

IN THE MATTER OF ARBITRATION BETWEEN THE

United States Postal Service,

and the

American Postal Workers Union, AFL-CIO

and the

National Postal Mail Handlers Union, A Division
of the Laborers' International Union of North America, AFL-CIO

RI-399 National Dispute
Case No. 6X21C-6X-J23013492

Before:
Margaret R. Brogan, Impartial Arbitrator

Appearances:

For the Postal Service:

Alexandra M. McNicholas
Syed Shaun A. Bokhari
Michael W. Faber

United States Postal Service, Washington, D.C.

For the American Postal Workers Union

Melinda K. Holmes
Murphy Anderson, PLLC, Washington, D.C. 20005

For the National Postal Mail Handlers Union

Matthew Clash-Drexler
Bredhoff & Kaiser, P.L.L.C., Washington, D.C.

This matter is premised upon a claim filed by the APWU pursuant to the National Agreements and the tripartite Regional Instruction (RI) 399 Process, involving the Memorandum of Understanding, Re: Update of Regional Instruction (RI) 399 Procedures (herein “2018 Update MOU” or “Update MOU”).

Hearings were held in this matter on April 2 and 3, 2025 via video, at which time all parties were given the opportunity to present all relevant testimonial and documentary evidence. All three parties filed written briefs, which were received by the undersigned by July 31, 2025.

At hearing the parties were unable to reach a joint stipulation as to the issue before me, but provided their suggested versions of the issue, and granted me the jurisdiction to frame the issue based upon the evidence and arguments of the parties. (T. 6) Accordingly, I conclude that the issue before me is as follows:

ISSUE

Whether the Postal Service violated the 2018 Update MOU, when it applied an exception and changed the craft jurisdiction at two postal facilities to align with a National-level craft determination, when there is a pending dispute as to what assignments are listed on the relevant revised 9-1-2017 Inventory?

RELEVANT CONTRACT LANGUAGE¹

2018 UPDATE MOU

Paragraph 10(a)

The three National parties will implement a Nationally based process to resolve all National, Regional, and Local level disputes that have been filed in or referred to the RI-399 process since September 1, 2017, and remain pending as of the signing date of this Update MOU or that are filed after the signing date of this Update MOU. This process shall contain the following concepts:

a.

(i) Jurisdiction will be based on a “Revised 9-1-2017 Inventory” status quo agreement, as of September 1, 2017, for all postal facilities currently employing clerks or mail handlers.

(ii) The status quo will be determined by the local jurisdictional work assignment practices as of September 1, 2017, unless those practices were deemed contrary to a National-level craft determination previously issued by the Postal Service, a National-level or local-level jurisdictional settlement signed by all three parties, a National-level or Regional-level tripartite arbitration award determining jurisdiction, or an existing inventory signed by all three parties. If there is a disagreement as to whether any of these exceptions (following the word “unless”) apply to a particular Revised 9-1-2027 Inventory, it will be referred to the National Dispute Resolution Committee (“NDRC”) for resolution by the NDRC.

National Agreements

In both the APWU and NPMHU collective bargaining agreements with the Postal Service (JXs 10, 11) **Article 3** provides as follows:

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations: 3.1 To direct employees of the Employer in the performance of official duties;...3.3 To maintain the efficiency of operations entrusted to it; 3.4 To determine the methods, means and personnel by which such operations are to be conducted.

¹ Other contract language will be referenced and set forth below.

BACKGROUND AND FACTS

RI-399 is a tripartite process between the Postal Service, the APWU (who represents the clerk craft) and the NPMHU (who represents the mail handler craft.) Relevant to this proceeding, RI-399 governs the jurisdictional work assignments for clerks and mail handlers regarding pieces of equipment and the performance of operations in a particular postal facility. It also includes a tripartite dispute resolution process (DRP) for work jurisdictional disputes, which is explained in the 1992 DRP MOU as amended in the 2018 Update MOU. The 1992 DRP MOU established committees at the local, regional and national levels to resolve jurisdictional disputes. (T. 215, 225)

The “primary craft” is the craft that is assigned to perform a task within an operation or piece of equipment. The following can trigger a change in the primary craft jurisdiction, when: 1) new work is introduced; (2) a new or consolidated facility is created; or (3) an operational change justifies the change in craft. (2018 Update MOU at Section 11). A National Craft Determination Letter (NCDL) is a decision by the Postal Service regarding craft jurisdiction assignments, typically based upon one of these triggers. The NCDL process includes a site visit with the National Dispute Resolution Committee (NDRC), obtaining feedback from both the APWU and NPMHU as to who they view should get the work at issue, and evaluating the work on the basis of the RI-399 guidelines. The Postal Service makes the final determination, and a NCDL is issued. (T. 220)

Pursuant to the 1992 DRP MOU, the Unions can file a dispute over a Postal Service’s craft determination. Record testimony demonstrated that, in the past, while a

dispute over an NCDL is pending, the craft assigned under that disputed NCDL performs the function or task consistent with that NCDL craft determination. An NCDL becomes final and binding when there is tripartite agreement, or through the issuance of a national award resolving jurisdictional challenges to the NCDL. (T. 196, 218-223, 306; 2000 MOU)

The 1992 DRP MOU also established the requirement that the parties do inventories at the local level to identify which craft is performing particular work at that time. The process is for the parties to go through a facility and identify which craft was performing what work, with the goal that these inventories could be jointly agreed to and would guide who performed the work going forward. As stated, the Postal Service has the authority to make a determination as to which craft does the work, subject to the dispute mechanism.² Where there is a dispute, the DRP provides for a tripartite arbitration dispute process. (81-84, 353)

But the goal of creating inventories under the 1992 DRP throughout the country was not fully realized. Inventories were not completed, and thousands of disputes were raised, creating a large backlog of cases at the lower and national levels, referred to by the parties as the “black hole.” Under the 1992 DRP MOU, the parties agreed that for national level disputes, there would be one mutually selected arbitrator.³

Negotiations with all parties began in 2014 with the goals of improving the DRP and RI-399 processes. A result of these negotiations was the tripartite 2018 Update MOU which sought to streamline and improve upon the 1992 DRP process, get all

² USPS Case No. AD-NAT-1311, RI-399 Award of Arbitrator Gamser.

³ The undersigned was recently appointed by the parties to this position. I thank all parties for their excellent presentations which assisted me in taking on this role for this matter.

facilities employing clerks and mail handlers to revise inventories to show which craft was performing what work as of September 1, 2017, the “status quo” date, and close the “black hole” of regional and national disputes that had overwhelmed the system. (JXs 1-4)

The 2018 Update MOU, which is considered part of the National Agreements with the Unions, includes a provision agreed to by all parties that a majority of National-level jurisdictional disputes pending as of September 1, 2017 would be withdrawn. The Unions agreed to the withdrawal of specified cases, with some exceptions, under Section 6 of the 2018 Update MOU, which specifically states that, “National-level cases pending as of September 1, 2017 are withdrawn, thereby accepting the USPS determinations previously issued.”⁴

In addition, Unions received compensation in consideration for the withdrawal of the cases pursuant to the signing of the 2018 Updated MOU. That language in Section 4 states, “All of the disputes in the RI-399 referenced in Paragraphs 2 and 3 above are withdrawn in consideration of payments made by the Postal Service in accordance with each Union.” (JX 3; T. 88, 227-229)

The 2018 Update MOU also established a process for the parties to revise inventories based upon the “status quo,” that is, work practices as of the September 1, 2017 date. The parties agreed in their Update MOU negotiations that they would establish a status quo date in the recent past prior to the signing of the 2018 Update MOU. Jurisdiction under the Update MOU is based upon the 9-1-2017 status quo inventory, subject to listed exceptions in Paragraph 10(a). One of the “status quo

⁴ That section goes on to list National-level cases that were excepted from this withdrawal, which is not relevant to this matter.

exceptions” is where the work assignment practices listed on the status quo inventory were “contrary to a National-level craft determination previously issued by the Postal Service.”

Paragraph 10(a) of the 2018 Update MOU also provides that in the event there is disagreement as to the application of the exceptions following the word “unless” in Section 10(a), it will be referred to the NDRC who would make a resolution, which has been defined as a settlement, remand, or national-level arbitration under RI-399. There is nothing in the Update MOU which indicates that the Postal Service cannot implement one of the exceptions when an inventory dispute is pending. (T. 234-235)

Relevant Inventory Disputes

My jurisdiction as arbitrator in this dispute does not extend to my making a decision as to which craft should be doing specific work. But in my role of interpreting the relevant contract language, it is important to discuss the context of the APWU’s claim, and the underlying process that was employed.

The work at issue involves the Automated Flat Sorting Machine, the AFSM 100, as enhanced in 2006 with automatic induction and automatic tray handling (AI/ATHS). For many years prior to making the enhancements, the clerks performed prep work on the equipment. In 2006, after the enhancement, the Postal Service issued an NCDL, utilizing the RI-399 process which included seeking input from both Unions. The 2006 craft determination assigned the primary jurisdiction of the feed station to the clerk craft, the primary jurisdiction of the load and prep stations to the mail handler craft, and the

primary jurisdiction of the employee operating the ATHS to the mail handler craft.
(USPS Ex 2, 4, 5; T. 237-240)

Pursuant to the 2006 NCDL, the craft assignments on the AFSM 100 with enhancements was changed in line with the 2006 NCDL in most facilities, but not in Peoria, Illinois; Wichita, Kansas; and Billings, Montana. Challenges were filed by both Unions over the 2006 NCDL, which were still pending prior to the signing of the Update MOU. The Update MOU explicitly lists in paragraphs 7.j. and 7.l that the appeals by both Unions of the 2006 NCDL related to this work was pending as of the time of the signing of the Update MOU and the appeals were withdrawn by the mutual agreement of the parties.

When inventories were then conducted pursuant to the 2018 Update MOU, it was discovered that in those three facilities the clerks were performing the prep station work on the AFSM-100 with enhancements, contrary to the 2006 NCDL. The assignments on the 2017 inventory related to this work were disputed by the Unions, and the Local Dispute Resolution Committee (LDRC) submitted the inventory disputes to the NDRC for resolution, in line with Paragraph 10(a)(ii) of the Update MOU. Ultimately the NDRC remanded the inventory disputes to the Regional Dispute Resolution Committee (RDRC) for resolution. The remand instructions advised that the dispute could be taken to regional arbitration. In the meantime, the Postal Service changed the jurisdiction of the prep station work on the AFSM 100 with enhancements to the mail handlers in Peoria and Wichita, resulting in the loss of clerk positions. That dispute was still pending as of the time of the hearings in this matter. (USPS Ex 6, 7)

When the inventory was conducted In Billings, where again the clerks were performing the prep station work on the AFSM-100 with enhancements, the NPMHU had disputed that assignment in the 9-1-2017 inventory. The Billings dispute by the NPMHU was also referred to the NDRC, who remanded it to the RDRC as in Peoria and Wichita, except in the Billings situation the Postal Service did not switch the jurisdiction from the clerks to the mail handlers, and the NPMHU raised the case up to arbitration under RI-399. The NPMHU also filed a “crossing crafts” grievance against the Postal Service under their National Agreement, seeking back pay for the mail handlers. As a result, the mail handlers were awarded monetary damages. (T. 336)

The APWU argues that the existence of disputes regarding the work in Peoria and Wichita requires that the jurisdictional status quo as of September 1, 2017 must remain in place until the inventory dispute over the application of an exception to the status quo is fully and finally resolved. In its argument, the APWU relies upon an August 21, 2000 letter issued by Postal Service Contract Administration Manager Peter Sgro (“the Sgro letter”) which assigned jurisdiction on the AFSM-100 to the clerks. The APWU contends that this letter is dispositive of their claims to the work, supporting their argument that the 9-1-2017 status quo must remain intact. The Postal Service counters this argument by pointing out that the Sgro letter was not an NCDL, covered by the “unless” clause of the Update MOU, but merely guidance in the field, which did not undergo the RI-399 tri-partite process. Moreover, the Postal Service points out that the Sgro letter issued prior to 2000, when the enhancements to the AFSM-100 were implemented, and before the status quo date. (USPS Ex 1; T. 183, 187)

The Postal Service argues that the challenges filed by both Unions against the 2006 NCDL were withdrawn pursuant to the 2018 Update MOU language, resulting in the 2006 NCDL being final and binding upon all parties. It is further contended by both the USPS and the UPMHU that the 2006 NCDL is implicated in the “unless” language of the Update MOU paragraph 10(a), as it is a national-level craft determination, to which the parties must defer under that MOU language.

Relevant Bargaining History Related to the Negotiation of the Update MOU

The 2018 Update MOU took four years to negotiate. The record showed that the parties decided to engage in the negotiation of the 2018 Update MOU to address problems that had arisen in the implementation of RI-399 and the 1992 DRP process. The problems included the backlog of national level grievances (“the black hole”) and the need to redo the inventories, which had not been fully completed under the 1992 DRP. The APWU points out that revising and completing inventories was an important component of the Postal Service’s clerk-mail handler jurisdictional scheme.

The parties negotiated with the goal of improving the system. The APWU proposed that the Postal Service would compensate the Unions for the withdrawal of pending arbitrations. The NPWHU agreed with that idea but sought and obtained language to except certain national cases. The parties agreed to language that for those disputes that were withdrawn, the Unions would accept the NCDL determinations previously issued. The parties specifically named in the Update MOU that the appeals by both Unions of the 2006 NDCL related to the AFSM-100 with enhancements as withdrawn.

While the parties did not agree to stray from the core RI-399 principles as to the determination of craft jurisdiction, the parties did agree and add in Section 8 a notice provision with respect to Postal Service jurisdiction changes. The parties agreed that if the Postal Service did not comply with either the mandated 30 or 60 days of notice, the assignments would return back to the original assignment until the proper notice period was completed, and then revert to the Postal Service's jurisdictional determination. The parties also agreed to the redo of inventories and a new status quo date as discussed above.

The record showed that the "unless" clause in Section 10(a) was proposed by the NPWHU, based upon concerns expressed by local unions that local jurisdiction would be based solely on a status quo inventory even if those practices were inconsistent with certain Postal Service determinations. The AFSM-100 with enhancements was referenced in negotiations by the NPMHU as a pending case where national appeals were pending, and as stated above, the parties agreed to explicitly name those disputes as withdrawn in the final Update MOU. Testimony indicated that there was not significant push back on the "unless" clause language. The APWU did not propose, nor did the parties agree upon, language that would require the Postal Service to maintain current jurisdiction which was inconsistent with a national-level craft determination. (T. 378, 382-384; NPMHU Ex 2)

The APWU points to record evidence that the Update MOU is not specific about what should occur while a dispute over whether a status quo exception applies is being reviewed, because the parties believed in negotiations that they would be done with inventories and inventory disputes before any changes required or suggested by the

revised inventories were made. (Update MOU Q and A's indicating that parties expected new inventories would be completed by December 2018 USPS Ex. 4)

DISCUSSION

The positions of the parties will be briefly summarized. The APWU contends that the Postal Service violated Section 10(a) of the 2018 Update MOU by failing to maintain the jurisdictional status quo of September 1, 2017 until an inventory dispute over application of an exception to the status quo was fully and finally resolved. The APWU does not contest that a status quo exception may exist, but it argues that in two locations the Postal Service jumped the gun, to the detriment of clerks who had been performing work on the status quo date and for years earlier, and changed the jurisdiction to the mail handlers based on a 2006 national-level determination (NCDL). The APWU opines that their Union had contested the application of the 2006 craft determination to this inventory dispute, and the parties' dispute had been sent to the NDRC, and then was remanded to the regional level; but before the process was completed the Postal Service changed jurisdiction to the mail handlers, resulting in a number of clerks losing their long-held bid duty assignments, and were exsented. According to the APWU, the Postal Service's unilateral action is contrary to the tripartite process central to the RI-399 process and the Update MOU. The APWU maintains that the updating of the inventories was a key issue in negotiations of the 2018 Update MOU, and another goal was to avoid or funnel the disputes to a tripartite dispute resolution process where they could be expeditiously settled. According to the APWU, with the withdrawal of pending cases, this gave the parties a jurisdictional

refresh and an empty docket, along with the promise of new inventories and a “clean process” for addressing jurisdiction in the future. The APWU further argues that the contentions raised by the Postal Service as to other times it has changed jurisdiction is inapposite to the matter before us, and the Postal Service’s purported financial concern is both overstated and too uncertain to be a reason to interpret the Update MOU to permit the Postal Service to act unilaterally on jurisdiction changes the parties have agreed to address in their tripartite process.

To the contrary, the Postal Service and the NPMHU are aligned for the most part in this case and take the position that jurisdiction can be changed pursuant to an exception under the Update MOU, and the Postal Service need not wait until the inventory dispute is resolved to make the change in craft jurisdiction, in line with contract language, bargaining history, and case law. Additional arguments of the parties will be addressed below.

On the basis of the record evidence and the arguments of the parties, I conclude that the APWU has failed to establish that the Postal Service violated the 2018 Update MOU.

My jurisdiction here is not to decide which craft gets the work at issue, but to interpret paragraph 10 and other language of the Update MOU as it applies to the dispute before me. In this matter, I am charged with applying the relevant contract language, specifically the “unless” clause of Section 10.a of the 2018 Update MOU and related sections, to the inventory disputes raised by the APWU. In this proceeding, as it is a contract interpretation matter, the APWU has the burden of proof in demonstrating a contract violation by the Postal Service.

The parties negotiated an updated MOU so as to improve the RI-399 process. Among the changes as reflected in the 2018 MOU Update, was an agreement by the parties of a method of alleviating the “black hole” of an overwhelming amount of pending national and lower level grievances. The Unions agreed to withdraw a majority of pending disputes as of the status quo date of September 1, 2017, for monetary consideration. The parties also agreed to conduct new inventories to determine what craft was performing specific work as of the 9-1-2017 status quo date. In addition, the parties agreed to the “unless” clause, which conditions the determination of status quo date jurisdiction on certain exceptions, including “a National-level craft determination previously issued by the Postal Service...” In the event of such an applicable National-level craft determination by the Postal Service, the parties agreed that where there is a pending case, that is withdrawn pursuant to the Update MOU, the parties shall accept the USPS determination previously issued.

In this case, there were pending appeals by the APWU and NPMHU with respect to a National-level craft determination (NLCD) relating to the work in issue, the AFSM 100 with enhancements, at the time of the signing of the Update MOU. Indeed, those appeals are explicitly listed in the Update MOU as withdrawn, meaning in a tri-partite fashion the parties have agreed that the previous USPS determination was mutually accepted. The “unless” clause does not bar the APWU from questioning that determination through the RI-399 process as to whether the exception applies to the specific work at issue in Peoria, Illinois and Wichita, Kansas as of the status quo inventory date. That dispute is still pending and active before the NDRC which

remanded it to the RDRC, and which may result in a tripartite settlement, or arbitrator's decision.

The question raised here by the APWU is whether the Postal Service had the right to change the jurisdiction in these two facilities while the inventory dispute is pending. The APWU seeks a determination that the Postal Service violated the Update MOU, Section 10.a, by failing to maintain the status quo work practices during the pendency of the inventory dispute. I find no support for the APWU's position in the contract language, its bargaining history or relevant case law.

There is nothing in the language of the Update MOU which states that the Postal Service cannot change jurisdiction based upon its good faith determination that a correction was necessary and the work in issue is covered by a National-level Craft Determination. There is no language which mandates that the work practices in place on the status quo date must be maintained while an inventory dispute is pending. The APWU acknowledges that no such language was proposed as they believed the inventories would be completed and resolved in a more timely fashion. There is no other bargaining history that supports the APWU's interpretation of the relevant language.

In this case, the Postal Service made the change in jurisdiction based upon a 2006 NCDL. Under the MOU Update the appeals to the NCDL were withdrawn and the determination was accepted by all parties. The Postal Service acted consistent with its management rights reserved in the National contracts. This is separate from the APWU's right to raise the inventory dispute over whether the exception applies on the local level, which is still available for the APWU to pursue. Indeed, the APWU's

demand that the jurisdiction should align with local work practices while the inventory dispute is pending, rather than the NCDL, which was agreed to by all parties including the APWU as “accepted,” seeks to render meaningless the parties’ tripartite agreement on that subject in the Update MOU. Such an interpretation is not persuasive.

Another factor weighs in favor of the determination that the Postal Service acted in good faith when it determined that it should make the correction in jurisdiction. The Billings situation demonstrates that if the Postal Service ignored the 2006 NCDL, employees entitled to the work would be impacted, and damages could result. In addition, the Postal Service points out that to allow an inventory dispute to derail the imposition of a tri-partite National-level Craft Determination and maintain the status quo for one Union based on local work practices, could lead to an unworkable process that obstructs, rather than improves, the RI-399 tripartite scheme, which was the goal of the Update MOU.

The APWU also cites the “Sgro” letter in support of its position in this matter. I conclude that I cannot rely upon this document. The APWU did not demonstrate that this was a National-level craft determination or that it was a product of the RI-399 tripartite process so as to be covered under the “unless” clause of Section 10 of the Update MOU. It also was issued at a time prior to the implementation of the enhancements on the AFSM-100 so it provides no guidance to our current dispute.

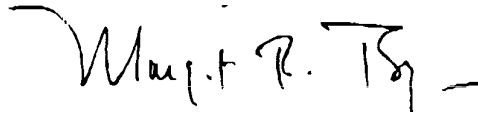
Finally, analogous arbitration cases between the parties have been cited supporting my conclusion that the Postal Service acted within its management rights in making the change in jurisdiction even during a pending dispute.⁵

Accordingly, I find that the APWU failed to shoulder its burden of demonstrating that the Postal Service violated the 2018 Update MOU. Accordingly, I shall deny the APWU's dispute.

⁵ See, e.g., *In the Matter of Arbitration between the U.S. Postal Service and Nat'l Postal Mail Handlers Union and Am. Postal Workers Union*, Cases No. Q11M-6Q-J 152811315 & Q10C-4Q-J 15291805 (Sharnoff, Arb. 2020).

AWARD

The APWU failed to shoulder its burden of establishing that the Postal Service violated the 2018 Update MOU. Accordingly, this dispute is denied.

A handwritten signature in black ink, appearing to read "Margaret R. Brogan", with a horizontal line extending to the right.

Margaret R. Brogan, Arbitrator

Date: November 3, 2025