Article 19, Arbitrator Mittenthal concluded that the regulation was not even remotely related to wages, hours or working conditions. The Postal Service focuses on a single sentence in which Arbitrator Mittenthal then stated that "[i]t is the subject matter of the regulation, not its effect, which determines whether Article 19 can properly be invoked." But, taken in context, and in light of the facts of the case, the NPMHU argues that it is apparent that Arbitrator Mittenthal's point simply was the one he had already made several times in his opinion: that Article 19 could not be invoked on the basis of a remote and tenuous "potential effect" on the employment conditions of bargaining unit members. That is simply another way of saying, as he said earlier in his opinion, that a regulation "not related, or only indirectly related, to 'wages, hours or working conditions' cannot violate Article 19." Moreover, the distinction the Postal Service attempts to draw between "subject matter" and "effect" simply has not been recognized in the arbitral case law under Article 19, and is flatly inconsistent with the cases discussed above that apply Article 19 in a variety of contexts dealing with handbooks or regulations.

A 2009 APWU regional arbitration decision, Case No. B06C-4B-C 09112269 (Sulzner, 2009) concluded that Handbook PO-408 was not an Article 19 handbook. Arbitrator Sulzner relied on the distinction between "subject matter" and "effect" in Mittenthal's 1990 National Arbitration case. The NPMHU maintains that Arbitrator Sulzner not only misconstrued Mittenthal's reasoning, but his determination is inconsistent with the result in a significant



number of National Arbitration awards under Article 19. It stresses that, as a regional award, it is not controlling precedent, and urges that it should not be followed.

A very recent NALC National Arbitration award by Arbitrator Nolan relied in part on the "subject matter" language of Mittenthal's decision. Case No. Q11N-4Q-C 14032224 (2015). To the extent Arbitrator Nolan's reasoning may be in tension with the NPMHU's analysis in this case, the NPMHU notes that it was not a party in the NALC case and, therefore, is not bound by it, and argues that it does not reflect the body of arbitral law on this issue or a proper interpretation of Article 19.

#### APWU POSITION

The APWU supports the NPMHU's position that the PO-408 is an Article 19 handbook and therefore enforceable through the grievance procedure. It stresses that the Postal Service repeatedly has acknowledged that PO-408 is an Article 19 handbook and insists that the Postal Service is bound by such admission. It points to the letters by a Postal Service Manager transmitting revisions of PO-408 to both the NPMHU and the APWU in 2007 which explicitly stated that this was being done pursuant to Article 19. Moreover, it asserts that the attachments to each letter varied depending on the Article 19 requirements of the two National Agreements. It also points to the letter written by another Manager in 2014, in response to a bargaining demand and information request from the APWU, in which he stated that Handbook PO-408 is incorporated into the CBA by Article 19. The APWU stresses that except to say that its top Labor Relations Managers were wrong, the Postal Service did not challenge or explain these admissions. Finally, the APWU states that the 2009 regional award by Arbitrator Sulzner, which relied on dictum in the 1990 Mittenthal award as the basis for ruling that PO-408 was not an Article 19 handbook, is not binding or persuasive for purposes of the determination to be made in this case.

POSTAL SERVICE POSITION

The Postal Service stresses that Article 19 applies only to those parts of handbooks and manuals that "directly relate to wages, hours or working conditions." Citing Arbitrator Mittenthal's 1990 decision, the Postal Service asserts that when analyzing a publication under Article 19, arbitrators must consider the subject matter and the purpose and intent of the publication, and not merely whether the publication might have some indirect impact on union or employee interests. National Arbitrators, including Arbitrators Gamser, in APWU Case No. H8C-NA-C-61 (1982), and Das, in APWU Case No. Q94T-4Q-C 98099959 (2009), have ruled that publications that provide guidance to field management do not directly relate to wages, hours or working conditions and, thus, are not enforceable pursuant to Article 19. Such publications do not establish rules for which employees are accountable, nor do they affect otherwise existing employee rights and benefits. Rather, they are communication vehicles from management to management outside the scope of the contractually binding documents that are incorporated into the National Agreement through Article 19. Such communications are part of how the business is managed, and it is reasonable that management should be able to issue such guidance without being subject to union approval or challenge. Nothing in the spirit or letter of Article 19 suggests otherwise.

In contrast, the Postal Service points out, documents that contain directions for employees, not managers, are documents that do directly relate to wages, hours or working conditions and meet the requirements of Article 19. In order for a handbook or manual to qualify as one to which Article 19 applies, the handbook, or part thereof at issue, must meet at least two requirements. First, as Mittenthal stated in his 1990 Award, the direct and actual "subject matter" of the handbook must directly relate to employee wages, hours or working conditions. An indirect impact is insufficient. Second, as recognized in the cited National Arbitration decisions by Arbitrators Gamser and Das, a handbook that serves as a guide to management in the exercise of rights within its prerogative does not qualify as directly relating to wages, hours or working conditions under Article 19. The Postal Service also cites Arbitrator Nolan's very recent 2015 NALC National Arbitration decision as following these principles. In that case, Arbitrator Nolan stressed:

If simply having an effect on employees were the test, then virtually every handbook would be incorporated in the Agreement. The subject matter, then, must itself *directly* relate to wages, hours or working conditions.

The Postal Service insists that Handbook PO-408 fails to meet both of the requirements. The subject matter does not concern employee rights, benefits or working conditions. The subject matter of Handbook PO-408 is the consolidation of all originating and/or destinating distribution operations from one or more post office facilities into other automated processing facilities for the purpose of improving operational efficiency and/or service. This is a traditional management function reserved to management's judgment under Article 3.

The Postal Service points to the 2009 APWU regional arbitration decision of Arbitrator Sulzner which reviewed Handbook PO-408 for Article 19 applicability. Although regional arbitrations are not binding, the Postal Service asserts, the relevance of this case is beyond dispute. Arbitrator Sulzner was presented with the same issue and engaged in the same analysis as is required here. Following his thorough analysis, including a review of many of the same arguments and precedents presented here, Sulzner concluded that Handbook PO-408 was not an Article 19 handbook. The Postal Service urges that his reasoning is sound and his conclusion is correct.

The Postal Service maintains that its correspondence cited by the Unions does not make Handbook PO-408 an Article 19 handbook. These letters reflect, at most, a misunderstanding about the scope of Article 19 by a handful of postal employees. They do not conclusively establish that Handbook PO-408 is an Article 19 Handbook. There is no indication that the writers of these routine letters engaged in the kind of analysis of the issue that has occurred in the context of this case. Further, whether Handbook PO-408 is an Article 19 handbook is an interpretive issue for National Arbitration. That determination must be made by applying the law to the facts; an unsupported assertion by a postal employee does not make it law. The drafters of these letters are not infallible; to the extent that they assert that Handbook PO-408 is covered by Article 19, they are wrong. Similarly, merely finding that the AMP studies

are an appropriate subject of information requests is not equivalent to finding that Handbook PO-408 directly relates to wages, hours or working conditions.

Finally, the Postal Service notes that a conclusion that Handbook PO-408 is not covered by Article 19 does not harm or deprive the Unions of any rights or benefits. The Unions may challenge the impact of a decision to consolidate operations through their rights under Article 12.

### FINDINGS

In his 1978 APWU National Arbitration decision in Case AC-NAT-11991, Arbitrator Garrett broadly addressed Article 19 as follows:

This critically important Article first appeared in the National Agreement in 1973. Its language seems clearly to reflect recognition by all parties that they were unable in national negotiations to deal in detail with all of the myriad significant subjects of collective bargaining which expectably are presented in such a vast enterprise, with many separate craft organizations representing the bargaining unit employees. Article XIX represents, therefore, an effort to achieve reasonable stability in the various bargaining relationships, while at the same time recognizing the need for Management to have reasonable flexibility for the proper exercise of its essential functions as spelled out in Article III.

As Arbitrator Mittenthal emphasized in his 1990 decision, Article 19 by its terms only applies to Postal Service regulations that "directly relate" to wages, hours or working conditions.

Handbook PO-408, as most recently revised in March 2008, includes the following provisions:

#### 2 Feasibility Study

##### 2-1 Purpose

An area mail processing (AMP) feasibility study determines whether there is a business case for relocating processing and distribution operations from one location to another. An AMP feasibility study must be conducted when a new facility project incorporates operations from two or more offices. An AMP feasibility study is completed within two months of the notification of intent to conduct the study. With input from management at both the losing and gaining facilities, the designated area AMP coordinator is responsible for preparing the AMP feasibility study and gathering supporting documentation.

The objectives of an AMP feasibility study are identified as follows:

1. Evaluate service standard impacts for all classes of mail.
2. Consider issues important to local customers.
3. Identify impacts to Postal Service staffing, both craft and management positions.
4. Analyze savings and costs associated with moving mail processing operations.

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#### 4 Communications

##### 4-1 Introduction

Communications is an integral part of the area mail processing (AMP) process. The need for clear, consistent, and accurate communications is especially important when announcing an AMP feasibility study, notifying stakeholders about the public input meeting, and relaying the final decision about a proposal. . . .

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##### 4-3 Postal Service Accountability and Enhancement Act

AMP is affected by the Postal Service Accountability and Enhancement Act, which became effective December 20, 2006. Specifically, the Postal Service must do the following:

1. Provide adequate public notice to communities affected by a proposed network rationalization decision.

2. Make available information about any service changes in the affected communities, any other effects on customers, any effects on Postal Service employees, and any cost savings.
3. Afford affected persons ample opportunity to provide input on the proposed decision.
4. Take such comments into account in making a final decision.

#### 4-4 Communications Plan Overview

The objective of the AMP Communications Plan is to communicate effectively to the public and Postal Service employees the fact that consolidation of operations improves efficiency and/or service. The AMP worksheet, Stakeholders Notification, identifies those local stakeholders who require timely and appropriate communications, including the following:

1. Employees.
2. Employee organizations.
3. Appropriate individuals at various levels of government.
4. Local media.
5. Community organizations.
6. Local mailers.

Communications to stakeholders must occur when the following milestones in the AMP process are reached:

1. Notice of intent to undertake an AMP feasibility study.
2. Scheduling of public meeting.
3. Final decision about the approval or disapproval of an AMP proposal.
4. Other events, such as placing a study on hold or resuming a feasibility study.

## A-5 Stakeholders Notification

### A-5.1 Overview of the AMP Worksheet

A vital aspect of AMP is timely, clear communication with all stakeholders. An announcement of an AMP feasibility study starts the communication with employees, employee organizations, local government officials, media, community groups and local mailers. A team approach should be used to communicate with all craft and management organizations.

(Emphasis added.)

The March 2008 revision of Handbook PO-408 recognizes the strong interest of postal employees and unions -- among other stakeholders -- in decisions to close or consolidate Postal Service processing facilities.<sup>2</sup> It provides for Congressionally mandated (PAEA) notice/communication to employees and unions and for affording them opportunity for input which must be taken into account by management in making a final decision. Notably, prior to issuing this latest revision of PO-408, the Postal Service in November 2007 distributed drafts to the NPMHU and the APWU accompanied by letters signed by a top Labor Relations Manager at Headquarters which stated:

In accordance with Article 19 of the National Agreement, enclosed is a draft copy of Handbook PO-408, Area Mail Processing Guidelines.

The Postal Service does not argue here, as it did to regional Arbitrator Sulzner in 2009, that this transmittal was an example of customary handling of changes in handbooks not subject to Article 19 coverage, but only -- in accordance with the Postal Service's current position -- that those transmittal letters (and the 2014 letter to the APWU cited by the Unions) were wrong in treating PO-408 as an Article 19 handbook and should not be determinative of this issue.

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<sup>2</sup> Employees excessed as a result of such decisions are subject to relocation, transfers and reassignments inside and outside the craft and inside and outside the building even across state lines.

Bargaining unit employees and their unions have a vital interest in the conduct of AMP studies provided for in PO-408. The impact of those studies on their "wages, hours or working conditions" is direct and significant. This is not a case like that decided by Arbitrator Mittenthal in 1990, which involved an APWU challenge to voter registration guidelines, in which he concluded: "Voter registration, realistically viewed, has nothing to do with the 'wages, hours or working conditions' of Postal Service employees." While there can be no question that the ultimate decision as to whether to close or consolidate a postal processing facility is within the Postal Service's exclusive management rights recognized in Article 3, the AMP process provided for in PO-408 serves in part to protect bargaining unit interests. This also is not a case like that recently decided by Arbitrator Goldberg, involving contracting for and administering Contract Postal Units (CPUs), in which he found that the regulations at issue did not impact existing employee rights or benefits and were not concerned with protecting bargaining unit interests.

The purpose of PO-408, as it has evolved over the years, is not just to provide guidance or advice to postal managers on how to perform an AMP study; it is not solely an internal management document. The purpose also includes ensuring that the interests of postal employees, as well as other stakeholders, are adequately considered, not just by providing for notice/communication and stakeholder input, but more broadly by providing a process -- in part mandated by the PAEA -- designed to optimize decision-making regarding closing and relocation of processing and distribution facilities that has a significant impact on employees.<sup>3</sup> Cost savings, including labor costs, are an important component of the AMP process. Given the significant impact of decisions to close or relocate a processing facility on employee wages, hours or working conditions, affected employees and their unions have a substantial and direct interest in the Postal Service adhering to the AMP process set forth in PO-408.

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<sup>3</sup> The facts in this case, thus, are not analogous to those in the 1982 Gamser decision and 2009 Das decision cited by the Postal Service.



The Postal Service in this case strongly relies on the dictum in the 1990 Mittenthal Award that: "It is the subject matter of the regulation, not its effect, which determines whether Article 19 can properly be invoked." (Emphasis in original.) It is important, however, to place this dictum in context. Arbitrator Mittenthal already had concluded that any ultimate impact of voter registration on working conditions "is tenuous in the extreme" and, therefore, there was no "direct" relationship as required to trigger Article 19. His dictum about "subject matter" was addressed to the APWU's argument that the voter registration rule was a "work rule" because it regulated employee behavior, and, as such, *per se* dealt with working conditions. Mittenthal rejected this argument, stating in part:

It is the subject matter of the regulation, not its effect, which determines whether Article 19 can properly be invoked. If the controlling consideration is simply whether the regulation has the effect of restricting employee behavior, then probably any and all rules regarding conduct would fall within the purview of Article 19. That could hardly have been what the parties intended. They limited Article 19 to that which "directly relates to. . .working conditions." The APWU view, if accepted, would eliminate the term "directly" and place all regulations, however indirect and remote their relationship to "wages, hours or working conditions", within the scope of Article 19. (Emphasis in original.)

In context, I do not read Arbitrator Mittenthal's decision as holding that applicability of Article 19 never can be based on the impact of a Postal Service regulation on "hours, wages or working conditions" even where, as in the present case, that impact is direct and substantial. His point, in my view, is that application of Article 19 is not triggered merely because a regulation has some effect on employee behavior unrelated or only tenuously related to its purpose or subject matter. Moreover, as the Unions point out, there are National Arbitration decisions that recognize in certain circumstances that the adverse impact of a regulation on "wages, hours or working conditions" can be a basis for application of Article 19, including Arbitrator Gamser's 1980 (casuals' wages) and 1982 (MS-47) decisions and Arbitrator Das' 2002 (ASM) decision.<sup>4</sup>

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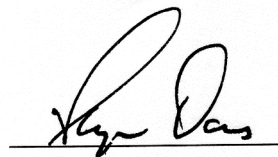
<sup>4</sup> In his 1980 decision, Arbitrator Gamser ultimately ruled against the APWU, concluding that: "Insufficient hard evidence to establish this [alleged] adverse impact is to be found in the record made by the grievants." Applicability of Article 19 was not at issue in Arbitrator Das' 2002

In sum, I find that the Postal Service Labor Relations Managers who in 2007 and 2014 treated Handbook PO-408 as covered by Article 19 in their dealings with the Unions got it right. Arbitrator Sulzner's regional arbitration decision to the contrary, of course, is not a binding precedent, and seems to me largely to be based on a misreading of Arbitrator Mittenenthal's 1990 decision. Arbitrator Nolan's very recent 2015 NALC National Arbitration decision contains some reasoning that could be viewed as at odds with the reasons set forth in this decision, although he also found the regulation in question to have only a limited and indirect effect on wages, hours or working conditions. As the NPMHU and APWU were not parties in the case decided by Arbitrator Nolan, it is not, in any event, a binding precedent.

Accordingly, I find that Article 19 incorporates Handbook PO-408 into the National Agreement. It should be emphasized that the decision in this case is focused squarely on Handbook PO-408 and its particular direct relationship, as discussed above, to "wages, hours or working conditions." Moreover, the parties broadly addressed the issue of Article 19's applicability to Handbook PO-408, rather than to parts thereof.

#### INTERIM AWARD

Article 19 incorporates Handbook PO-408 into the National Agreement. The parties should proceed to schedule a hearing on the merits of the grievance.

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Shyam Das, Arbitrator

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decision. However, the finding that certain changes in Postal Service policy relating to subcontracting of maintenance services was not fair, reasonable, and equitable largely was based on the "potential adverse effect on the bargaining unit."