

NATIONAL ARBITRATION PANEL

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In the Matter of the Arbitration )  
between )  
UNITED STATES POSTAL SERVICE ) Case No. Q06C-4Q-C 10191368  
and )  
AMERICAN POSTAL WORKERS )  
UNION, AFL-CIO )  
)

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BEFORE: Shyam Das

APPEARANCES:

For the Postal Service: Ann R. Cronin, Esquire  
Brian M. Reimer, Esquire

For the APWU: Melinda K. Holmes, Esquire

Place of Hearing: Washington, D.C.

Dates of Hearing: July 14-15, 2010  
May 14, 2012

Date of Award: December 3, 2012

Relevant Contract Provisions: Articles 14 and 31.3

Contract Year: 2006-2010

Type of Grievance: Contract Interpretation

Award Summary:

The issues raised in this dispute are resolved as set forth in the above Findings.

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Shyam Das, Arbitrator

On June 3, 2010, the Union appealed the present dispute to National Arbitration. The issues raised in this dispute, as articulated by the Union, are as follows:

1. Did the Postal Service violate Section 8(a)(5) of the National Labor Relations Act in failing to bargain with the APWU regarding ergonomic issues with the DBCS?
2. Did the Postal Service violate Article 14 of the National Agreement in failing to bargain with the APWU during the term of the 2006 National Agreement regarding ergonomic issues with the DBCS?
3. Did the Postal Service violate Article 14 of the National Agreement by demanding that the APWU pay the Postal Service for information the Union requested about the DBCS?

Article 14 of the applicable 2006-2010 National Agreement includes the following relevant provisions:

ARTICLE 14  
SAFETY AND HEALTH

Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. The Employer will meet with the Union on a semiannual basis and inform the Union of its automated systems development programs. The Employer also agrees to give appropriate consideration to human factors in the design and development of automated systems. Human factors and ergonomics of new automated systems are a proper subject for discussion at the National Joint Labor-Management Safety Committee.

Section 2. Cooperation

The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions.... If an employee believes he/she is being required to work under unsafe conditions, such employees may:

(a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;

(b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;

(c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour, and/or

(d) make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor.

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Any grievance filed in accordance with Section 2.(c) above which is not resolved at Step 2 may only be appealed to the local Safety and Health Committee for discussion and decision or may be appealed directly to arbitration within 21 days after receipt of the Employer's Step 2 decision. Any such appeal to the Safety and Health Committee must be made within fifteen (15) days after receipt of the Employer's Step 2 decision unless the parties agree to extend the time for appeal. The committee shall meet to discuss the grievance at the next regularly scheduled Safety and Health Committee meeting. Any grievance not resolved by the committee may be appealed directly to arbitration within 21 days of the committee's review. If appealed to the regularly scheduled local Safety and Health Committee, the parties representatives shall be prepared to present the issue to the committee with their assessment and resolution.

Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket at the request of the Union.

### Section 3. Implementation

To assist in the positive implementation of the various programs:

A. There shall be established at the Employer's Headquarters level a Joint Labor-Management Safety Committee and a Joint Labor-Management Ergonomics Committee.... Not later than 60 days following the effective date of this National Agreement,

designated representatives of Union and Management will meet for the purpose of developing a comprehensive agenda which will include all aspects of the Employer's Safety Program and Ergonomics Program. Subsequent to the development of this agenda, priorities will be established and a tentative schedule will be developed to insure full discussion of all topics. Meetings may also be requested by either party for the specific purpose of discussing additional topics of interest within the scope of the Committees.

The responsibility of the Safety and the Ergonomics Committees will be to evaluate and make recommendations on all aspects of the Employer's respective Safety and Ergonomics Programs, to include program adequacy, field implementation, studies for improving the work environment, training, and unsafe conditions. To support this process the Employer shall establish a fund of \$500,000 within ninety (90) days of the effective date of this Agreement.... The Fund shall be supervised by the Joint National Labor-Management Safety Committee. Disbursement of the funds for any expenditures shall be authorized by the chairperson of the Committee.

The Chairman will be designated by the Employer.... The Headquarters level Committee will meet quarterly and the Employer and Union Representatives will exchange proposed agenda items two weeks before the scheduled meetings. If problems or items of significant, national nature arise between scheduled quarterly meetings either party may request a special meeting of the Committee. Either party will have the right to be accompanied to any Committee meeting by technical advisors.

Article 14 goes on to provide for Area Level and Local Joint Labor-Management Safety Committees.

Article 31 of the National Agreement addresses "Union-Management Cooperation." Section 3 provides:

#### Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to

continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

In October 2007, an Occupational Safety and Health Administration (OSHA) team conducted an on-site "verification" at the Denver P&DC purportedly under the terms of the Ergonomic Strategic Partnership (ESP) between OSHA, the Postal Service and postal Unions. OSHA subsequently issued a report addressing ergonomic issues related to operation of Data Bar Code Sorter (DBCS) machines at the Denver P&DC.<sup>1</sup>

A meeting of the National Joint Labor-Management Ergonomics Committee (National Ergonomics Committee) provided for in Article 14.3.A was held on October 14, 2008. On September 16, 2008, Greg Bell, then APWU Industrial Relations Director (now Executive Vice President), sent a letter to John Dockins, then USPS Manager of Contract Administration, setting forth the Union's agenda for the meeting. This agenda included 13 items relating to DBCS operation, based on the OSHA Denver report, which Bell stated "warrant discussion and possible action."

Bell, who was not at the October 14, 2008 meeting, testified that the Union representatives who were in attendance reported to him that the Postal Service "refused" to discuss the DBCS ergonomic issues on the agenda and raised an issue questioning the basis for OSHA making its on-site visit and report. Bell indicated they also told him that the Postal Service stated that Article 14 was not a joint process and that the Postal Service had no obligation to bargain over the ergonomic issues raised by the Union, which Bell stated was contrary to the parties' history.

Following the October 14, 2008 meeting, the Union sent the Postal Service a follow-up letter requesting certain information it had asked for at the meeting. In an October 23, 2008 response, Manager Dockins stated:

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<sup>1</sup> DBCS machines, which date back to the 1980s, have been described as the backbone of the Postal Service's distribution network.

Please note that this request has been assigned information request tracking number IR08-55, and shall be processed in accordance with the applicable rules, regulations, and collective bargaining agreements. You shall be notified if this request requires remittance on the part of the APWU for photocopies and/or time spent processing the information.

(Emphasis added.)

According to Bell, the Postal Service had not previously sought payment for information relating to Article 14 issues.<sup>2</sup>

On December 29, 2008, the APWU filed an unfair labor practice (ULP) charge with the NLRB alleging:

Since on or about October 14, 2008, and continuing to date, the Postal Service has failed and refused to meet and bargain in good faith with the American Postal Workers Union, AFL-CIO, about ergonomics issues revealed in a report of the U.S. Occupational Health and Safety Administration.

On April 1, 2009 Dockins sent a letter regarding part of the IR08-55 information request (relating to ergonomic aspects of Flats Sorter System equipment operation), in which he stated that the Postal Service estimated the cost to the Union of processing and providing the information as \$1216.00. Dockins further stated:

If the APWU wishes the Postal Service to capture and retrieve the requested information, payment in the amount of \$1216.00 should be forwarded to my office....

\* \* \*

We will promptly furnish the requested information once this office is informed that the APWU will pay the costs....

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<sup>2</sup> In an October 31, 2008 letter, Dockins included a similar statement in response to an October 21, 2008 request for information in follow-up to the October 14, 2008 meeting.

On April 27, 2009, the National Ergonomics Committee met again. The agenda evidently included 10 items identified by the Union that were based on the OSHA Denver report. Both Bell and Dockins attended this meeting.

Bell explained that he attended the April 27, 2009 meeting because the Postal Service was taking the position that it had no obligation to bargain over these ergonomic issues and that if the Union wanted information relating to these issues it would have to pay for that information. Bell described the meeting as cordial but asserted that the Postal Service did not present anything substantive. Bell testified that Dockins said the Postal Service would consider a joint evaluation or joint process, but at the end of the day -- Bell stressed -- there was no joint process and the Postal Service had not changed its position regarding payment for information. On cross-examination, Bell acknowledged no one from the Postal Service "refused" to do what he asked -- Dockins said he would consider it, but it still has not occurred.

Dockins testified that all of the Union's agenda items were discussed at the April 27, 2009 meeting, and the Postal Service provided a response. He indicated that while the Postal Service did not agree to what the Union was proposing, it did agree to take back the Union's concerns and consider them. When asked on cross-examination whether all of the items remained "open" at the end of the meeting, Dockins testified:

I don't know if they all were or not.... For instance, on the stacking, I don't know if we came to an impasse or a resolution or -- we told our concerns -- it's space requirement problem. There's only so much space behind these machines.

Dockins said this was the first time he had heard the Union assert it was not required to pay for information it requested related to safety and health issues. Dockins said he responded that Article 31.3 was clear, and he drew a distinction between an information request that constituted joint request from the Committee, that the Postal Service would provide without charging the Union, and information requested by the Union. Dockins also testified that his practice always has been to provide requested information and bill the Union later.

On May 1, 2009, the NLRB issued a Complaint and Notice of Hearing which subsequently was amended on or about July 20, 2009. The amended complaint alleges that the Postal Service had refused to bargain in accordance with Section 8(d) of the Act, citing its failure and refusal to provide requested information and to bargain collectively, as requested by the Union on or about September 16, 2008, about ergonomic issues associated with the DBCS machine. The parties ultimately settled the information request charge, and the NLRB deferred the failure and refusal to bargain charge to arbitration under the Board's *Collyer* deferral policy.

Bell stated that he attended another National Ergonomics Committee meeting in September 2009 at which Ron Scott was the lead person for the Postal Service (as he had been at the April 27, 2009 meeting Bell previously had attended). Bell testified:

Q ...[W]hat do you recall about that meeting?

A. Ron is a very nice guy. It was a very cordial meeting. We still didn't get resolved the issue of joint -- a joint process. If memory serves me right, they were unprepared to address the ergonomic issues dealing with the DBCS, and we also raised the issue -- my main issue for attending was the fact that the only way we get the information is if we pay for it. You know, I focused on the joint process. I thought it was a good meeting. The resolve -- there was no resolve, but I thought it was a good meeting.

\* \* \*

Q Do you recall in that meeting, did the Postal Service -- did it offer any substantive information or proposals regarding the DBCS ergonomic concerns?

A They were unprepared. And I think they said that good people were looking into it, something like that. Whatever it was, they were unprepared to address it.

At the earlier [October 14, 2008] meeting I think -- that I didn't attend -- but reflected in the correspondence, they had internal groups doing certain things. But at this meeting, the second meeting that I attended, they were unprepared to discuss the ergonomic-related issues of DBCS as a result of that [OSHA Denver] report.

Various Union and Postal Service representatives -- including Dockins, Bell and then APWU President William Burrus -- attended a meeting on March 30, 2010. There appears to have been a misunderstanding as to the purpose of the meeting. Dockins testified that when he suggested they talk about ergonomics, Bell interjected that the NLRB had filed a complaint on that and it was not what the Union was there to talk about. At the end of the meeting, Dockins testified, he indicated he was willing to talk about ergonomics and the DBCS anytime the Union wanted to. He said he repeated that in a phone call he had the next day with President Burrus, who responded: "I'll let you know." Dockins said there never was any further communication on it.

On May 3, 2010, the Union initiated the present Step 4 dispute.

The Union submitted as exhibits a number of earlier MOUs and other settlement agreements relating to ergonomic issues and to participation in an OSHA voluntary protection program which Bell explained reflected the parties' mutual understanding that dealing with ergonomic and safety issues is a joint process. Bell testified:

Q And concerns that equipment is inherently unsafe, would those arise through article 14? Would the union raise those through article 14?

A Anything dealing with safety and ergonomic-related issues, whether it's unsafe working conditions, unsafe equipment, anything dealing with injuries, illness -- all of that is raised under article 14. And successfully. The parties have a very successful history of addressing those decisions. Joint -- a joint process where the parties are making decisions that maybe one can argue that's the employer's decision to make. But when it comes down to safety and health, it's a joint process. I mean, that's the history of it.

Bell also stated that since he became the Union's top safety and health person in 1995 there never before has been an issue over payment for information relating to safety and ergonomic issues which, he said, are dealt with as a joint process.

In his testimony, Dockins stressed that the function of Article 14 committees is "to meet, discuss and then recommend to management all aspects of the employer safety program." Sometimes, he added, matters are resolved, sometimes not. In the event of a disagreement, Article 14 -- among other things -- provides that the Union can file an expedited Article 15 grievance and proceed to rights arbitration. Dockins pointed to testimony of APWU President Burrus in a 1995 interest arbitration hearing at which Burrus stated that if the Union had a disagreement with the Postal Service over how to handle an ergonomic issue it could initiate an Article 15 grievance (as well as utilizing OSHA procedures). Dockins stressed that Burrus did not mention demanding mid-term bargaining and impasse interest arbitration.

The Postal Service submitted a chronological list of National Ergonomics Committee and National Safety Committee and subgroup meetings between June 19, 2008 and June 29, 2010. It points out that ergonomic issues were discussed in at least eight of those meetings.

#### UNION POSITION

The Union stresses that there is no disagreement that ergonomics is a mandatory subject of bargaining over which the Postal Service must negotiate with the APWU. The crux of this case turns on whether the Postal Service proved its defense that the APWU waived the Postal Service's duty to bargain over national ergonomic policy and practice for the DBCS for the term of the 2006 National Agreement. The Postal Service's theory that Article 14 replaces bargaining is not supported by the terms of Article 14 and how those terms have been implemented by the parties. Rather than being an end in and of itself, Article 14 provides for and requires bargaining over national ergonomic issues by the joint National Ergonomics Committee. Article 14 does not furnish some other process to replace the bargaining which it affirms.

The Union asserts that the applicable legal standard for determining whether the Union has waived the duty to bargain in this case is that the waiver be "clear and unmistakable." The Postal Service's primary waiver theory is that the APWU, in agreeing to the terms of Article

14 and to continuing the National Ergonomics Committee, agreed to replace bargaining over national ergonomic issues with meetings of the National Ergonomics Committee and local grievances over actual harm to employees from the Postal Service's practices. In this case, however, Article 14, both by its terms and by how those terms have been applied by the parties, does not provide for the kind of alternative dispute resolution process sufficient for it to replace bargaining. On the contrary, the terms of Article 14 explicitly embrace and require the bargaining the Union demanded here.

The Union points out that Article 14 establishes National Safety Labor-Management Committees through which the Union can give input on and bargain over the Postal Service' safety and health policies and practices. Article 14 does not, however, give the Committees authority to enforce their recommendations. Moreover, although Article 14 references grievances and arbitration, it is clear those provisions supplement Article 15 by giving priority to grievances that directly involve the immediate safety and well being of employees. They fundamentally rely on the existing grievance and arbitration procedures in Article 15 to resolve fact-specific safety and health disputes. By its own terms, therefore, Article 14 does not contain a distinct process for resolving disputes, as President Burrus noted in his 1995 interest arbitration testimony cited by the Postal Service. The arbitrations referenced in Article 14 -- which Burrus referred to -- are rights arbitration over whether a condition violates the National Agreement and not interest arbitration to decide national policy on how the condition should be eliminated or mitigated. The National Ergonomics Committee is not a replacement for bargaining, but rather a direction for where to bargain and an affirmation of the requirement over what to bargain. The Committee joint recommendations process described in Article 14 provides the parties with an ongoing method to evaluate and make recommendations on the Postal Service's ergonomics program, but when the Union demands bargaining, the joint recommendation process gives way, if necessary, to traditional negotiations by the Committee.

The Union stresses that it also presented undisputed evidence of many times in the past when the parties have bargained and resolved safety and health issues, in particular ergonomic issues. Those resolutions were sometimes also the settlement of ULP charges about the Postal Service's failure to bargain, and all address broad policy concerns, rather than

only specific harm to certain employees. Article 14 employs no alternative process for challenging policy and rules issues over ergonomic concerns with the DBCS other than to request bargaining through the national committees.

The Union insists the Postal Service has failed to bargain with the APWU over ergonomics issues relating to the DBCS equipment. The Postal Service's conduct in this case did not constitute good faith bargaining as required by Section 8(d) of the NLRA. Section 8(d) does not dictate a result or that agreement be reached, but it does obligate parties to make a good faith effort to reach agreement. Whether bargaining, in fact, occurred is determined by the totality of the circumstances. In this case, the Union argues, the evidence clearly demonstrates that bargaining did not occur despite the parties' participation in several National Ergonomics Committee meetings. Union witness Greg Bell testified that although there were a number of Committee meetings where the Union raised the DBCS ergonomic issues, and although those meetings were cordial, they were never substantive on those issues and no progress was made. All told, the Union asserts, the record demonstrates that the Postal Service never engaged in negotiations with the Union with the intent of trying to reach agreement on the DBCS ergonomic issues as required by Section 8(d). This failure violates the contractual requirements of Article 14 as well as the legal requirements of the NLRA.

The Union also contends that the Postal Service's demand that the Union pay for the information it requested about the DBCS violates Article 14. Article 14 and its joint Committees are premised on an open exchange of information and ideas between the parties so as to promote the complete exploration of safety and health concerns and to enable joint recommendations to be made to management. Consistent with Article 14, the Postal Service must provide information the Union requests related to those ends without charge. This is not only justified by the exclusive control the Postal Service has over this information, but also by the undisputed fact that both parties need the information to mutually establish baselines and measures, particularly on ergonomic issues like those involved here. The Union maintains that the Postal Service, as it always has done before, should not charge the Union for Article 14 information needed for it to comply with its safety and health commitments. Article 31 and postal policy with regard to payment for general labor-management information requests is not

relevant, the Union insists, because the special use of information under Article 14 justifies a different rule.

In conclusion, the Union requests that the Arbitrator: (1) affirm the Postal Service's duty to bargain with the APWU concerning ergonomics of the DBCS; (2) find the Postal Service in violation of Section 8(a)(5) of the NLRA and Article 14 of the National Agreement for failing to bargain with the APWU over the ergonomics of the DBCS and order the Postal Service to bargain with the APWU; and (3) find the Postal Service in violation of Article 14 for demanding payment for information related to issues before the National Ergonomics Committee.

#### EMPLOYER POSITION

The Postal Service agrees that safety and ergonomic issues are mandatory subjects of bargaining under the National Labor Relations Act. It asserts that the parties have bargained about these topics since the onset of postal collective bargaining, resulting in Article 14. Article 14 places obligations on the Postal Service to provide a safe working environment, creates joint Committees to meet and confer on those issues, and provides an expedited grievance/arbitration procedure to allow for quick resolution of safety and health issues at either the national or local level. The Postal Service contends that, having agreed with the Union to the broad terms in Article 14, the Postal Service has fulfilled its legal bargaining obligations and is entitled to rely on the bargain it struck with the Union until the National Agreement expires.

The Postal Service has agreed to MOUs on health and safety issues. But even if the Union is correct in characterizing this as "mid-term bargaining," that does not detract from the Postal Service's right to rely on the bargain it struck in Article 14. Either party could have taken its chances with an arbitrator on those occasions, but chose a settlement instead.

The Postal Service insists that neither it nor the APWU is obliged to engage in "mid-term bargaining" on a topic that already is covered by Article 14. The DBCS issues raised by the Union clearly are covered by Article 14, as they relate to safety and health. Article 14

specifically encompasses ergonomic issues and those issues were discussed at eight National Committee meetings. If the Union was unsatisfied with the safety and health situation regarding DBCS machinery, it could have invoked the expedited grievance/arbitration procedure either at the national or local level. But the Union cannot utilize the expedited Article 14 appeal procedures to seek the right to force the Postal Service to engage in mid-term bargaining and, if that results in impasse, interest arbitration.<sup>3</sup> The Postal Service stresses that in 41 years of bargaining with the Union, there never has been a mid-term interest arbitration. While the Postal Service does not deny the possibility that a mandatory topic of bargaining could arise mid-term -- one that has not been addressed by the parties in an existing National Agreement -- such is certainly not the case here.

The Postal Service argues that the Union produced no evidence to support its claim that the Postal Service violated Article 14 in this case. The Postal Service met and conferred with the Union in eight national meetings on DBCS safety and ergonomic issues. While the Union may have been dissatisfied with the fact that the Postal Service did not change its position, there is nothing in Article 14 that requires the parties to come to an agreement. That is why there is an expedited grievance/arbitration procedure.

Finally, the Postal Service asserts that it properly can require the Union to reimburse it for costs reasonably incurred in obtaining information requested by the Union relating to ergonomic safety issues. The APWU has agreed in Article 31.3 that the Postal Service can "require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information." Article 14 contains no exception to that policy. Article 14.3.A does create a fund, established by the Postal Service, where disbursements "shall be authorized by the chairperson of the Committee." Postal Service witness Dockins explained that the practice of the Postal Service is to follow Article 31.3 if an information request comes from the Union only, but to agree to use Committee funds when the request comes from the Committee chairperson, who is designated by the employer. This practice, the Postal Service maintains, follows the clear language of the contract.

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<sup>3</sup> The Postal Service notes that in the private sector bargaining that results in impasse can lead to a strike or lockout. In the Postal Service, the result would be interest arbitration, where an

Accordingly, the Postal Service requests that the Arbitrator deny the grievances.

### FINDINGS

In its 15-day Step 4 statement of position in this case, the Union stated:

...[P]ursuant to Article 14 the parties agreed to a joint process for handling safety and addressing safety/ergonomic issues that encompasses bargaining between the parties over safety and ergonomic issues that may arise directly affecting bargaining unit employees. Moreover, if the parties reach an impasse, Article 14 provides for the dispute to be placed at the head of the arbitration docket to be heard, at the request of the Union.

In Article 14 of the National Agreement, the parties have addressed safety and, in particular, ergonomic issues. Article 14.1 sets forth a general standard that the Postal Service is obligated to conform to:

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force.

Article 14.1 continues: "The Union will cooperate with and assist management to live up to this responsibility." Article 14.2, which is captioned "Cooperation," states that: "The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions." (Emphasis added.) Article 14.3, captioned "Implementation," establishes various Joint Labor-Management Committees, including the National Ergonomics Committee, and states:

The responsibility of the Safety and the Ergonomics Committees will be to evaluate and make recommendations on all aspects of the Employer's respective Safety and Ergonomics Programs, to include program adequacy, field implementation, studies for improving the work environment, training, and unsafe conditions.

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arbitrator can alter the terms of the National Agreement.

These provisions in Article 14 clearly reflect the parties' agreement that safety and ergonomic issues are to be jointly addressed on an ongoing basis by both parties. Management retains the ultimate authority -- and responsibility -- to take necessary action to provide safe working conditions and to develop a safe working force, subject to agreements it makes with the Union and to the Union's right and ability to challenge such action or inaction on an expedited basis through the grievance/arbitration procedure provided for in Article 15.

The parties have agreed in Article 14 how ergonomic issues that arise during the term of the National Agreement, such as those raised by the Union in this instance, are to be addressed and resolved. I agree with the Postal Service that, for purposes of Section 8(d) of the NLRA, the provisions of Article 14 set forth the parties' bargain with respect to how such ergonomic issues are to be dealt with during the term of the National Agreement. The key issue here, therefore, is whether the Postal Service has complied with those Article 14 procedures.

In this case, the Union properly brought its concerns regarding DBCS ergonomic issues -- regardless of their source -- to the National Ergonomics Committee. This is a joint Committee with broad responsibility "to evaluate and make recommendations on all aspects of the Employer's...Ergonomics Programs." Implicit in Article 14 is that both parties, individually and jointly, will act in good faith and that in many, if not most, instances this will result in a mutually acceptable resolution of a particular issue -- whether by management action or in an MOU or other agreement.

Article 14, as the Union recognizes, does not require the parties to come to an agreement, but provides for expedited grievance/arbitration of unresolved disputes. This is rights, not interest, arbitration. Under Article 15, an arbitrator is empowered to determine whether the Postal Service is in violation of Article 14 or some other contractual agreement.<sup>4</sup>

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<sup>4</sup> This is different from the process the parties agreed to in Article 19, which applies when the Postal Service proposes a mid-term change in a handbook, etc., that directly relates to wages, hours or working conditions which might otherwise trigger a legal duty to bargain. Article 19 arbitration, as agreed to by the parties, is analogous to interest arbitration to the extent the Union can challenge the change as not being fair, reasonable, and equitable.

The record developed in this case reflects the Union's concern that the Postal Service has repudiated Article 14's requirements by asserting that Article 14 is not a joint process and that it is not required to bargain with the Union under Article 14. This was the gist of what APWU witness Bell testified was reported to him by Union representatives following the initial October 14, 2008 National Ergonomics Committee meeting. The Union's agenda for that meeting was based on OSHA's report regarding DBCS ergonomic issues at the Denver P&DC. None of the persons who attended that meeting testified in this case, but there is evidence that suggests the meeting may have gotten off to a bad start when the Postal Service expressed its belief that OSHA had overstepped its role under the ESP in conducting the October 2007 "verification" at the Denver P&DC, while Union representatives pressed the Postal Service to provide the Union with a response to the OSHA report.

By the time the National Ergonomics Committee met again on April 27, 2009 to discuss the items raised by the Union, the Union had filed a ULP charge with the NLRB, claiming the Postal Service had failed to bargain over the ergonomic issues included in the OSHA report, and the Postal Service had sent the Union a letter which on its face seems to say that the Union would have to pay in advance -- or at least commit to payment -- before the Postal Service would provide requested information related to those issues. The Union saw the Postal Service as denying any obligation to jointly address the ergonomic issues the Union had raised and as seeking payment, for the first time, for information the Union had requested to enable it to fulfill its role under Article 14. The Postal Service saw the Union as demanding mid-term bargaining -- in the legal sense -- which potentially could result in interest arbitration if the parties reached impasse.

Bell and Dockins, who attended the April 27, 2009 meeting, had somewhat different recollections of what occurred at the meeting. Dockins stated that all the Union's agenda items were discussed and the Postal Service both gave a response and agreed to take back the Union's concerns and consider them. Bell stated the Postal Service did not present anything substantive, but he agreed there was discussion on some of the items, although he was not sure which ones. He did describe the meeting as cordial and agreed that the Postal

Service did say it would consider a joint evaluation or joint process to further address the items raised by the Union, although that did not materialize.

Thereafter, the parties continued their involvement with the NLRB, which issued an amended complaint on July 20, 2009 charging the Postal Service with a failure to bargain, a charge it later deferred to arbitration.

At the next National Ergonomics Committee meeting in September 2009, Bell stated that he focused on the "joint process" under Article 14, and he characterized it as a "good meeting," despite the lack of resolution. At that point, it would appear there was a reasonable chance the Article 14 process would get back on track. But, ultimately, that did not occur, and -- following what seems to have been a somewhat confusing and unhelpful meeting between various Union and Postal Service representatives on March 30, 2010 -- the present dispute was initiated on May 3, 2010.

Article 14 provides for the Union to play a major role and, to the extent previously stated, establishes a joint process for addressing safety and ergonomic issues. The Union had the right under Article 14 to be heard on the DBCS ergonomic issues it presented to the National Ergonomics Committee and to have the Postal Service respond substantively to the Union's proposals, including any proposals for joint studies, etc. This does not appear to have been fully accomplished, but the evidence does not establish that the Postal Service acted in bad faith or otherwise violated Article 14 of the National Agreement or Section 8(a)(5) of the NLRA. As full compliance with the Article 14 process was not achieved, the parties are directed to reactivate that process, consistent with these findings, to the extent the Union's DBCS ergonomics agenda items remain outstanding.

The remaining issue concerns payment by the Union for information it requested from the Postal Service. As the Postal Service asserts, the provision in Article 31.3 which permits the Postal Service to require the Union to reimburse it for costs incurred in obtaining information it requests to carry out its responsibilities as bargaining representative does not carve out an exception for information relating to safety and health or Article 14 issues. Nor

does Article 14 expressly address payment for information requested by the Union. But charging the Union for information it reasonably requests in good faith to fulfill its joint role and obligations under Article 14 in relation to issues before the National Ergonomics Committee is not consistent with the overall structure and tenor of Article 14.<sup>5</sup> Moreover, the Postal Service did not present specific evidence contradicting Bell's testimony that the Union historically has not been charged for such information. Accordingly, the Postal Service is directed to provide information reasonably requested by the Union in good faith to fulfill its role and obligations under Article 14 in relation to issues before the National Ergonomics Committee without exacting payment therefor.

AWARD

The issues raised in this dispute are resolved as set forth in the above Findings.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator

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<sup>5</sup> The fund provided for in Article 14.3 -- disbursements from which are to be authorized by the Committee chairperson designated by the Postal Service -- serves much broader purposes than obtaining existing information. It does not seem particularly germane to the issue at hand.