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| In the Matter of the Arbitration |) | |
| Between |) | |
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| UNITED STATES POSTAL SERVICE |) | USPS Case No.: 6X 18T-6X-C- 21281358 |
| |) | |
| and |) | APWU No. HQT20210237 |
| |) | |
| AMERICAN POSTAL WORKERS |) | |
| UNION, AFL-CIO |) | (Maintenance-Pending Qualification) |
| |) | |

Arbitrator

For the U.S. Postal Service:

For the Union:

Jason Veny, Counsel

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| Place of Hearing: | Videoconference hearing |
| Dates of Hearing: | February 25 & 26, 2025 |
| Briefs Received: | June 24, 2025 |
| Date of Award: | August 13, 2025 |
| Relevant Contract Provisions: | Articles 5, 12 & 38 |
| Contract Year: | 2018-2021 |
| Type of Grievance: | Interpretive - Articles 38 & 12 |

The grievance is granted, in part. The positions to which successful applicants were promoted pending qualification (PQ) under the provisions of Article 38.5.3 & 4 were not vacant positions while they were being so occupied, and were not permissibly subject to

reversion by the Postal Service, even if the intention was to minimize the impact of excessing under Article 12. When staffing packages necessitate changes in the complement of an installation, and potentially impact the continuation of the position to which a successful applicant is promoted PQ, the parties must proceed using the procedures set out in Article 12. The Postal Service is not permitted to take unilateral action to revert the position and revoke the successful applicant's promotion PQ status independent of the Article 12 notice and discussion process. The matter is remanded to the parties to determine the appropriate remedial action to be taken in the specific circumstances of each of the affected employees. I retain jurisdiction to conduct an additional hearing, if necessary, to determine the remedy absent agreement of the parties.

This case arises under the following provision of Article 38 of the National Agreement:

ARTICLE 38 - MAINTENANCE CRAFT

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Section 5. Selection Methods

C. Successful Applicant(s)

1. Within eight (8) days after the closing of the original Notice of Intent to fill a vacancy, the installation head shall post a notice stating the successful applicant and the applicants' seniority date.
2. The successful applicant shall be placed in the new assignment within 14 days after the announcement of the successful applicant. Normally, the successful applicant shall work the duty assignment as posted.
3. An exception to 1 and 2 above shall be when the Notice of Intent has stated that the promotion is contingent upon satisfactory completion of training. In these cases, within 14 days the applicant shall be reassigned as an unassigned regular in his/her current occupational group and level. The employee shall be placed in a detail assignment on the tour and nonscheduled days in the occupational group and level of the duty assignment for which the training is intended. For the duration of the detail assignment, the employee will be treated as if promoted to that position. Upon satisfactory completion of the required training or one (1) year from the date detailed, whichever occurs first, the employee shall be declared the successful applicant and promoted with a preferred assignment seniority date determined according to Section 2.G.2 of this Article.
4. In the event the employee fails to complete satisfactorily the required training discussed in Paragraph 3, the employee shall remain as an unassigned regular in his/her current occupational group and level.

A hearing was held by videoconference before the undersigned on February 25 & 26, 2025, where the parties had the opportunity to examine and cross-examine witnesses, present documentary evidence, and make arguments in support of their respective positions. The parties filed post-hearing briefs which were received by the arbitrator on June 24, 2025.

ISSUES:

In accord with their respective 15 day letters, the parties state the issue presented in this case as follows:

The Union presents the following issue:

Whether the Postal Service violated Articles 5, 12 and 38 of the Collective Bargaining Agreement and the National Labor Relations Act (*NLRA*) by unilaterally canceling promotions for employees who have spent less than one year in their promoted position?

The Postal Service presents the following issue:

Whether it is a violation of Article 12 and 38 of the Collective Bargaining Agreement (CBA) when the Postal Service cancels a higher-level detail assignment of Maintenance craft employees who are in a pending qualification status in order to minimize excessing?

At the hearing, the Union clarified its belief that the issue includes a determination of whether a “promotion pending qualification” creates a vacant position, and whether the Postal Service’s unilateral cancellation of promotions for employees who were promoted “pending qualification” violates the National Agreement and *NLRA*.

After hearing the evidence, I conclude that the interpretive issue presented is whether the National Agreement permits the Postal Service to revert positions that are being filled by maintenance craft employees who are in a “pending qualification” status and to unilaterally cancel their promotions to higher level detail assignments in order to minimize excessing.

RELEVANT AGREEMENT PROVISIONS:

Other than the Article 38 language noted above, the following language of the National Agreement is relevant to the instant dispute.

ARTICLE 5 - PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 12 - PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

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Section 4. Principles of Reassignments

A. A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular workforce shall be kept to a minimum, consistent with the needs of the Service. Reassignments will be made in accordance with this Section and the provisions of Section 5 below.

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Section 5. Reassignments

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C. Special Provisions on Reassignments

4. Reassignment Within an Installation of Employees Excess to the Needs of a Section

- a. The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations. If no sections are established immediately by local negotiations, the entire installation shall comprise the section.
- b. Full-time employees, excess to the needs of a section, starting with that employee who is junior in the same craft or occupational group and in the same level assigned in that section, shall be reassigned outside the section but within the same craft or occupational group. They shall retain their seniority and may bid on any existing vacancies for which they are eligible to bid. If they do not bid, they may be assigned in any vacant duty assignment for which there was no senior bidder in the same craft and installation. Their preference is to be considered if more than one (1) such assignment is available.

ARTICLE 38 - MAINTENANCE CRAFT

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Section 4. Posting

A. In the Maintenance Craft all vacant duty assignments will be filled as follows:

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2. All vacant duty assignments shall be posted by Notice of Intent within 30 days from when vacancy occurs. If a duty assignment has not been posted within 30 days, the installation head or designee shall advise the union in writing as to the reasons the duty assignment is being withheld. If a vacant assignment is reverted, a notice shall be posted within ten (10) days advising of the date of the reversion and the reasons therefor.

3. If the current approved staffing package no longer supports continuation of a vacant duty assignment(s), that duty assignment may be reverted, provided it is not being withheld. The Union will be notified within ten (10) days advising of the date of the reversion(s) and the reasons therefor.

RELEVANT FACTS/BACKGROUND:

This dispute concerns the language of Article 38.5.C - Successful Applicants, and its effect on a situation where the Postal Service staffing package no longer supports the position that was posted for promotion, and is being filled by an applicant “pending qualification.”

The record reveals that paragraphs 3 and 4 were added to Article 38.5.C during the negotiations leading to the parties’ 1987-1990 National Agreement. While the language of Paragraph 4 remains the same, the initial Paragraph 3 stated as follows:

3. An exception to 1 and 2 above shall be when the notice of intent has stated that promotion is contingent upon satisfactory completion of training. In these cases, within 14 days the applicant shall be reassigned as an unassigned regular in his/her current occupational group and level and placed on the tour and non-scheduled days of the duty assignment for which the training is intended. Upon satisfactory completion of the required training, the employee shall be:

a. declared the successful applicant and promoted, with a preferred assignment seniority date made retroactive to the date the employee was reassigned, and

b. compensated retroactively for the difference between the rates of pay of his/her current and new occupational group and level from the date of reassignment to the date of promotion.

The 1990-1994 National Agreement shows a modification of the retroactive seniority dates language to differentiate between those declared successful applicants prior or

subsequent to June 25, 1992, referencing the new provisions of Section 2.F.2 of Article 38.

The current language of Article 38.5.C, including Paragraphs 3 and 4, was negotiated by the parties in the 1994-1998 National Agreement. James Linberg, Director of the Maintenance Division between 1992 and 2001, was involved at the bargaining table as part of the Union committee since 1980, although he did not become the chief spokesman until 1992. He testified that, at that time, the Postal Service was changing from mechanized to automated sortation requiring changing machines and massive retraining of all maintenance employees. Linberg recalled that the Postal Service was concerned about employees failing to pass the training as well as the effect of an MSPB ruling that veterans (some 30-40% of the workforce) could not be downgraded if they can do any job in the facility, which ETs could perform. He stated that the parties dealt with the situation by using the term “detail” to allow the Postal Service an escape hatch if the employee did not pass training, as well as to allow the employee all of the benefits of promotion, except for an employee who does not pass training. Linberg explained that the parties put in a 1 year time limit to require the Postal Service to provide training within that period of time. He testified that the only intent of the “detail” process was to include the situation of an employee not passing training, and any staffing implications were never raised or discussed. He opined that the parties meant this “detail” to be different from an Article 25 “detail,” although he admitted that there is no reference to any difference in definition within the National Agreement.

The Union set forth in writing Questions and Answers on Maintenance Issues arising from the new 1994 National Agreement language. Question 8 relates to the change in the pending qualification language. Its states:

Article 38.5.C.3 has changes affecting employees pending successful completion of training. The procedure is now to detail the employee to the assignment. The employee will receive an assignment order (PS Form 1723) for the pay level of the new position.

During the detail assignment, the employee is treated as if promoted (for overtime scheduling and volunteering, holiday scheduling, annual leave scheduling, and PAR placement, etc.) Also, the employee remains on PERs for equal and higher positions.

Question 9 asks what happens if the employee fails the training course mandated on the Notice of Intent. The response is:

Should the employee fail to satisfactorily complete the required training, the detail ends and the employee is an unassigned regular in their original occupation group and level. The position where the employee had been detailed is then posted in accordance with Article 38.4.

Current Maintenance Craft Director Idowu Balogun, who was a representative for national level Article 38 negotiations, stated that there are approximately 30,000 maintenance employees in about 75 occupational groups. He explained that when a person is promoted, the job they are promoted from gets posted, and the individual becomes unassigned. Balogun noted that an employee who passes the required testing and interview gets put on a register for promotion (PER), and it is not uncommon to wait 15 years on the PER to get a promotion. He asserted that a person on a PER is already qualified for the job, but may be missing training for a particular machine. During Covid, when the National Training Center (NCED) was closed, the parties negotiated an extension of the 1 year training period until 30 days after the training center reopened. Shannon Richardson, Director of Contract Administration for the APWU at Postal Headquarters, testified that the agreement reached not to cancel PQ status for employees awaiting completion of training during the Covid shutdown of the NCED, had very

limited application, and did not apply to those in PQ status unrelated to this limited shutdown.

Balogun testified that the only basis negotiated for canceling a promotion is if an employee does not pass training, and the parties never discussed or utilized this provision for staffing adjustments. He opined that the Postal Service cannot cancel a promotion by saying that it is reverted, since the only way to reduce staffing is to implement the Article 12 procedure which gives employees the same grade and retreat rights. Balogun testified that the Postal Service never canceled a promotion because of staffing, and queried why an employee would want to leave his job for a promotion if it was being treated as a detail, where there would not be any ability to return to his old position if the promotion was canceled. He agreed with Linberg that “detail” in Article 38.5.C.3 is not the same as the “detail” discussed in Article 25.

Dave Sarnacki, Maintenance NBA for the Northeast Region, explained that there is a different application of “temporary detail” in Article 38, since when you are pending qualification, you have no duty assignment to go back to, and the expectation is that you are going to be placed in the position permanently. He noted that a promotion pending qualification has a ripple/domino effect since their job is filled and down the line.

Terry LeFevre was a Labor Relations Specialist at Headquarters between 2011 and 2018, and was involved in contract negotiations specifically with reference to Article 38 between 2005 and 2018. LeFevre testified that the use of the term “detail assignment” in Article 38 is the same as elsewhere in the National Agreement, and is a temporary assignment outside your occupational level and group, which could be when you are going to training, and is different from a permanent position or promotion. He noted that “treated as if promoted” means that the employee has all seniority rights of the occupational group he is detailed to. LeFevre referenced an email he had with Steven

Raymer, then Maintenance Division National Director, dated August 26, 2013, concerning the impact of this language on a situation involving a site consolidation. His email to Rayner states:

I seem to recall us discussing this scenario in the past. I believe the detail is ended and the employee is to preference from his form 50 position. Your thoughts please.

There is a MPE mechanic that has recently been promoted to ET. He has not completed the required training for promotion so no form 50 has been cut. He is working as an ET and being paid the higher level. The site is being consolidated in the future. If this employee is still in “limbo” at the time of preferencing, what level is considered for his offerings? ET or MPE?

Rayner’s email response the same date confirmed that LeFevre was correct, and that the employee would preference from his MPE position. LeFevre forwarded this email exchange to representatives in the field in February, 2020, in response their question about what happens to an employee still in pending qualification (PQ) status when the job goes away.

Erich Henegar, Executive Manager of Maintenance Implementation since 2021, deals with how to implement policy in the field. He stated that he was involved in national bargaining in 2018 and 2021, when there were no changes made to Article 38, and was not involved during the time the relevant language of Article 38.5.C.3 was originally adopted. Henegar explained that a Form 50 is a personnel record that reflects a permanent change in status of an employee, while a Form 1723 is used for detail or temporary assignments (including training). He testified that when an employee is in a detail PQ to a higher level position, he is not promoted but is working in a temporary assignment and paid pursuant to a Form 1723 so no new Form 50 is initiated, since the higher level position remains vacant and he has not left his Form 50 position.

Henegar explained that a staffing package is the authorization for funding for positions and hours, and is generated either annually or by an event (such as equipment movement). When a staffing package no longer supports all of the positions or hours that exist at a particular installation, the Principles of Reassignments set forth in Article 12.4 come into play which involve excessing, the process of reducing staffing and involuntarily placing employees elsewhere. The options for doing so include reversion of positions - removing unoccupied or vacant duty assignments (as opposed to abolishing positions that are filled), and withholding jobs in surrounding areas (within 50 miles) of the impacted installation to accommodate excessed employees.

Debra Mills, Executive Manager of Strategic Complement, is an Article 12 subject matter expert with the Postal Service. She testified that the Postal Service takes steps to meet its goal of avoiding excessing and reducing involuntary displacement and keeping dislocation to a minimum, including prerequisites such as attrition, reduction of overtime, reduction of pre-career employees, and reversion of vacant positions. Mills stated that when an employee is put on detail and paid pursuant to a Form 1723, the detailed position remains vacant, and can be reverted. She noted that a PQ employee remains in their Form 50 occupational group, and if their position is reverted, the Form 1723 is canceled and the maintenance employee becomes an unassigned regular in their occupational group, and is reassigned in accordance with the “pecking order” set forth in Article 12.

All Union witnesses testified that the position an employee is promoted into PQ is no longer a vacant position, and is not subject to reversion when staffing considerations necessitate possible excessing. Henegar stated that he has experienced situations where PQ status was canceled in 2013, where there was a plant closure and also when FSS machines were removed, and the PQ employee in the position that was to be excessed

was treated as if he was in his Form 50 position for Article 12 purposes. Richard Woeber, APWU Maintenance Craft Director, related that when he was promoted to Maintenance Mechanic (MM) in the Cincinnati area in March, 2020, he had to leave his Tour 2 weekend off custodian job at a post office 15 minutes from his home to go to Tour 1 at the Main Post Office. He testified that he bid on two other Level 7 MM jobs while he was PQ on his initial MM position, and then had his position canceled in February, 2021 due to staffing needs. Woeber stated that there were 9 employees who were similarly situated; 8 of them had their resultant grievances resolved, and one quit.

PARTIES' POSITIONS:

The Union argues that the plain language of the National Agreement has only one condition for when a promotion can be withdrawn, and that is the failure to complete training. It notes that Article 38.5.C makes clear that PQ status is contingent upon satisfactory completion of training, and that once that training is completed the candidate is promoted. The Union points out that a person promoted PQ is occupying the duty assignment, so it is not vacant, and there is no contractual language justifying an encumbered ongoing vacancy. It posits that the National Agreement requires a vacant position to be filled within 59 days - 30 days to create the NOI (Article 38.4.A.2); 7 days for the NOI to be posted (Article 38.4.1.A); 8 days to notify the successful bidder (Article 38.5.C.1); and 14 days to assume the bid (Article 38.5.C.2) - and there is no exception for a promotion PQ position. The Union contends that the Agreement requires the Postal Service to adhere to posting requirements for vacant positions, which must be posted within 40 days of the vacancy, or a reversion notice must be sent to the Union. It maintains that if a promotion PQ remains a vacancy, as the Postal Service argues, it must post the encumbered position. The Union asserts that arbitrators have held that the appropriate remedy for violations of posting requirements would be to order the

Employer to post and fill the position, and to pay out of service (OOS) pay to the successful bidder and subsequent bidders, citing *USPS & APWU (Class Action)*, 4B-18T-4B-C 21291010 (Simmelkjaer, 2024); *USPS & APWU (Class Action)*, C06C-4C-C 09245958 (Kelly, 2019); *USPS & APWU (Class Action)*, B15T-1B-C 17653591 (Sutton, 2019).

The Union states that the only contractual mechanism for an involuntary reassignment are the specific procedures of Article 12. It asserts that Article 38.4.A.3 only permits a current approved staffing package to support a reversion, not an anticipated or proposed future one. The Union contends that the Postal Service's "staffing" argument contradicts the National Agreement and creates absurd results. It notes that removal of PQ employees creates staffing instability since unassigned regular employees returned to their original or new placements inflate staffing complements triggering Article 12, not preventing it. The Union posits that it would likely create an excessing event within a different occupational group, not keep disruptions to a minimum, since the PQ employee's original position has already been backfilled. It notes that under the Article 12 framework, an involuntarily reassigned or excessed employee receives saved grade and retreat rights, which was not the case with canceled PQ employees. The Union also points out the chilling effect permitting such PQ promotion cancellation would have on the workforce morale and future advancement, since such employees become unassigned regulars who can be placed in less desirable positions/tours/days off.

The Union argues that a "detail" under Article 38 is different from one under Article 25, and means "promoted for all practical purposes" PQ. It asserts that the bargaining history confirms the parties' intent, which was not to have staffing as a justification to cancel promotions, only failing training. The Union points out that the

parties never discussed staffing packages and promotion cancellations when negotiating the language of Article 38.5.C.3 & 4, and only agreed to such cancellation in the situation where the PQ employee fails training. It contends that the 2103 email regarding consolidation of a plant and the resulting Article 12 event, concerned the lack of in-craft rating for higher level employees so they could take the lower level jobs within the installation to avoid excessing. The Union points to the change in contract language in 2015 saying that higher level occupational groups encompass lower level ones, so no higher level employee is excessed.

The Union argues that the Postal Service created a new process of canceling promotions PQ and treating them as unassigned regulars without saved grade or retreat rights in violation of the *NLRA*. It maintains that the Employer cannot unilaterally change a term and condition of employment without bargaining with the Union, relying on *Master Window Cleaning, Inc. d/b/a Bottom Line Enterprise & SEIU, Local No. 18 et al.*, 302 NLRB No. 63 (1991); *Technocap LLP*, 372 NLRB No. 136 (2023); *Endurance Environmental Solutions LLC & IBT Local 100*, 373 NLRB No. 141 (2024). The Union also asserts that the Postal Services violated Article 5, 12 and 38 when it (1) canceled PQ promotions for staffing reasons outside the requirements of Article 38, (2) treated PQ positions as vacant even though they were occupied, and did not follow the posting requirements of Article 38, (3) failed to follow the procedures for excessing under Article 12, and (4) treated PQ employees as detailed without providing their contractual right to return to their former duty assignment.

As a remedy the Union requests that the arbitrator (1) find that a promotion PQ is not a vacancy, (2) declare that the Postal Service violated both the National Agreement and the *NLRA* by improperly canceling PQ promotions absent a failure of training, (3) issue a cease and desist order, and (4) make all affected employees whole.

The Postal Service stresses that the Union bears the burden of proving that a contractual violation occurred, and must show that its contract interpretation is superior to that of the Postal Service, citing *USPS & NALC, NPMHU & APWU (Non-payment of Wages)*, 4B 19N-4B-C 2310456 (Nolan, 2024). It argues that the plain language of Article 38.5.C.3 & 4 states that a detail PQ is only a temporary assignment, and the higher level position remains vacant during the detail. The Postal Service notes that the purpose of the PQ provision is to provide a mechanism to detail people who are not yet qualified, which is different from the promotion language of Article 38.5.C.1 & 2 which permanently places an employee in the higher level position. It points out that it is written as a separate process and does not say that an employee is permanently placed into the position when detailed to it, a fact confirmed in the Q&A document the Union put out to explain the change in language.

The Postal Service highlights that the parties described reassignment to PQ status as a “detail,” which is a temporary assignment using a Form 1723 assignment order not a promotion effected by a change in the Form 50, as seen in the Woeber situation. It also notes that 38.5.C.3 specifically states that the applicant is reassigned as an unassigned regular in his current occupational group and level, and “shall be placed in a detail assignment on the tour and nonscheduled days in the occupational group and level of the duty assignment for which the training is intended.” The Postal Service points to 38.5.C.4 which spells out what happens if the employee fails to complete satisfactorily the required training - “the employee shall remain as an unassigned regular in his/her current occupational group an level” - which indicates that it was not a permanent assignment to the higher level position. It notes that the language regarding placement of the applicant is very different between 38.5.C.2 (shall be placed in the new assignment) and 38.5.C.3 (shall be placed in a detail assignment), which is intended for receipt of training, and that the addition of the phrase “will be treated as is promoted to that position” shows the

employee is not actually promoted until he qualifies for the position, although he can exercise certain contractual rights and preferences during his PQ status. The Postal Service also relies on the last sentence of 38.5.C.3 indicating that the employee is promoted only after satisfactory completion of training or 1 year passes. It notes that the PQ employee also remains on the PER, which would not occur if he had been promoted. The Postal Service contends that the contract does not differentiate between the use of the term “detail” in Article 38 and 25, it is not a term of art with different intended meanings, and always connotes the temporary nature of the assignment.

The Postal Service argues that Article 38.4.A.3 empowers it to revert higher level maintenance positions to which employees are detailed PQ due to a change in a facility’s staffing package in order to fulfill its obligations to minimize excessing, as set forth in Article 12.5.B.1, noting that it is not a demotion for an employee to return to their Form 50 occupational level. It points out that reversion is a tool for management to avoid excessing when the staffing package no longer supports the position, and since the position an employee is detailed to PQ is a vacant position, it is subject to reversion, rather than having to excess the employee that is put in it causing more disruption. While admitting that the prerequisites to avoid excessing (e.g. reduction of overtime, separation of pre-career employees, reversion) are not contained in Article 12, the Postal Service states that they are included in the impact statement that is provided to the Union. It asserts that if the prerequisites make it no longer necessary to excess, the procedural requirements of Article 15.5.C.4 & 5 are not applicable.

The Postal Service contends that the Union’s position that a detail PQ is a promotion runs afoul of Article 38.5.C.3, and would compel it to promote unqualified employees into positions that it can no longer support, which may result in the need to excess employees. The Postal Service asserts that it is empowered to take these actions

under Article 3 and must be allowed to minimize and avoid excessing as required by Article 12, and to run its operations efficiently. It posits that if management were required to promote unqualified employees into positions that were no longer supported, it would result in excessing and undermine Article 12.

Finally, the Postal Service asserts that the Union previously agreed that management may revert higher level positions with a detail PQ and return employees to their current Form 50 group and level, resulting in management reverting a number of higher level positions and canceling details PQ. It points to the 2013 Raymer-LeFevre email exhibiting such agreement, which led to its eventual cancellation of details PQ with employees returned to their Form 50 occupational group and the absence of any challenge by the Union. For all of these reasons the Postal Service argues that it is empowered to cancel PQ details (vacancies) by reversion in order to meet its staffing and reassignment obligations.

DISCUSSION AND FINDINGS:

As I see it, the thrust of this case is about whether the National Agreement permits the Postal Service to revert a higher level assignment which was posted and to which an employee has been promoted PQ, and is currently working and being “treated as if promoted,” thereby canceling the promotion and placing the employee in unassigned regular status in his Form 50 occupational group and level. This situation may arise when the staffing package no longer supports all positions at the installation, including the position into which the employee has been promoted PQ.

As agreed, reversion is one option the Postal Service has to eliminate positions that are vacant. If a position is occupied, it cannot be reverted, but must be abolished. Thus, the issue is whether the position to which an employee has been promoted PQ can

be considered a vacancy subject to reversion. The Postal Service focuses on the fact that the employee has not yet been promoted when he is in PQ status, arguing that the position he is filling remains vacant throughout his qualification period. On the other hand, the Union contends that a position that is being occupied and performed by a successful bidder PQ, who is treated for all contractual purposes as if promoted to that position, cannot be considered a vacancy.

When I read the pertinent language in the context of Article 38.4.A, I conclude that a vacancy is a postable position. It is not one that has been posted and filled, even if in PQ status. There is no doubt that the position that was posted and awarded to the successful applicant PQ, is not able to be posted again during the pendency of the qualification period. The parties agreed that the PQ period is over “upon satisfactory completion of the required training or one (1) year from the date detailed, whichever occurs first...” There is no contractual language justifying or permitting an encumbered ongoing vacancy without the requirement of posting. Article 38.4.A.2 states what needs to happen to all vacant duty assignments.

The Postal Service asserts that, since the employee who was promoted PQ has not yet been promoted into the bid position, the position he is occupying must then be considered a vacant position. It focuses on the agreed language of the parties that such employee receives a “detail assignment” to the position, which is, by its terms, a temporary assignment that can be ended unilaterally by the Employer.

While there is no specific difference in definition of the use of the term “detail” in various locations in the National Agreement, the details referenced in Article 25, Higher Level Assignments, relate specifically to situations where the time period of the temporary assignment is determined by management before making the assignment, and requires a written management order stating the beginning and approximate termination

date. Article 25.4, Higher Level Details, discusses temporarily vacant higher level positions. It states that for details of anticipated duration of 1 week or more to higher level positions that are identified as being permanently filled on the basis of promotion of the senior qualified employees, the Employer is to designate the senior qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists.

A successful applicant to a posted higher level vacancy is not the same as an employee who is detailed to a temporarily vacant higher level position. The position to which the employee is promoted PQ has been posted as a permanent vacancy, and is being filled through the Posting procedure set forth in Article 38.4. It is not a temporarily vacant higher level position. The Form 1723 generated by payroll to initiate the pay and benefits during the PQ period, and the fact that the employee's Form 50 position is not changed until he successfully completes the training and his promotion is finalized, does not convert this detail to one that is intended to fill a temporarily vacant position.

There can be little doubt that a promotion PQ is not the same as a promotion encompassed within Article 38.5.C.1 & 2. The parties negotiated a process by which a successful applicant for promotion who requires some additional training can be placed in the position for the period of time necessary to obtain and pass such training, while enjoying all of the contractual benefits of the position. However, just because the promotion is not yet finalized during the time the employee is in PQ status, and the employee remains in his Form 50 occupational group and level (for Article 12 and 38 preferencing purposes), does not mean that the position for which he was the successful bidder remains vacant while the employee is PQ for his promotion into it. The employee is fulfilling all of the duties and responsibilities of the position and working its tour and duty hours as if he was in the position, and being treated as if promoted. The facts reveal

that the Postal Service understood that once a person is promoted PQ from the PER into a position, there is no longer any obligation on its part to post it, as there would be if it was considered a vacancy.

While I cannot accept the Union's position that an employee in PQ status is the same as a fully promoted employee, since the parties clearly differentiated their status in Article 38.5.C.3, there is nothing in the language of the Agreement or the bargaining history of the parties to indicate that the Union agreed that the higher level position the employee received through the bidding process remains vacant. The 2013 email correspondence between LeFevre and Rayner posits the situation of a site consolidation in the future, and addresses what preferencing rights an employee PQ has at the time of reassignment under Article 12. The Union agreed that such employee would preference under his Form 50 occupation and level, not the level of the position that he is still PQ on. However, the email correspondence does not reveal any agreement by the Union that the position he is working PQ can be reverted as part of the Article 12 process.

This interpretation does not require the Postal Service to promote unqualified employees into positions that are no longer supported by the staffing package. In such situation, if the employee is PQ, he should be permitted to exercise his contractual rights as if promoted to that position and/or the parties must follow the designated Article 12 process which may require the abolishment of the position with the corresponding implications for the employee. While the Postal Service's desire to minimize the impact of reassignments and dislocation and inconvenience to employees is commendable, and, in fact, required by Article 12, there is no showing that reverting positions to which an employee has been promoted PQ, thus leaving such employee as an unassigned regular in his Form 50 occupation and level, would result in less inconvenience to employees or minimize the impact. The parties negotiated a process in Article 12 to deal with

circumstances where the effect of a staffing package change creates a situation where the number of employees exceeds the number of positions. If the position to which an employee has been promoted PQ is no longer supported by the staffing package, then the Postal Service can abolish the position and the affected employee's reassignment rights would be determined by the process outlined in Article 12 which could include retreat/return rights and saved grade.

There is an issue remaining concerning whether the Postal Service's action in canceling the promotions PQ for the employees whose positions they reverted violates Article 5 and the *NLRA*. The Union filed an unfair labor practice (ULP) charge on May 24, 2021, which was deferred by the NLRB Regional Director on July 30, 2021. It is clear that the cancellation of a promotion PQ, and a return to unassigned regular status, not only affects the employee's wages but his terms and conditions of employment as well. It is therefore encompassed within the definition of Section 8(d) of the *NLRA*, and is covered by the prohibition against unilateral action in Article 5 of the National Agreement.

The Union has argued that the Postal Service's violative action was a unilateral demotion of employees whose promotions PQ were canceled in at least 4 different offices.¹ As noted above, I do not accept the Union's interpretation that an employee promoted PQ is the same as a fully promoted employee, since the parties negotiated different language covering employees who are promoted into positions and those who are promoted PQ, and whose promotion will only become fully effective after passing the required training. The record makes clear that during the PQ period when employees are "treated as if promoted to that position," they are able to bid on other positions for which they are fully qualified and enjoy many of the other contractual benefits attached to the

¹ I find that what occurred here was clearly not a disciplinary demotion.

promoted position. However, their promotions only become effective after they successfully complete the required training or 1 year passes, whichever occurs first. Regardless of whether the characterization of “demotion” applies in this situation, these employees were wrongfully removed from their higher level positions when the Postal Service improperly reverted them.

In anticipating and/or implementing a new staffing package which reduces the number of positions/employees at an installation, the Postal Service has specific contractual obligations under Articles 5 and 12. Under Article 12.4 (as well as the referenced Memorandum of Understanding Re: Maintenance Craft Discussions Per Article 38.3.K), the parties agreed upon a process to deal with the development of a relocation and reassignment plan that involves meetings both at the national and regional levels at designated time periods (90 days/6months) prior to implementation. Thus, the National Agreement requires both notification to, and bargaining with, the Union over the proposal and its implementation and effects.

The record in this case does not reveal whether such notification and bargaining took place with respect to these staffing issues. Postal Service officials indicated that they decided to revert the positions as part of their effort to avoid or minimize the impact of the new staffing parameters under Article 12. What appears to have occurred is that the Postal Service decided, as part of its anticipated new staffing package, that it would be less disruptive to revert these disputed positions and return the employees pending PQ into unassigned regular status in their prior grade and occupation level. The fact that the positions were not vacant nor properly subject to reversion, means that what happens to the impacted employees should have been part of the parties’ overall Article 12 discussions. Since it appears they were not subject to discussion with the Union prior to the Postal Service taking the disputed action, the unilateral action in both reverting the

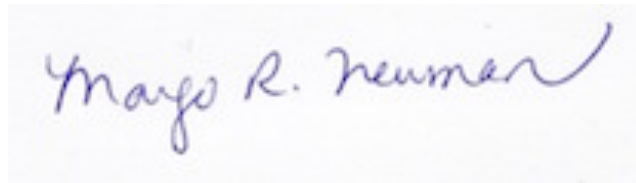
positions and removing employees promoted PQ from them could well violate both Article 5 and Section 8(a)(5) of the *NLRA*. It may be that in raising this issue, and filing this grievance, the parties have engaged in impact discussions. However, that would have occurred sometime back in 2021, and could possibly have been included in Covid-related discussions and agreements in the interim. I would need more evidence of what actually occurred with respect to the affected individuals around that time before finding that an actual violation of Section 8(a)(5) of the *NLRA* occurred.

Thus, I find that the positions to which successful applicants were promoted PQ, and were performing the job duties and responsibilities while receiving training, were not vacant positions subject to being reverted by the Postal Service, even in an attempt to minimize the impact of excessing under Article 12. The employees affected by such reversions should have been the subject of discussions between the parties prior to the implementation of any actions changing the complement of the installations in issue. Since it is unclear the number of employees so affected, the time periods involved, and whether local grievances and/or Article 12 discussions ultimately resolved their placement, I remand the question of the appropriate remedy to the parties. Should they be unable to resolve any outstanding remedial issues, they can return to me for the presentation of additional evidence concerning the identity of the affected employees and their alleged losses, as well as the parties' respective positions on what remedial order should be granted in this case.

AWARD:

The grievance is granted, in part. The positions to which successful applicants were promoted PQ under the provisions of Article 38.5.3 & 4 were not vacant positions while they were being so occupied, and were not permissibly subject to reversion by the Postal

Service, even if the intention was to minimize the impact of excessing under Article 12. When staffing packages necessitate changes in the complement of an installation, and potentially impact the continuation of the position to which a successful applicant is promoted PQ, the parties must proceed using the procedures set out in Article 12. The Postal Service is not permitted to take unilateral action to revert the position and revoke the successful applicant's promotion PQ status independent of the Article 12 notice and discussion process. The matter is remanded to the parties to determine the appropriate remedial action to be taken in the specific circumstances of each of the affected employees. I retain jurisdiction to conduct an additional hearing, if necessary, to determine the remedy absent agreement of the parties.



Margo R. Newman, Arbitrator