

NATIONAL ARBITRATION
CASE Nos. Q95R-4Q-C02101253 and Q95R-4Q-C02101267

In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE

- and -

**NATIONAL RURAL LETTER CARRIER'S
ASSOCIATION**

Subject:- 2002 Mail Count

CBA Article 19, Section 1
P O-603 Chapter 5

Dana Edward Eischen, National Arbitrator

Appearances

For the NRLCA:

Peer & Gan, LLP

by

Michael Gan, Esq., of Counsel

Dennis Clark, Esq., of Counsel

For the U.S.P.S.:

Lynn D. Poole, Esq.-Manager, Arbitration

Also Present

For the NRLCA

Gus Baffa, (former) President
Randy Anderson, Dir. Labor Relations
Scotty Hicks, (former) President
Dale Holton, President
Donnie Pitts, Vice President

For the U.S.P.S.

William Daigneault, L. R. Specialist
Judith Stokowski, L. R. Specialist
Robert West, Operations Specialist

PROCEEDINGS and CASE SUMMARY

Article 15, Section 5 of the National Agreement between the United States Postal Service (“USPS”, “Postal Service” or “Employer”) and the National Rural Letter Carrier’s Association (“NRLCA”, “Union” or “Association”) provides for two-tier grievance arbitration. Article 15.5.D governs “area arbitration” of “removal cases and contract cases not involving national issues”. Step 4 of the grievance procedure is reserved for Article 15.5.C “National Arbitration” of “certified cases involving national interpretations” and/or “other cases which the parties agree have substantial significance”, *i.e.*, National-level disputes over the interpretation of the National Agreement and, to the extent referenced in Article 19, provisions of published handbooks and manuals.

This National Arbitration dispute presents two such interrelated unresolved grievances, in which NRLCA alleges that certain conduct by USPS management, prior to and during the conduct of the 2002 National Mail Count (“NMC”), compromised the integrity of that mail count and undermined the reliability/validity of its results, in violation of Handbook PO-603, Memorandum of Understanding.14 and National Agreement Articles 5, 19 and 30.

Grievances Q95R-4Q-C02101253 (“253”) and Q95R-4Q-C02101267 (“267”), filed by former NRLCA President Gus Baffa on March 8, 2002, were processed separately before consolidation by the Parties for presentation in a single arbitration proceeding. It is noted that the USPS conditioned its acquiescence to consolidated arbitration of the two grievances on the following:

The United States Postal Service agrees to accept the NRLCA's request that the two above cases be consolidated. However, in so agreeing, the Postal Service does not concede that there is any connection between the Union's claims in Case No. 253 and its allegations in Case No. 267. Furthermore, the Postal Service reserves all possible procedural defenses, including, but not limited to, a contention that issues raised by the Union in any combined presentation were not raised in the Step 4 grievances or subsequent discussions; or that the issues raised are not national interpretative issues of general application.

National Level Grievance Q95R-4Q-C02101267 alleges that the Postal Service violated the National Agreement, Handbook PO-603 and regulations referenced by Article 19, in the actual conduct of the 2002 national mail count; specifically, by imposing and enforcing “benchmarks” or “guidelines” which improperly influenced the counting and recording of “mark ups” (Column J), “loading time” (Column Q), and “other suitable allowances” (Column R) on USPS Forms 4239 and 4241. National Level Grievance Q95R-4Q-C02101253 alleges violations of the National Agreement and Handbook PO-693 in the presentation and content of “Rural Carrier Mail Count Course #44Q0105” (“Mail Count Course”), during training sessions for Postal Service managers, conducted just prior to that 2002 NMC by Postal Service Headquarters in Potomac, MD and Denver CO. In denying both grievances, the Postal Service challenged the substantive arbitrability of Grievances Q95R-4Q-C02101253 (“253”), maintained that no such violations had occurred and/or that any arguable discrepancies were merely unintended local aberrations which were *de minimis* in affect.

Hearings of this extraordinarily complex and contentious dispute were conducted at Washington, D.C., on ten days over a 12 month period; commencing January 20, 2004 and concluding on January 26, 2005. Both Parties were represented throughout by Counsel and afforded full opportunity to present documentary evidence, testimony subject to cross-examination and oral argument. After receipt of a transcribed certified stenographic record, the proceedings were closed with the filing and exchange of post hearing briefs, reply briefs and additional exchanges of positions; all of which finally was completed in mid-September 2005. Since the voluminous record in this matter consisted of more than 1,500 pages of testimony by some two dozen witnesses, 187

exhibits and a few hundred more pages of respective post-hearing submissions, the Parties relaxed the contractual time limits for rendition of this Opinion and Award.¹

NATIONAL INTERPRETIVE ISSUES

The present dispute concerns allegations by NRLCA that officials and managers of the Postal Service manipulated or at least attempted to manipulate the results of the 2002 National Mail Count (“NMC”), by means of the content and presentation of a “Mail Count Course” (Case 253) prior to the 2002 NMC and/or by means of direct intervention during the two-week 2002 NMC, which influenced the collection of mail count data relative to Column J “mark ups”, Column Q “loading time”, and Column R “other suitable allowances”(Case 267). At the arbitration hearings in this matter, Counsel for the Parties eschewed my invitation to develop a joint submission of the merits issue(s) for determination. Rather, they stipulated that the merits issues presented in this consolidated arbitration can be ascertained by reading, *seriatim*, extensive grievance processing correspondence exchanged at Step 4, [Union Exhibits 1, 2 and 6 (Emphasis in original)]:

Case No. Q95R4Q-C 02101253 (“Mail Count Training Course”)

Pursuant to Article 15, Section 4 (D), of the parties National Agreement, the Association submits this National Level grievance on the following:

Did the Postal Service violate Handbook PO-603, Chapter 5; the National Agreement, including but not limited to Article 5, Article 19, Article 30, Section 1, and MOU 14; and Federal labor law, including but not limited to Sections 8 (a) (1) and (5) of the National Labor Relations Act, when it conducted at least two National Mail Count Trainings using Rural Carrier Mail Count Course #44QO105? The information, whether oral or written, disseminated at these Trainings was unilaterally implemented during the National Mail Count now in progress in a concerted effort to lower the count and rural route evaluations to the detriment and disadvantage of all bargaining unit employees.

¹Faced with such an extensive record, it is necessary to begin at the beginning and go till one comes to an end. [“Where shall I begin, please your Majesty?” [the White Rabbit] asked. “Begin at the beginning,” the King said very gravely, “and go on till you come to the end –then stop.” Lewis Carroll, *Alice’s Adventures in Wonderland*, p. 106 (1945).]

In addition, the subjects discussed at the National Mail Count Trainings and Rural Carrier Mail Count Course #44QO105 relate to certain Mail Count grievances either pending at Step 4 of the parties, grievance procedure or on appeal to National Level Arbitration.

Because the subjects of these Mail Count grievances, which impact the rural craft nationwide, were discussed at the National Mail Count Trainings and in Rural Carrier Mail Count Course #44QO105, and because Postal Managers were provided with false and misleading information with regard to the subjects of these grievances, all Mail Count grievances pending at Step 4 or on appeal to National Level Arbitration are hereby incorporated in this grievance.

Not only is it the intent of the Association that the two omnibus grievances filed this day shall be consolidated with all mail count grievances presently pending at Step 4 and/or awaiting National Level Arbitration but that any pre-arbitration settlement and/or National Arbitration Award in any or all of the grievances shall be all encompassing and of National application for optimum coverage of all similarly-situated rural carriers, regardless of whether individual or other class-action grievances have been filed.

The Association's remedial request includes, but is not limited to an immediate cessation of any further counting of mail, the complete and total nullification of any counts or results of any portion of the February-March 2002 National Mail Count as well as the future conduct of a proper National Mail Count at a time and for a period mutually agreeable to the parties or as directed by the National Arbitrator. Every individual carrier shall have the right to elect which of the two counts shall be used to determine the new evaluation of the route. This choice by the rural carrier may not be rejected or otherwise overridden by the Postal Service. All bargaining unit employees shall likewise be made whole in any and all respects.

* * *

GUIDEBOOK ON RURAL DELIVERY
Mail Count Course #44QO105

Listed below is a list of items taken from the above-mentioned guidebook that the NRLCA does not agree with OR that the employer did not explain sufficiently to avoid misinterpretation in the field. The NRLCA's complaints include, **but may not be limited to the following:**

1. "Explain that Form 4239 will be signed by the person completing the form and it will be made available to the carrier **within 24-HOURS** (bold type added for emphasis)." **WE DISAGREE.**
2. (Column B) "Do not record mail that has been 'high rised' in DPS for apartments, trailer parks, etc. in this column. This type of mail should be recorded in Column 'L'. **NRLCA POSITION: IT DEPENDS.** IF the mail is NOT 'in delivery point sequence order, and it qualifies as sector/segmented mail, then it DOES go in Column B. IF it is in DPS order, then it goes 'in Column L.
3. "A rigid article which measures 5 X 18 X 1 9/16 would be recorded as other size mail (Columns A or C) because none of the size criteria dimensions are exceeded." **WE DISAGREE.** The PO-603 says that this is a FLAT because *none* of the dimensions *exceed* the criteria..
4. "The total number of boxholders credited **MUST NOT EXCEED** the total family count for the route." **WE DISAGREE.** The PO-603 says, "Enter the daily number of boxholders (**families, boxes, or deliveries, as appropriate**) taken out for delivery on the route.

5. "Column P: Registered and Certified Accepted

Description: Registered and certified mail the carrier has collected on the route and the carrier provides a Form 3986, Receipt for Registered Article, or Form 3800, Receipt for Certified Mail."

*** WE DISAGREE. WE HAVE A STEP 4 THAT DOES NOT REQUIRE THIS IN ORDER TO GET CREDIT. HOWEVER, THE POSTAL SERVICE REFUSED TO GIVE CREDIT IN THE 2000 MAIL COUNT TO A CARRIER IN TENNESSEE. A GRIEVANCE IS CURRENTLY AT STEP 4 ON THIS ISSUE AGAIN.

6. "Column 'Q': Load Vehicle

Description: The actual time used to transfer mail from the carrier's area to his/her vehicle and the time to place the mail in the vehicle. Includes time needed to return equipment to its designated location."

"Do not credit the double handling of mail from the floor to the hamper."

"Load time does not start until the mail is in hampers or other containers and ready to be pushed to the carrier's vehicle."

"Load time ends when the carrier returns loading equipment to its designated location."

ON THE LOADING TIME ISSUE, SOME OF THE ABOVE MAY BE CORRECT OR NONE OF IT MAY BE CORRECT. IT DEPENDS. The National Board has taken the position that loading time ends after the carrier has returned the equipment to the designated location AND has signed out on the 4240. OR, in the alternative, that Column R time be given for the time necessary to go from the designated location for returned equipment to the carrier's case and the sign out function is complete.

7. **THERE IS AN ERROR THAT BENEFITS THE CARRIER.** "Any item that you try to scan and it won't scan gets an additional 17 seconds to input." THE 17 SECONDS IS ONLY FOR THOSE ARTICLES THAT HAVE A NON-BARCODED LABEL AND MANUAL INPUT IS REQUIRED.

8. "Expanded talks (video or other presentations) are not included as Column 'R' time. If compensation is needed, pay on Form 8127." WE DISAGREE. If it is anticipated that for the rest of the year that the safety/service talks will be more than 5 minutes, or the actual time, the time should be made a part of the route's evaluation, the carrier should NOT be paid on an 8127 after the count for the respective overage.

9. "Sequencing Cards: Not counted as 'R' time. Pay on Form 8127 for writing on the Blue Cards only. THERE IS CURRENTLY A GRIEVANCE THAT HAS COME UP THROUGH THE GRIEVANCE PROCEDURE ON THIS ISSUE AT THE STEP 4 LEVEL.

10. Column R-"Time waiting for draw bridge is not credited as 'R' time." AGAIN, THIS DEPENDS. If the carrier's schedule is such that this is a daily or weekly occurrence, then time should be credited in Column R.

11. Column R-"Receiving or clearing accountable mail is not 'R' time. AGAIN, IT DEPENDS. IF THE CARRIER HAS TO TRAVEL AN UNREASONABLE DISTANCE TO PERFORM THESE FUNCTIONS, THEN THE NRLCA CONTENDS THAT ADDITIONAL TIME IS WARRANTED. *** THIS ISSUE IS PART OF A GRIEVANCE ON ANOTHER ISSUE THAT HAS COME UP THROUGH THE GRIEVANCE PROCEDURE THAT IS CURRENTLY AT THE STEP 4 LEVEL.

NOTE: WE HAVE NO WAY OF KNOWING FOR CERTAIN WHAT VERSION OF THIS COURSE WE HAVE. WE HAVE ASKED AND NOT RECEIVED THE "OFFICIAL" VERSION FROM POSTAL HEADQUARTERS. THERE HAVE BEEN MANY EDITIONS OVER THE LAST SEVERAL MONTHS. EACH NEW VERSION SEEMED TO ELIMINATE A FEW MISTAKES/ERRORS/DISAGREEMENTS.

HOWEVER, DUE TO THE DISSEMINATION OF THESE VARIOUS VERSIONS, CHAOS HAS REIGNED. THIS COURSE/DOCUMENT AND MANAGEMENT TRAINING BASED ON SUCH [IS] ONE OF THE ISSUES IN THE FIRST NATIONALLY FILED STEP 4 GRIEVANCE.

On several occasions, the most recent being September 6, 2002, we discussed the above captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the Postal Service violated the National Agreement when it conducted at least two national mail count training sessions using Rural Carrier Mail Count Course #44QO 105.

On February 3, 2002, the interest arbitration panel issued an opinion and award to the United States Postal Service and the National Rural Letter Carriers' Association. On page 25 of that award, the panel mandated that a national mail count be conducted on all rural routes for twelve working days beginning February 28, 2002. As a result, during the week of February 11, 2002, the Postal Service conducted two training sessions for district and area personnel responsible for the national rural mail count which reviewed general mail count information.

The Union claims that the Rural Carrier Mail Count Course that was used at these training sessions was inaccurate and was used in a concerted effort to decrease rural route evaluations to the detriment and disadvantage of all rural carriers. It is the position of the Postal Service that the 2002 national mail count was completed in accordance with mail count policies and procedures, as directed in Handbooks PO-603, Rural Carrier Duties & Responsibilities; and M-38, Management of Rural Delivery Services; as well as mail count guidelines previously provided. While the Rural Carrier Mail Count Course was used as part of two training sessions in draft form, use of the Course did not improperly reduce rural route evaluated hours.

Prior to the training, some area and district delivery staff discovered from reviewing previous counts that an alarming number of routes received more credit than the route warranted for certain functions. Some routes received too much credit, some routes received credit for functions already included in another credit, and some routes received credit for a function that does not recur on a daily or weekly basis. Management did not want to continue the practice of providing erroneous time credits. As a result, headquarters staff conducted training sessions with area and district personnel to ensure rural routes receive accurate time credit for the functions in question. During these training sessions, headquarters representatives reiterated repeatedly that no one is suggesting that rural carrier routes receive less time credit than each function is entitled. Every route should be credited with every minute of time the route deserves. Conversely, no route should receive more credit than the route deserves. The guidance provided at these sessions with the use of the Rural Carrier Mail, Count Course was to provide an accurate mail count.

The Course, in draft form, included over three hundred and fifty (350) statements relative to conducting a mail count. The NRLCA raised concerns with eleven (11) of those statements. On July 23, 2002, the Union was provided a copy of the finalized version of Course #44QO1 05. The revisions from the draft were generally cosmetic changes to clarify the material in the guidebook ensuring that it is not misunderstood or taken out of context. The following are the eleven (11) disputed statements as submitted by the Union and the Postal Service's position on each:

1. *Explain that Form 4239 will be signed by the person completing the form and it will be made available to the carrier within 24-HOURS.*

The Union did not agree with the 24 hour limit.

Reference to 24 hours was deleted from the final version. The original statement has no affect on the route's evaluation.

2. *(Column B) Do not record mail that has been "high rise" in DPS for apartments, trailer parks, etc., in this column. This type of mail should be recorded in Column L.*

The Union contends that if the mail is not in DPS order, but is in sector/segment order, it should be recorded in Column B. If it is in DPS order, it should be recorded in Column L.

While the original statement was quite clear, it was nevertheless modified to ensure the reader does not assume mail should be recorded as DPS when the mail is not in DPS order.

3. *A rigid article which measures 5 X 18 X 19116 would be recorded as other size mail (Columns A or C) because none of the size criteria dimensions are exceeded.*

The Union contends that it should only be recorded in Column C.

This was corrected in the final version. "Other Size Mail" is part of the heading for Column C, not A. Nevertheless, it is unlikely the counter would have improperly recorded these rare mail pieces based on the original language.

4. *The total number of boxholders credited MUST NOT EXCEED the total family count for the route.*

The Union contends that credit should be given for the boxholders (families, boxes, or deliveries, as appropriate).

This was changed in the final version. Nevertheless, the original statement would not have provided less credit to the route than the clarification.

5. *Column P. Registered and Certified Accepted*

Description: Registered and certified mail the carrier has collected on the route and the carrier provides a Form 3986, Receipt for Registered Article, or Form 3800, Receipt for Certified Mail.

The Union does not agree and stated that it currently has a grievance pending at the national level on this issue. Until the grievance on this issue reaches its final disposition at the national level, the parties have a difference of opinion. The fact that the parties differ on this issue does not preclude the Postal Service from continuing to state and apply its interpretation or the Union from printing its interpretation in its magazine.

6. *Column Q: Load Vehicle*

Description: The actual time used to transfer mail from the carrier's area to his/her vehicle, and the time to place the mail in the vehicle. Includes time needed to return equipment to its designated location.

Do not credit the double handling of mail from the floor to the hamper.

Load time does not start until the mail is in hampers or other containers and ready to be pushed to the carrier's vehicle.

Load time ends when the carrier returns loading equipment to its designated location.

The Union contends that loading time ends after the carrier has returned the equipment to the designated location AND has signed out on Form 4240, Rural Carrier Trip Report; OR if loading time ends when the carrier returns loaded equipment to its designated location, the carrier should be credited Column R time from the end of loading time until the sign out function on Form 4240 is completed.

The original draft language was not changed in the final version. It is the position of the Postal Service that the statements are correct and consistent with Section 535.12.q. of Handbook PO-603. Clearly, signing out on Form 4240 is not part of the loading function. The Union's fallback argument that if it is unsuccessful in proving that signing out on Form 4240 is part of "Column Q -Loading Vehicle", then it must be part of "Column R - Other Suitable Allowance" is without merit. Standards for mail, boxes, miles and certain functions have existed on rural routes for almost 50 years. It has never been the position of the Postal Service that the time required for a rural carrier to enter the time the carrier leaves the office to serve the route on Form 4240 is a function that should be timed and credited separately to the evaluation of the route. Recording time is one of the duties that is included in the overall evaluation without a specified time credit. Memorandum of Understanding #.2 in the National Agreement states in part,

The parties recognize the existing evaluated system of compensation to be a fair, reasonable, and equitable method of payment. The parties further recognize that the evaluated system is comprised of elemental standards which may not in every instance be adequate for an individual carrier, nevertheless, the parties agree that the standards, when examined collectively, represent a fair day's pay for rural carriers.

The evaluated system was never intended to add credit to rural routes for every inconsiderable action, motion or task performed by the rural carrier. It is the position of the Postal Service that the task of signing Form 4240 is already included in the overall route evaluation.

Interestingly, the Union has not contended that rural carriers, on average, are not able to work within the evaluation of their assigned routes because the actual time required to sign the Form 4240 was not added to the overall route's evaluation.

7. Any item that you try to scan and it won't scan gets an additional 17 seconds to input. The Union states that this is an error that benefits the rural carrier. It states that the 17 seconds provided is only for those articles that have a non-barcoded label and manual input is required.

This error would have improperly INCREASED rural route evaluations; therefore, it was deleted in the final version. The Union claims in this grievance that the Postal Service provided erroneous information in this training session in a concerted effort to decrease rural route evaluations to the detriment and disadvantage of all rural carriers.

8. Expanded talks (video or other presentations) are not included as Column "R" time. If compensation is needed, pay on Form 8127.

The Union contends that this is incorrect if it is anticipated that the weekly safety/service talks will be more than 5 minutes for the rest of the year. In that situation, the actual time over 5 minutes should be included in the route's evaluation and not paid on Form 8127 separately.

The Union misunderstood this statement. There is no dispute that video or other presentations which are not incidental to normal daily performance are paid pursuant to Article 9.2.N of the National Agreement and not included in the route's evaluation. This statement was nevertheless changed for clarification.

9. Sequencing Cards: Not counted as "R" time. Pay on Form 8127 for writing on the Blue Cards only.

The Union contends that this is not consistent with its position and there is a grievance pending at the national level on this issue.

Until the grievance on this issue reaches its final disposition at the national level, the parties have a difference of opinion. The fact that the parties differ on this issue does not preclude the Postal Service from continuing to state and apply its interpretation or the Union from printing its interpretation in its magazine.

10. Column R - Time waiting for draw bridge is not credited as "R" time.

The Union contends that in cases where it is a daily or weekly occurrence, such time should be credited in Column R.

This was deleted from the final version. This statement was explained in detail at the training sessions. For example, it was discovered that one route had been previously credited 30 minutes per day because there was a chance the carrier may be delayed due to a draw bridge. This was totally improper. It was not a daily or weekly occurrence. There was no misunderstanding from the district and area staff attending the training sessions. It was explained that if certain conditions occur on a or weekly basis, credit may be appropriate.

11. Column R - Receiving or clearing accountable mail is not "R" time.

The Union contends that if the carrier has to walk an unreasonable distance to the accountable cage, additional credit should be provided in Column R. The Union also stated that it currently has a grievance pending at the national level on this issue.

Until the grievance on this issue reaches its final disposition at the national level, the parties have a difference of opinion. The fact that the parties differ on this issue does not preclude the Postal Service from continuing to state and apply its interpretation or the Union from printing its interpretation in its magazine.

If the Union presumes the course relates to wages, hours or working conditions, as it applies to employees covered by the National Agreement, and the Union objects to any portion of the final version of the Course, the Union had an obligation to request a meeting within 15 days of receiving the copy in accordance with Article 19 of the National Agreement. The Union received the finalized version on July 23, 2002, and has not requested

a meeting and therefore, has not challenged the final version of Course #44QO1 05. As a result, it is Management's position that the Union has accepted the final version of the Course.

During the grievance meetings, the Union advised that it has obtained and will be obtaining documents to support its position in this grievance. When asked for copies of all the documents, the Union replied that it has no intention of providing all the information to Management at Step 4; however, it did provide a "sampling" of documents, consisting of 10 documents. Management objected, stating that the Postal Service can not investigate or defend a grievance without considering the Union's evidence or having knowledge of specific allegations. None of the documents suggest that rural routes have received less credit than the route is entitled.

The Union has not shown that any rural route in the country received less credit than entitled as a result of Management using a draft copy of Course #44QO105 in a portion of two training sessions prior to the 2002 National Rural Mail Count.

This grievance is denied.

Time limits were extended by mutual consent.

Case No. O95R-40-C 02101267 ("Mail Count Conduct")

Pursuant to Article 15, Section 4 (D) , of the parties, National Agreement, the Association submits this National Level grievance on the following dispute:

Prior to and continuing through the February-March 2002 National Mail Count, the Postal Service, through its Executives, Managers, Postmasters, Supervisors and Agents, by informal or formal directive, oral or written, improperly influenced the counting, timing, and otherwise measuring of all elements recorded during the ongoing National Mail Count, including intentionally interfering with the even flow of mail in a concerted effort to lower the count and rural route evaluations to the detriment and disadvantage of all bargaining unit employees, in violation of Handbook PO-603, Chapter 5; the National Agreement, including but not limited to Article 5, Article 19, Article 30, Section 1, and MOU 14; and Federal labor law, including but not limited to Sections 8(a)(1) and (5) of the National Labor Relations Act.

In addition, the Postal Service, through its Executives, Managers, Postmasters, Supervisors, and Agents has intimidated and harassed rural craft employees in an attempt to secure a more favorable count for the Postal Service and neuter any opposition to the Postal Service's unprecedented and improper practices, and to restrict rural craft employees in the exercise of their Section 7 rights under the National Labor Relations Act.

Finally, in violation of the above-referenced provisions of the PO-603, National Agreement, and Federal labor law (but not limited to these), the Postal Service has published, orally or in writing, or by some other means, "benchmarks" or "targets" on certain mail count elements, including but not limited to loading time, markups, and Column "R" time. Such "benchmarks" or "targets" have resulted in Postal personnel involved in the February-March 2002 National Mail Count taking extraordinary steps in order to meet or exceed these "benchmarks" or "targets," all of which has improperly influenced and distorted the counting, timing, and otherwise measuring of all elements recorded during the February-March 2002 National Mail Count to the detriment and disadvantage of all bargaining unit employees.

The Association's remedial request includes, but is not limited to an immediate cessation of any further counting of mail, the complete and total nullification of any counts or results of any portion of the February-March 2002 National Mail Count as well as the future conduct of a proper National Mail Count at a time and for a period mutually agreeable to the parties or as directed by the National Arbitrator. Every individual carrier shall have the right to elect which of the two counts shall be used to determine the new evaluation of the route. This choice by the rural carrier may not be rejected or otherwise overridden by the Postal Service. All bargaining unit employees shall likewise be made whole in any and all respects.

On several occasions, the most recent being July 18, 2002, we discussed the above captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the Postal Service improperly influenced the 2002 National Mail Count, which in turn reduced rural route evaluations to the detriment and disadvantage of rural carriers.

The USPS/NRLCA interest arbitration panel provided an opinion and award on February 3, 2002. Among the changes to the collective bargaining agreement, the panel provided a national mail count to be conducted on all rural routes for twelve (12) working days beginning February 28, and ending March 13, 2002.

It is the position of the Union that the Postal Service improperly influenced the counting, timing, and otherwise measuring of all elements recorded during the 2002 National Mail Count. On May 17, 2002, the Union submitted a document titled, BENCHMARKS (DPARS). This document included various email messages, memos to postmasters, and information from management in 14 districts and 1 area office. Most of the documentation refers to local benchmarks that were established to monitor "other suitable allowance" (column R), "loading vehicle" (column Q) and "marked up" pieces (column J). The Union contends that, by taking steps to meet or exceed these benchmarks, management has improperly influenced and distorted the counting, timing, and otherwise measuring of all elements recorded in the 2002 National Mail Count.

It is the position of the Postal Service that the 2002 National Mail Count was conducted in accordance with mail count policies and procedures. The main factors comprising a mail count consist of applying national standards for determining the time credited for the number of mail pieces of each mail type handled, the number of miles for each route, and the number of mail boxes on the route. However, there are a few time credits that are based on the actual time needed to perform the function being credited. Much of the time credit recorded in column R, "other suitable allowance", and all of the time credit recorded in column Q, "loading vehicle", is the time actually used by the rural carrier in lieu of a national standard. Because there is no national standard, management realizes that rural routes, in some cases, may receive more or less time credit than the route warrants if proper evaluation procedures are not followed.

Another concern involves column J, "marked up" pieces. While each piece does receive a standard credit, this is a category that at times receives too much credit because the total number of mark-up pieces is inflated due to improperly categorizing mail pieces that should be bundled instead of individual piece credit.

Some area and district delivery staff discovered from reviewing previous counts that an alarming number of routes received more credit than the route warranted. Some routes received too much credit, some routes received credit for functions already included in other credit, and some routes received credit for a function that does not recur on a daily or weekly basis. Management did not want to continue the same errors. As a result, headquarters staff conducted meetings with area and district personnel to ensure rural routes receive accurate time credit for the functions in question. During these meetings headquarters representatives reiterated repeatedly that no one is suggesting that rural carrier routes receive less time credit than each function entities. Every route should be credited with every minute of time the route deserves. However, nor should any route receive more credit than the route deserves. The guidance was to ensure an accurate mail count.

To ensure that some postmasters and supervisors were not providing too much time credit for certain functions during the mail count, some areas/districts established benchmarks, as a point of reference that required local management to report reasons for exceeding high time credits. This is not new. Some areas used these types of benchmarks in previous mail counts. A benchmark is not intended to deny any appropriate time credits for the route. It is merely used as a flagging mechanism that identifies routes claiming higher than normal time credit for a particular function. Management can investigate to determine whether the route is being provided more credit than entitled. This is not only proper, but required. Management must be able to manage. It would be inappropriate for the district staff not to question excessive credit for a route that could be unwarranted.

The Union submitted a copy of a memorandum from the Western Area to Plant Managers. The Union contends that the memo encourages the plants to sort more mail on Delivery Point Sequence (DPS) during the mail count. DPS mail receives a lesser time credit than other letter size mail and would reduce the evaluation for a rural route. However, a review of the DPS percentage for the Accounting Period which included the mail count shows a reduction in that percentage.

During the grievance meetings, the Union advised that they have obtained and will be obtaining documents to support their position in this grievance. When asked for copies of all the documents, the Union replied that they have no intentions of providing all the information to Management at Step 4, however will provide a "sampling" of documents. Management objected, stating that the Postal Service can not investigate or defend a grievance without considering the Union's evidence or having knowledge of specific allegations. The Union did submit the "sampling" of evidence, which consisted of area and district management email messages and memos from 1 area and 14 districts. None of the documents suggests that rural routes have received less credit than the route is entitled. In fact, the documents generally established benchmarks that management used to ensure accurate mail counts.

The Union is contending that Management's actions could have caused rural routes to receive less credit than entitled. The Union has not shown or even contended that any routes were in fact adversely affected.

In the absence of any contractual violation, this grievance is denied.

Time limits were extended by mutual consent.

CASE No. O95R-4O-C 02101253 and CASE No. O95R-4O-C 02101267

This letter follows our several meetings on December 19, 2003.

We appreciate your willingness to consolidate the above-referenced cases for hearing and briefing. As you requested, please note below the issues that the Association will be prepared to raise in arbitration.

It is our position that the Postal Service's 2002 Mail Count Training/Instruction (Case 1253) gave rise to many of the issues in Case 1267. Indeed, the Association views Case 1267, in part, as the implementation or practical effect of Case 1253.

Accordingly, as a number of issues are germane to both grievances, they are indicated with an asterisk.

Case 1253

Rural Carrier Mail Count Course #44QO105, its unilateral implementation (Article 19), and its contents (erroneous statements).*

Form 4239 (See Step 4 denial, num. para. 1)*
 Col. B - "high rise" (See Step 4 denial, num. para. 2)
 Col. C - rigid article (See Step 4 denial, num. para. 3)
 Col. E - boxholder credit (See Step 4 denial, num. para. 4)
 Col. R - expanded talks (See Step 4 denial, num. para. 8)
 Col. R - draw bridge (See Step 4 denial, num. para. 10)

Rural Carrier mail count training*

Training used to set benchmarks*
 National Officers excluded from training
 Erroneous Area/District training materials*
 No compensation for state stewards to attend management mail count training.
 Carriers prohibited from counting.

Case 1267

DPARS/targets-benchmarks*

Col. J*
 Col. Q*
 Col. R*

Redlining*
 Post pre-count conference changes
 No even flow of mail
 DPS mandates

Analysis of the foregoing grievance appeal documents, the transcript of arbitration proceedings and the post-hearing briefs reveals that the broad scope of the consolidated Step 4 grievances has been substantially distilled during the grievance appeal and arbitration process. It is noted that even the final iteration of the issues by NRLCA, *supra*, contains redundancies as well as allegations, assertions, arguments and counter-arguments which were not developed and/or insufficiently joined in the hearing record to permit arbitral determination. All of these complications and complexities form the context in which the following seemingly simple questions are presented and determined in this National Arbitration:

- 1) Did the Postal Service violate the National Agreement as claimed in Case # Q95R-4Q-C02101253?
- 2) Did the Postal Service violate the National Agreement as claimed in Case # Q95R-4Q-C02101267?
- 3) If so, what shall be the remedy?

NATIONAL AGREEMENT PROVISIONS

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- a. To direct employees of the Employer in the performance of official duties;
- b. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- c. To maintain the efficiency of the operations entrusted to it;
- d. To determine the methods, means, and personnel by which such operations are to be conducted;
- e. To prescribe a uniform dress to be worn by letter carriers and other designated employees;
and,

- f. To take whatever actions may be necessary to carry out its mission in emergency situations; *i.e.*, an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

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 15
GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. General Policy

Grievances which are filed pursuant to this Article are to be processed and adjudicated based on the principle of resolving such grievances at the lowest possible level in an expeditious manner, insuring that all facts and issues are identified and considered by both parties. In the event that a grievance is processed beyond Step 1, both parties are responsible to insure all facts, issues and documentation are provided to the appropriate union and management officials at the next higher level of the grievance procedure. The parties further agree that at any step in the grievance procedure, the Union representative shall have full authority to settle or withdraw the grievance in whole or in part. The Employer representative, likewise, shall have full authority to grant, settle or deny the grievance in whole or in part.

Section 2. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement.

Section 4. Grievance Procedure-General

A. Observance of Principles and Procedures

The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible Step and recognize their obligation to achieve that end.

B. Failure to Meet Time Limits

The failure of the employee or the Union at Step 1, or the Union thereafter, to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance.

C. Failure to Schedule Meetings

Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

D. National Level Grievance

It is agreed that in the event of a dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated as a grievance at the Step 4 level by the President of the Union. Such a grievance shall be initiated in writing and must specify in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the contention of the Union. Thereafter the parties shall meet at Step 4 within thirty (30) days in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. Should they fail to agree, then, within fifteen (15) days of such meeting, each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to such issues. In the event the parties have failed to reach agreement within sixty (60) days of the initiation of the grievance at Step 4, the Union then may appeal it to arbitration, within thirty (30) days thereafter.

* * *

Section 5. Arbitration

A. General

A request for arbitration must be submitted within the time limit for appeal as specified for the appropriate Step. The National President of the Union must give written authorization of approval to the Employer at the national level before the request for arbitration is submitted.

Grievances referred to arbitration will be placed on a pending arbitration list. Except for discharge cases, the Union will have sixty (60) days from the date of such referral to certify the case to be scheduled for arbitration at the earliest possible date. Cases which are not certified for arbitration within the sixty (60) day period shall be considered waived and removed from the pending arbitration list. Discharge cases referred to arbitration shall be placed on a separate pending arbitration list. The Union will have fifteen (15) days from the date of such referral to certify the case to be scheduled for arbitration at the earliest possible date. Cases which are not certified for arbitration within the fifteen (15) day period shall be considered waived and removed from the pending arbitration list. If there are other certified disciplinary cases related to the employee's removal grievance, these cases shall be scheduled for hearing along with the removal cases.

The case with the lowest docket number pending before a panel will be scheduled to be heard first. However, the parties may mutually agree to assign such cases for hearing out of numerical sequence in order to fill a vacated hearing date, or to lessen the amount of the arbitrator's travel time and expense or for other valid reasons. Arbitration hearings shall be held during working hours. Employee witnesses shall be on Employer time when appearing at the hearing provided the time spent as a witness is part of the employee's regular working hours.

Any dispute as to arbitrability may be submitted and determined by the arbitrator. The arbitrator's determination shall be final and binding. The arbitrator shall render his award within thirty (30) days of the close of the hearing, or if briefs are submitted, within thirty (30) days of the receipt of such briefs on cases which do not involve interpretation of the Agreement, or are not of a technical or policy making nature. On all other cases, the award shall be rendered within thirty (30) days if possible. All decisions of the arbitrator shall be limited to the terms and provisions of this Agreement and in no event may the terms and provisions of this Agreement be altered, amended or modified by the arbitrator. Unless otherwise provided in this Article, all costs, fees and expenses charged by an arbitrator will be borne by the party whose position is not sustained by the arbitrator. In those cases of compromise where neither party's position is clearly sustained, the arbitrator shall be responsible for assessing costs on an equitable basis.

B. Selection of Panels

National and Area Arbitration Panels are established as set forth below:

The members of these panels will be selected in accordance with the procedure set forth below and will serve for the term of this Agreement and shall continue to serve for six (6) months thereafter unless the parties otherwise mutually agree. To assure the expeditious processing of grievances, the parties by agreement may increase the size of these panels at any time. Should vacancies occur, or additional members be required on the National or Area panels, such vacancies shall be filled by mutual agreement. In the event the parties cannot agree on individuals to serve on these panels, or to fill any vacancies which may exist, a list of five (5) arbitrators will be supplied by the American Arbitration Association for each selection to be made. The parties shall then proceed by alternately striking names from the list until only one individual remains. Such individual shall be selected to remain on the panel.

C. National Arbitration

Effective August 3, 1996, a National Panel of not more than three (3) arbitrators will be established to hear certified cases involving national interpretations or other cases which the parties agree have substantial significance. Arbitrators on the National Panel will be assigned to hear cases on a rotating basis. Member(s) of the Area Panel may by mutual agreement be member(s) of the National Panel.

Prior to the scheduled hearing each party to the dispute may separately submit to the arbitrator who has been assigned the case, and to the other party to the dispute, a statement setting forth the following:

- a. the facts relevant to the grievance;
- b. the issue in the case;
- c. the position(s) or contention(s) of the party submitting the statement.

The parties may by mutual agreement submit a joint statement to the arbitrator. A stenographic record will be taken if requested by either party to the dispute. In such case, the cost of such record shall be borne by the requesting party. The other party, upon request, will be furnished a copy of the record, in which case the cost of such record shall be borne equally by both parties to the dispute.

D. Area Arbitration

A geographically balanced Area Panel of arbitrators is established to hear removal cases and contract cases not involving national issues.

Normally, a stenographic record shall not be taken at these hearings, nor post hearing briefs filed. However, either party may make exception to this policy. The case with the lowest docket number pending before a panel will be scheduled to be heard first. However, the parties may mutually agree to assign such cases for hearing out of numerical sequence in order to fill a vacated hearing date, or to lessen the amount of the arbitrator's travel time and expense or for other valid reasons.

* * * * *

ARTICLE 19 HANDBOOKS AND MANUALS

Section 1. Statement of Principle

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

Section 2. Initial Notice of Proposed Changes

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least thirty (30) days prior to issuance. Such notice shall identify the proposed changes in the appropriate handbook or manual, as they apply to the Rural Carrier Craft. After receipt of the notice, the Union may request a meeting concerning the proposed changes. Such request must be made within fifteen (15) days of receipt of the notice; and the meeting must be scheduled and held within thirty (30) days after receipt of the notice unless mutually agreed otherwise.

Section 3. Final Notice and Arbitration

Following the meeting and prior to publication, the Union will be given a final written notification of the changes which shall include any modifications to the initial proposed changes. Upon receipt of this final notice, if the Union believes the changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) days after receipt of the final notice. Absent a request for a meeting in accordance with the time limit set forth above, a request for arbitration must be submitted within forty-five (45) days of receipt of the initial notice of proposed changes. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours and working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

* * *

Memorandum of Understanding .14

The United States Postal Service and the National Rural Letter Carriers' Association face a very exciting and challenging future as we continue to expand the role of the Postal Service as an important gateway to the an household. Going forward, our future success will depend on how well we work together as a team. ...Emphasis must be placed on the corporate objective that all managers, supervisors, and union representatives give the highest priority to compliance with our collective bargaining agreement. ...

* * * * *

RURAL CARRIER DUTIES AND RESPONSIBILITIES HANDBOOK PO-603
(Emphasis in original)

Chapter 5
INSPECTION, COUNT, AND ADJUSTMENT OF RURAL ROUTES

510 Types of Rural Routes

511 Evaluated Rural Routes

511.1 Definition

An evaluated route is one based on weekly workload evaluation. Compensation is authorized on the basis of evaluated time as determined by office and route time standards after subtracting any relief time.

511.2 Types of Evaluated Rural Routes

511.21 H Routes. The regular carrier works 6 days a week.

511.22 J Routes. The regular carrier has a relief day every other week.

511.23 K Routes. The regular carrier has a relief day every week.

511.24 Auxiliary Routes. The carriers work 6 days a week. Normally, these routes are evaluated at less than 39 hours per week.

* * *

530 Rural Route Mail Counts

531 General

531.1 Purpose

These instructions provide standardized and uniform procedures for conducting mail counts on rural routes. An understanding of these instructions by rural carriers and managers helps ensure accuracy of mail count data, and prompt evaluation and correct classification of rural routes. Postmasters, supervisors, and rural carriers must ensure that mail counts are properly conducted and that data is accurately reported.

531.2 Definition

A count of mail is physically counting and recording, at specified times, the number of pieces of mail delivered, collected, or handled on rural routes. This includes both national and special mail counts. Mail counts are used to assemble data that provides the basis for individual route evaluations. These route statistics indicate:

- a. Volume of mail handled.
- b. Amount of office and route time used by the carrier.
- c. Adequacy of service to rural customers.
- d. Efficiency and performance of the carrier.

531.3 Route Evaluations

The evaluation of a rural route is determined by the mail volume handled, daily miles traveled, the number and type of boxes served, and fixed or variable time allowances, i.e., the types of data that are obtained from mail counts (see Form 4241-M, *Rural Route Evaluation Worksheet*).

532 Types of Mail Counts

532.1 National Mail Counts

A national mail count is conducted on all rural routes in accordance with the provision of the USPS/NRLCA National Agreement.

532.2 Special Mail Counts

Special counts held in September are conducted during the last 12 working days of the month. Special counts held during any other month are scheduled in accordance with the provisions of the USPS/NRLCA National Agreement. Special counts are not conducted in July, August, or December.

533 Procedures for National and Special Mail Counts

533.1 Responsibility

533.11 Postmasters. Postmasters must hold joint conferences with supervisors and rural carriers to discuss count procedures at least 15 days before the start of the count. In addition, the postmaster must arrange a meeting with each eligible rural carrier to discuss requirements for election of a higher classification for which the rural carrier may qualify (see 535.23k). The postmaster is also responsible for including, in writing, any questions or comments raised by the carrier after the count, forwarding Form 4241, *Rural Delivery Statistics Report*, with the written comments to the Management Sectional Center (MSC), and advising the carrier, in writing, of the MSC's decision. Postmasters must make every effort to immediately resolve disagreements regarding the actual number of pieces counted at the local level.

533.12 Postmasters or Supervisors. Postmasters or supervisors must make completed Forms 4241 available to carriers and ensure that all columns on Form 4241 have been completed and totaled before giving the forms to the carriers to review. The signature of the postmaster (or designee) is considered verification of the validity of the count data.

533.13 Carriers. If you agree with the count data, your signature is considered verification of the validity of the count data. When you disagree with the count data, you need not sign the form. However, you must promptly submit written comments to the postmaster explaining in detail the reasons for objecting and the exact nature of the supposed errors or omissions.

533.14 Management Sectional Centers. The MSC is responsible for providing a prompt written reply to the postmaster advising of its decision.

533.2 Conducting the Count

533.21 General. All classes of mail handled by each rural carrier must be counted daily during the official count period. Before it is cased, mail must be counted at the facility where the carrier cases the mail. The postmaster or supervisor must exercise extreme caution to ensure that all entries on the count forms are correct. Carriers may observe the mail count on their relief days or on days when they are on leave. (Any carrier who observes the mail count on a relief day, or while on leave, must be in a nonduty status and must not participate in office work activities.)

533.22 Rural Carrier Schedule Mileage Routes.

During the 12 days of the mail count on mileage routes, the carrier counts the mail 8 days, and the postmaster or supervisor counts 4 days (picked at random). **Exception:** Those mileage routes classified as high density (L) are counted by management on all days. Carriers may observe, and may also count if they wish to, on the days management makes the count. When in management's judgement the route borderlines evaluated status, the supervisor or postmaster makes the full 12-day count.

533.23 Evaluated, High Density L, or Auxiliary Routes. On routes classified evaluated, high density (L), or auxiliary, the postmaster or supervisor makes the count on all days during the count period. (This requirement is applicable where post offices are closed on Saturday and supervisory personnel are not normally on duty.) The rural carrier may observe and also count the mail. However, the postmaster or supervisor must count the delivered and collected mail, and enter it on the daily count forms.

534 Casing of Mail by Carrier

534.1 General

The principle underlying the count is that the same mail flow conditions prevail during the count period that are normally in effect the rest of the year. All mail available up to the normal cutoff time for distribution on the day preceding the count is delivered on that day; and all mail available up to the normal cutoff time on the last day of the count is included in the count and delivered.

* * *

535 Mail Count Forms

535.1 Form 4239

535.11 Description

535.111 Form 4239 (see Exhibit 534.2) is designed to function as a combination daily worksheet and mail count record. This important daily record provides the basic source of mail volume and time data that is transferred to Form 4241, *Rural Delivery Statistics Report*, and consolidated for the count period. (Use a separate form to record each day's mail count.)

535.112 The postmaster, supervisor, or mileage route carrier responsible for making the count, prepares Form 4239 daily. Form 4239 worksheets are completed as the mail is counted. After Form 4239 has been completed each day, the postmaster -retains the original, and the carrier receives the carbon copy.

535.113 When management completes Form 4239, it will be shown to the carrier, upon request, before the mail is trayed or strapped out to allow verification of the count data.

535.114 The postmaster, supervisor, or mileage route carrier who makes the daily count must sign Form 4239 each day.

535.115 Carriers serving evaluated, high density (L), or auxiliary routes do not make entries on Form 4239.

535.116 Form 4239 is completed at intermediate offices and forwarded under cover daily to the headout office postmaster for consolidation on Form 4241. Form 4241 is not completed at intermediate offices.

535.117 On presently classified evaluated, high density (L), and auxiliary routes, Form 4239 is completed in accordance with 533.23.

535.118 On mileage routs not classified as high density (L), Form 4239 is completed in accordance with 533.22.

535.12 Completion. During the entire mail count period, complete Form 4239 daily for each route. Daily, transfer the totals from Form 4239 to Form 4241. Use the following guidelines to complete Form 4239:

* * *

j. Column J--Marked Up.

(1) In this column, record the number of pieces of all classes of mail marked up. Markups are mail pieces undeliverable as addressed that require the carrier to endorse the mail with the reason for nondelivery specified in DMM 159.1. Do not record as a markup mail missorted to a route. Do include missorted and missent mail in the original count of mail. This applies where routes have been adjusted, territory changed, or the mail is routed to the wrong carrier.

(2) Where mailing addresses have been changed from rural route and box number to street name and number, do not credit as a markup, whether on the same route or where the territory has been transferred to another route. This is considered a handoff, and it is credited in the original count of mail.

(3) Markup credit is provided for the following categories of undeliverable mail:

* * *

q. Column Q--Loading Vehicle. Enter the time actually used to transfer mail from the carrier's work area to the vehicle, including placing in the vehicle. This includes time to take mail from the work area to the vehicle and the time necessary to return the equipment used to a designated location. Postmasters or supervisors must observe the loading operation daily to ensure that carriers operate efficiently. Include only the time required to place mail in gurneys or hampers in loading time if mail cannot be placed in the conveyance during strap out. In offices where the carrier does not normally withdraw all mail for the route, the required final withdrawal from the designated distribution case, or other equipment, is accomplished in conjunction with the loading operation; and the actual time required included in the loading allowance. **DO NOT INCLUDE** the time used for this function if the carrier receives the withdrawal allowance. Fully explain in the *Comments* section of Form 4239 loading time in excess of 15 minutes. However, do not interpret the loading allowance to be a minimum 15 minutes daily. The actual time shown for loading the vehicle must not include time for arranging parcels in delivery sequence as this is included in the time allowance for those items in column C.

* * *

r. Column R--Other Suitable Allowance.

(1) A reasonable time allowance may be claimed for unusual conditions, or for other services rendered on a daily or weekly basis, that are not accounted for under the normal work functions. This does not include time for vehicle breakdowns. Management must authorize items for which time is claimed under this heading. These must recur on a daily or weekly basis. Weekly safety talks must be conducted, and the actual time required (usually 5 minutes per week) must be recorded in column R.

(2) The actual time required to place the Central Markup System/Computerized Forwarding System (CMU/CFS) mail in the designated location is credited in column R.

(3) Where no office personnel are on duty when the carrier returns from serving the route on Saturday, the carrier receives actual time allowance for only those duties performed over and above the normal functions of this day and the following workday. (This does not include time spent counting mail or completing count forms.)

(4) Those carriers who serve a nonpersonnel rural unit receive a minimum allowance of 15 minutes daily for each unit served. Boxes located in these units are not included in the route totals on Form 4241. Additional time claimed for servicing a nonpersonnel unit must be justified in the *Comments* section.

(5) Personal time, or time used for purchasing and checking stamp stock, should not be entered. These times are credited when the evaluation is processed at the postal data center (PDC).

(6) No entries are made in this column for those routes using USPS-owned or leased vehicles. The PDC automatically credits appropriate time allowances, as indicated in 535.23. Time spent waiting for vehicle repair or tow while on the route is not a recurring function, and is not granted.

(7) All entries in column R require justification in the *Comments* section. Note: No entries are made in this column for those routes with collection compartments, or parcel post lockers located in centralized delivery equipment.

* * * * *

BACKGROUND

The Evaluated Pay System for Rural Carriers

The evaluated pay system established by USPS and NRLCA is unique in the Postal Service, in that rural carriers are not paid for an eight-hour day. Rather, each rural carrier is paid a particular annual salary at a point on a sliding scale of "Evaluated Hours" arrived at through mathematical conversion from the "Standard Hours" (total hours and minutes per week) s/he expends casing and delivering the mail, as recorded by postal managers during a National Mail Count ("NMC") of the particular rural route to which s/he is assigned. Thus, the rural carrier evaluated pay system takes into account the myriad differences and idiosyncracies among rural routes and between post offices providing rural mail delivery, *e.g.*, mail volume, number of boxes, logistics, demography, geography, *etc.* The calculations also factor in the three different route classifications for rural mail delivery:

“H” routes refer to those routes carried six days a week by the regular carrier; “J” routes refer to those routes carried six days a week by the regular carrier one week and five days a week by the regular the next week, with the sixth day every other week carried by a relief carrier; “K” routes are carried five days a week by the regular carrier and one day each week by the relief carrier. [In rural delivery, routes are delivered Monday through Saturday. There is no regular delivery service on Sunday].

Article 9.2.C.6 of the National Agreement contains a “Table of Evaluated Hours for Regular Rural Routes” which converts various ranges of total hours and minutes per week or “Standard Hours”, as counted during the NMC of a particular H/J/K route, into “Evaluated Hours”, by which the annual salary of the regular carrier for that route is established until the next NMC of that route. Within each of the three route classifications (J, H and K), there is a range in standard hours of between 6 and 10 hours. Because the “Table of Evaluated Hours for Regular Rural Routes” equates various ranges and permutations of H/J/K route “Standard Hours” into “Evaluated Hours”, escalating from 40 hours pay to 48 hours pay per week, even one minute plus or minus in a route’s total hours and minutes per week (“Standard Hours”) can make the difference between a higher or lower “Evaluated Hours” pay category for the regular carrier on that particular route. In that connection, the National Agreement shows that there is a spread of more than 17 standard hours per week between the smallest regular rural route listed in the Table of Evaluated Hours for Regular Routes (40:30 “Standard Hours”--6.75 hours per day= 41 “Evaluated Hours”) and the largest regular route (57:36 “Standard Hours”--9.6 hours per day= 48 “Evaluated Hours”). See Joint Exhibit 1, p. 26.

It should also be noted that once an evaluated salary is established for the route, a rural carrier is paid that same salary every pay period until the route is again evaluated, regardless of whether the

daily, weekly or monthly work load for that particular route is above or below the standard hours measured during the governing NMC. In short, irrespective of whether rural route casing and delivery takes less time or more time on any given day to day, week to week, or month to month, the rural carrier is paid on the basis of the annual salary set by the results of the most recent NMC of that particular route. [The relief employee, usually referred to as “RCA”, is compensated based “on the evaluation of the regular or auxiliary route served” when they work up to 40 hours per week].

The National Mail Count

The National Mail Count (“NMC”) is a real-time process of Postal Service managers and supervisors physically counting, timing, measuring, and recording some 32 different “elements” of rural route job functions performed by the rural carrier during a representative two to four-week period. Some of the job elements are measured by a simple whole number count of how many times an action is performed, others are measured by the actual amount of time expended performing the action, others are measured by size or dimension of “mail piece” objects and some are assigned a previously negotiated time value for each occurrence. At the conclusion of the rural mail count period, the data for each route are assembled, various formulae are applied and the route value for pay purposes is determined by calculations utilizing the standard allowances and actual time credits. Thus, each of the 32 mail count elements is converted into seconds, minutes, and hours from which the “Standard Hours” for an individual route are converted to “Evaluated Hours”; using formulae negotiated between the Postal Service and the NRLCA. This process eventually produces the salary for each rural route, in accordance with the graduated salary schedule (“Table of Evaluated Hours for Rural Routes”) set forth in Article 9.2.C.6 of the National Agreement.

During an annual NMC, which is conducted by Postal Service managers and very closely monitored by rural carriers and the NRLCA, data are collected about each rural route being counted, including the mail volume handled, the daily miles traveled, the number and type of boxes served, and the fixed or variable time allowances associated with functions that rural carriers perform in the post office and/or on the route. For the time period relevant to the present dispute, there were approximately 70,000 rural routes in the United States and its territories but in 2002 it had been many years since every rural route had been counted in a single NMC. Thus, of the 69,394 rural routes evaluated in the 2002 NMC, only about 40,000 had been evaluated in the mail count of 2000 and none were evaluated during 2001. [For those rural routes not counted in a particular NMC, the most recent previous valid mail count of the route governs for pay purposes until that particular route is next re-evaluated in another properly conducted NMC].

It is extremely expensive for the Postal Service to conduct a nationwide NMC, with cost estimates by various USPS witnesses ranging from 6.4 to 20 million dollars per week. Depending on the year, mail counts have lasted between 12 and 24 working days, during which postmasters and other management personnel inspect rural routes, hold pre-count conferences, and conduct the counts. The route inspection occurs shortly before or during the count so that current baseline data may be collected on the number and types of boxes served, mileage and stops necessary to serve the route, location, time, and frequency of authorized dismount and dismount distances for each individual route.

Each working day during the NMC time period, Postal Service managers count and categorize each and every piece of mail delivered to or collected from an individual rural route; utilizing mail count gauges, stop watches, and tape measures in order to properly categorize mail

pieces, time certain rural carrier functions and measure certain distances. Daily mail count findings are recorded in whole numbers or in seconds/minutes on PS Form 4239 (“Count of Mail-Rural Route”), described as a “combination daily work sheet and mail count record.” Thus, the Form 4239 entries are the basic source of mail volume and time data which is subsequently transferred to PS Form 4241, (“Rural Delivery Statistics Report”) and consolidated for the route evaluation.

Each mail piece handled or other compensable task performed by a rural carrier is recorded by an entry under the appropriate column on Form 4239 daily and transposed to Form 4241, in accordance with the guidelines set forth in PO-603, *supra*. There is a tally area or “Column” on Form 4239 for each of the 32 “elements” of rural carrier work which are measured during the NMC, including “letters” (Column A), “newspapers, magazines, flats, catalogs and rolls” (Column B), “parcels” (Column C), “box-holders” (Column D), *etc.* As noted, *supra*, the present dispute primarily concerns the propriety and validity of 2002 NMC count data relative to “mark ups” (Column J), “loading time” (Column Q), and “other suitable allowances” (Column R).

Column J “mark-ups” are mail pieces that are undeliverable as addressed and which require the carrier to endorse the mail with the reason for non-delivery. (*See* PO-603, Section 535.12j and Postal Bulletin 21952). Column Q “loading time” is time spent “taking mail from the work area to the vehicle, placing mail in the vehicle, and returning the equipment to a designated location..” However, no loading time is allowed for the sequencing (in delivery order) of parcels and loading time “in excess of 15 minutes must be fully explained in the Comments section of PS Form 4239.” (*See* Postal Bulletin 21952). Column R, an especially fertile source of controversy between these Parties, provides for allowances of “reasonable” amounts of time for “unusual” conditions, or for “other services rendered on a daily or weekly basis that are not accounted for under the normal work

functions.” (See PO-603, page 95 and Postal Bulletin 21952). [Column J markups are counted and recorded as a whole number, Column Q loading time and column R time are measured and recorded in minutes and seconds]. These three particular rural carrier job elements [Columns J/Q/R] were not among those expressly modified by a February 2002 interest arbitration award which significantly impacted certain other mail count elements, as well as the timing and conduct of the 2002 NMC.

The Wells Interest Arbitration Award

After attempting without success to negotiate a multi-year successor to the expired 1995-1999 National Agreement, the Postal Service and the NRLCA entered into a one-year extension agreement in November 1999. When the extended negotiations also ended in impasse, the Parties entered into mediation followed by tripartite interest arbitration proceedings, pursuant to provisions of the Postal Reorganization Act. Thus, the terms and conditions of employment in the current National Agreement, as well as the conditions for a February-March 2002 NMC of every single rural route, were established by the February 3, 2002 interest arbitration award of Neutral Arbitrator John Calhoun Wells (“Wells Award”).

In parts most significant for the present proceedings, the Wells Award directed that an expedited National Mail Count of every one of the approximately 70,000 rural routes in the United States and its territories be conducted by the Postal Service during the two-week period February 28-March 13, 2002. There had been no NMC in 2001 because the Parties were locked in the bargaining impasse and involved in the interest arbitration proceedings which led to the Wells Award. Thus, the most recent NMC on about ½ of those routes had been conducted during the last 12 working days of September 2000; whereas the other ½ of the rural routes had last been counted and re-evaluated in 1999 or earlier. Beyond changing the count period from September to February-

March for the 2002 NMC, the Wells Award also overrode the requirements of Handbook PO-603 §533.11, by compressing from 15 days to 6 days the time in which Postmasters had to meet with their rural carrier employees prior to the February 28, 2002 start of the 2002 NMC, *i.e.*, by no later than February 21, 2002. In addition to significant expedition in the timing of the 2002 NMC, the Wells Award also ordered changes in certain count elements which would have a major substantive impact on the count results: including a change in the letter/flats size distinction which resulted in rural carriers categorizing more lower-evaluated and fewer higher-evaluated flats; an increase in the letter casing rate from 16 to 18 pieces per minute; an increase in the flat casing rate from 8 to 10 pieces per minute; and, an increase the strap-out rate from 60 to 70 pieces per minute.

Based on those changes alone, both Parties understood that even the same amount of mail on a particular route in the upcoming 2002 NMC would produce a lower evaluation value for the rural carrier than it had in the previous NMC of that route. Postal Service calculations predicted that, on average, a rural route would “lose” almost 3 hours (174.1 minutes) in weekly evaluated time during the 2002 NMC, solely as a result of those standard changes. [The Wells Award also contained economic provisions favorable to the Union: a one level pay upgrade, and a \$300 evaluated salary schedule wage increase, to be funded by enhanced productivity resulting from the above-described standards changes].

The 2002 Mail Count Training Course

From the National Headquarters level in Washington, D.C. to the local post offices throughout the United States and its territories, the Postal Service is organized into the following 9 geographic Areas, each of which covers several States or parts of States – Northeast, New York Metro, Capital Metro, Eastern, Southeast, Great Lakes, Southwest, Western, and Pacific. Each Area is divided further into a number of Districts, sometimes variously referred to as “Clusters” or “Performance Clusters”. By way of example, the Northeast Area consists of 9 such Districts – Maine, New Hampshire, Springfield, Middlesex-Central, Boston, Southeastern New England, Connecticut, Albany, and Western New York.

Immediately after the Wells Award was issued, the Postal Service scheduled two national mail count training sessions for Area and District postal managers, one at Denver Colorado on February 12, 2005 and the other at Potomac, Maryland on February 13, 2005. A request by the Association’s Director of Labor Relations to attend and participate in these training sessions was denied by the Postal Service. Nor was the Association allowed to review or participate in the development of handouts and course materials for those 2002 NMC training sessions, prepared and utilized by Postal Service instructors at Denver and Potomac, entitled “Rural Carrier Mail Count Course #44Q0105 (draft)”.

Ms. Betty Tomes, a Customer Service Analyst from the Richmond Virginia District, put together her portion of the “draft” Mail Count Course from materials she had developed previously in conducting rural mail count training of postal managers in the Mid-Atlantic District; which she “up-dated” to reflect the changes from the Wells Award (NRLCA Exhibits 20-22.) The 63 pages of training materials Tomes prepared, presented and handed out to the training participants consisted

of charts and “bullet point” memoranda which covered in detail how a mail count is conducted, route inspections, pre-count conferences, carrier options and leave agreements. During these sessions Tomes further provided detailed information on counting and recording each of the more than 30 individual elements comprising the route evaluation, including Columns J, Q and R.

Tomes and Headquarters Operations Specialist Robert West, who chaired the training sessions, also discussed particular problem areas during a rural mail count, especially outliers, aberrations and “horror stories” of mis-classified Column R entries. Headquarters Labor Relations Specialist William Daigneault discussed the requirements of the Collective Bargaining Agreement and the status of pending Step 4 grievances concerning mail count elements. In addition to these relatively generic presentations by Tomes, West and Daigneault, the training session agenda also allocated an additional three (3) hours for a special presentation by Mr. James Kiser on “managing” the 2002 NMC count data for Columns J, Q and R. [As noted, *infra*, since Fall 2001 Kiser had been “on detail assignment” to the Postal Headquarters office of then Vice-President for Delivery and Retail, Henry Pankey from his regular assignment as Richmond District Manager of Finance. Shortly after the results of the 2002 NMC were tabulated, Kiser was promoted to the Headquarters executive position of Manager of Integrated Modeling and Analysis].

Vice-President Pankey, who addressed the attendees of the Potomac training session, had sent a memorandum to each of the nine Area Managers scheduled to attend those training sessions on February 7, 2005, in anticipation of Kiser’s presentation, reading in pertinent part as follows (NRLCA Exhibit 102):

The training sessions scheduled for next week will provide area, performance cluster and office level data on all aspects of the Rural Mail Count to assist districts in focusing on the issues and offices where evaluated Column R and Column Q Time exceeded the national average. In the meantime, attached are a national profile of all areas and a profile of the districts within your area.

The attachments referenced in the Pankey Memo were charts showing the national average Column R “other suitable allowances” times and Column Q “load times” for the six mail counts from 1995 through 2000²; the average Column R and Column Q load times for each of the nine areas for the 2000 count; each particular Area’s average R and Q times for the 1995-2000 counts; and the average R and Q times for each District within the Area for the 2000 count. [Vice-President Pankey’s presentation also included a disclaimer stating: “[N]o one here today is telling you to take one minute of time away from a rural carrier that they are due” (Kiser, Tr. 713-14)].

The specialized J-Q-R training in Denver and Potomac centered around a document prepared by Kiser, entitled “Managing the Opportunity”. The copy of that document introduced on the record of this arbitration proceeding as NRLCA Exhibit 23 was provided to the Union by the Postal Service, as pages 7-2 through 7-21 of a response to the Union’s October 4, 2002 “initial information request”.³ In testimony describing his presentation (Tr. 699, 772-74), Kiser asserted that he did not intend that the “average” numbers he presented and discussed at the training sessions be used as “benchmarks, caps, or targets” during the 2002 NMC:

The purpose of this data...and I specifically and emphatically stated that it was not to pass judgment on any of these numbers, but this was given because where there is what appears to be an inordinate amount of credit in [Columns J, Q or R], it needs to be validated and verified. It very well may be accurate. There are anomalies out there, there are certainly conceivably a reason why 260 minutes a week is proper and correct for an R-time allocation. But where you have such a data point that’s that far outside an average, or the normal distribution, it needs to be validated and it needs to be verified.

² In the 2000 NMC of some 40, 000 rural routes, the “national average” weekly R time per route was 45.4 minutes, the “national average” weekly load time per route was 53.2 minutes, and the “national average” weekly number of mark-ups per route was 115.8 pieces.

³ At the arbitration hearing, Mr. Kiser could not remember including or discussing pages 7-20 and 7-21 in his presentation but opined that those pages had been produced by the Southwest Area or the Oklahoma City District some time after he distributed the “Managing the Opportunity” document to the field managers. However, testimony from Richard Richey, Southwest Area Operations Analyst, persuasively establishes that pages 7-20 and 7-21 were distributed by Kiser at the Denver training, along with the preceding 19 pages of “Managing the Opportunity.”

Implementation of “Managing the Opportunity” at the Area Level

Within days of attending the February 12-13, 2002 Mail Count training sessions sponsored by the office of Headquarters Vice-President Pankey, Area managers communicated with their District offices about the emphasis Postal Service Headquarters had placed on “managing” Columns J-Q-R time and piece count data during the immanent 2002 NMC:

Northeast Area: The Northeast Area consists of the New England states and Western New York, with a total of 5,430 rural routes to be counted in 2002. The day after attending the Potomac training session, Dennis Wnuk, Manager of Delivery Programs Support sent an e-mail to all Northeast Area Districts, informing them that “[y]ou must also scrutinize data received from offices that have allowed excessive time in these columns [J-Q-R] in the past.” (NRLCA Exhibit 34). Wnuk testified that by “excessive” time he meant “inefficiencies such as using improper equipment or making unauthorized trips”, as well as “anything that would be above the national average or the area average” (Tr. 1058-63). Wnuk also instructed his District managers to review the daily count sheets “for any types of anomalies. . . having to do with Columns Q, J and R.” (Tr. 1060.) Wnuk defined “anomalies” to include any entries “above the national average, above their own individual averages from previous columns or something...very out of the ordinary”. (*Id.*) Wnuk also testified that he reminded his subordinates that Northeast Area Vice President Jon Steele expected them to “continue to work well with [the NRLCA] while obtaining accurate, fair evaluations—that reflect actual workload”. (Tr. 1067 and USPS Exhibit 35).

Eastern Area: The Eastern Area covers Pennsylvania, Ohio, Kentucky, West Virginia and the Carolinas and in 2002 it was the Area with the most rural routes in the United States- -14,600 rural routes. On February 14, 2002, Manager of Delivery Programs Support Elizabeth Schaefer sent

the following memorandum concerning “Rural Mail Count Exception Reporting” to all District Managers in the Eastern Area (NRLCA Exhibit 36; italics and underlining in original, bold emphasis added):

In an effort to contain rising costs of rural delivery, the Eastern Area will continue the exception reporting of certain items during this year’s National Rural Mail Count.

Attached is a sample letter for you to personalize and forward to your rural delivery offices as well as the exception reporting format that we will be using. ... **Every office with rural delivery must report to the District *daily* via cc: Mail, FAX, or phone call (with hard copy to follow) with explanations for any route that exceeds any one of the following benchmarks:**

- * 20 pieces of mark-ups per day
- * 8 minutes of loading time
- * 5 minutes of safety/service talks per week
- * Any other Column R time over eight minutes (less safety/service talks).

Each District will be required to provide a daily summary report of your reporting offices to the Area. ... List the office name and the total number of minutes exceeding the above-stated standards in each column. For each of these offices, provide an explanation showing District approval of time used or an action plan to correct overuse

* * *

Enclosed is a copy of the Rural Mail Count Exception Report. This report must be completed for every rural route during the scheduled National Rural Mail Count. **These reports must be returned to the District office at the end of each day. ...**

Each category has a suggested benchmark at the top of each column based on the national averages for Mark-Ups, Loading Time, Other Suitable Allowance, and Service/Safety Talks. Any route exceeding any one of those benchmarks must be reported daily and requires an explanation in the comment section. ...

The “2002 Rural Mail Count Exception Report”, which each Eastern Area post office was required to complete and file daily during the 2002 NMC, prominently states that each mark-up “adds \$37.41 to the yearly evaluated pay of the route” and that each minute of load time or Column R time “adds \$149.64 to the yearly pay of the route”. The local post office supervisors were ordered to compute the dollar amount that any entries over the benchmarks add to the route’s pay, and to explain in the “comments” section why the route exceeded the benchmark figure on that day. (*Id.*)

According to Schaeffer, mail count documentation provided to her subordinate local managers included references to the costs of exceeding the J, Q and R “benchmarks” in order to “get people to focus” and to “pay attention to what they were doing” (Tr. 868-69). Schaefer testified that her staff used national averages as “guidelines”, modified by “local knowledge of what made sense” (Tr. 870-71). When NRLCA state official Helen Malarik complained about these “Exception Report” and “guideline” requirements, Schaefer responded : “It wasn’t in any way to limit the actual time or the actual numbers that were used. But I wanted to force [managers] to look at their operations, to see if there were improvements that could be made, and just to provide an explanation. This wasn’t about the carriers; this was a manager requiring managers to report back on their operations.”(Tr. 872).

Just before the count began, Schaefer wrote another memorandum to her District Managers, which reads in pertinent part as follows (Tr. 917-19; USPS Exhibit 26, emphasis added) :

Since this is the first time in more than ten years that every rural route in the country will be counted, we want to make sure that we take advantage of all the opportunities that this count brings for the Eastern Area. This includes demonstrating to the National Rural Letter Carriers Association that we, as managers, will do everything that we can to ensure a fair and reasonable count for all concerned.

Schaeffer also testified that, despite the training instructions, the Eastern Area did not limit safety and service talks and that “whatever time those talks actually took was what was allowed” (Tr. 896-97); that local management explanations of J, Q and R numbers higher than the guidelines were “routinely accepted and the times were allowed” (Tr. 905-14; USPS Exhibit 25); that no managers had caps or limits on the numbers that they could report; that no one either at the Area or at Headquarters ever suggested such a procedure; that no rural carrier lost time because his or her office filed an exception report; and that “nothing “happened to managers” whose numbers exceeded the benchmarks. (Tr. 889-90, 914-15).

Great Lakes Area: The Great Lakes Area, which covers Michigan, Wisconsin, Illinois, Indiana, Missouri and a part of Iowa, had about 9500 rural routes to count in 2002. On February 27, 2002, the day before the 2002 NMC began, Operations Programs Analyst Mark Rosenwinkel sent an e-mail to all Great Lakes Area Districts, stating in pertinent part as follows: (NRLCA Exhibit 38, emphasis added)

Below are correct **DAILY** thresholds to be used area-wide for all routes in all offices per the instructions in the original message.

LOADING TIME:	9.1 minutes per day
COLUMN R TIME:	6.7 minutes per day
MARK UPS:	14.8 pieces per day

Our top performer in each of these categories was the Lakeland Cluster, with Gateway second best in each category. The continuous positive performance of these two Clusters is appreciated!

Concerning the requirement that any route exceeding these J, Q, R “thresholds” on any day during the 2002 NMC needed to be reported and justified, Rosenwinkel testified as follows:

Q: And did you require any reporting from the field on a daily basis with any route under a particular threshold or benchmark?

A: No, I did not.

Q: Why not?

A: I can't answer why I didn't put instructions to that end. You know, it was discussed and we talked about it, but I didn't put a lower end similar type instruction to the field.

Q: Okay. And where was it discussed? It is not in these complex instructions, is it?

A: No. Where was it discussed? In face to face meetings such as at Denver when we spoke on the phone to individual analysts.

Q: Okay. But you do know that these instructions were disseminated to the local post office level?

A: Yes.

Q: And you didn't speak to every postmaster in the Great Lakes Area, correct?

A: I didn't speak to any of them.

* * * * *

Q: Isn't it true for the majority of managers in the Great Lakes Area, the only instructions that they would have had with regard to thresholds was the one that we see here, Exhibit 38, that talks about reporting only when those thresholds are exceeded?

A: Yes, the majority.

Rosenwinkel testified that he “tried to be very clear” that the guidelines were not “limits or caps” on what a facility could record, or even “targets or expectations”; they were “simply performance evaluation tools or indicators”(Tr. 825). He also stated that none of his “instructions” were used to evaluate managers or their performance during the mail count Tr. 849-50); none of the numbers that Great Lakes used as “analysis tools” were in any way “dictated by Postal Service Headquarters” (Tr. 824-25); and the numbers he issued were not “hard and fast, but could be modified and changed by individual managers” (Tr. 826-27. Finally, Rosenwinkel described participating in two teleconferences in which Area representatives discussed mail count issues with Headquarters. He asserted that Headquarters representatives urged Area representatives to “make sure you stay in touch with your Union folks”; to correct any “misapplication” of J, Q and R numbers put out by management to the field in Denver and Potomac; and, “...make sure you are not trying to coerce the numbers. Just...use this as analysis tools and performance indicators” (Tr. 834-37, 842-43).

Southeast Area: The Southeast Area, covering Tennessee, Mississippi, Georgia, Alabama and Florida, had 12,600 rural routes in 2002. On February 15, 2002, Manager of Operations Programs Support Dennis Nott sent a memorandum to all Southeast Area District Managers emphasizing attention, among other things, to “high” mark ups, “high” R time, and “high” loading time and which included specific office and route data from the 2000 count concerning J-Q-R for use in “identifying excessive time reported in the previous count.” (NRLCA Exhibit 37) Mary Ann Richards, Manager of Delivery Programs Support for the Southeast Area, who prepared the memorandum for Mr. Nott, testified that no such instructions were issued to the field to look at “low” J-Q-R numbers, as well as “high” numbers.

On February 22, 2002, just before the count, Richards notified local managers as follows (Tr. 1142-43; USPS Exhibit 40--emphasis in original).:

I can't stress enough the importance of being fair, consistent and accurate with the messages that we are sending now and during the Rural Mail count. We do not, under any circumstances, want there to be an appearance that we are "out to get the rural carriers." We are not! We have a task to count every rural route. Changes have occurred in standards, L route classifications, mistakes have been made in previous counts, volume has declined, DPS % has increased, etc. Let's ensure that the right message is being delivered by our managers.

Please make sure the message is clear that we only want a "FAIR, CONSISTENT AND ACCURATE COUNT" for both parties.

As the count period wound down and then closed, Richards forwarded to the field the agreement with the Union on "redlining" (Tr. 1148-49; USPS Exhibits 13, 43) and the April 1999 "Bothwell Memo, *infra*, concerning the need to protect the integrity of the count, with underscoring for emphasis (Tr. 1161-66; USPS Exhibit 50; Union Exhibit 16).

Southwest Area: The Southwest Area covers Texas, Oklahoma, Arkansas and Louisiana, and at the time of the 2002 rural mail count had approximately 8400 rural routes. Area Vice President George Lopez sent a memorandum on February 13, 2002 instructing Southwest Area District Managers to review post offices with "high 'R' times (over 21 minutes)". (NRLCA Exhibit 39.) The Southwest Area Operations Analyst who drafted that memo testified that, even though the national average for R time in 2000 had been 45 minutes, the Southwest Area considered 21 minutes per week "an anomaly, it was a high spot." (Richard Ritchey, Tr. 966).

In addition specific J, Q and R "thresholds" were established for each Southwest Area District for the 2002 mail count. (Tr. 959.) In an e-mail dated February 21, 2002, summarizing "notes from today's telecon on the rural count", Ritchey instructed to all Southwest Area District Managers, as follows (NRLCA Exhibit 40; emphasis added):

It was decided to set thresholds on the 3 issues that are being closely monitored, 'R' time, Loading Time, and Mark-Ups. The Area would be notified of the thresholds each District sets. The Area would be notified of the thresholds each District sets. Any route exceeding these thresholds would have to explain to their Manager as to the reasons why.

Ritchey testified that the basis of that document was a similar 2000 mail count document he had developed when he was in the Mid-West Area, "modified by the Wells award and some alterations appropriate for the Southwest Area"(Tr. 942-43, 954). He conceded that the 2002 Southwest Area instructions contained instructions to limit safety and service talks to 5 minutes and references to watching for "excessive" loading time but insisted that these were no different from the 2000 Midwest Area guidelines he had used in 2000 at which time top officials of NRLCA were fully informed of his approach to the mail count. (Tr. 949-50).

Ritchey testified that thresholds were not set by the Southwest Area but, if District offices wanted to set "J, Q or R review thresholds", each District was free to decide what that would be. (Tr. 958-59; Union Exhibit 40). To "assist offices", Ritchey reviewed computer records in the Postal Service's Datakeeper time system and "made his own judgment on what offices should pay attention to their J, Q or R numbers, based on the averages they had previously recorded". These were offices with 21 or more minutes of "R" time—the same cut-off point as in 2000; 12 minutes per day of load time, and 120 pieces per week of markup time (Ritchey, Tr. 951-53; Union Exhibit 39, pp. 126-33) Ritchey asserted that the purpose of such "thresholds" was to "find out for sure what was going on" (Tr. 967-68) and that even if a markup, loading or R time was "outside of the ordinary, it was not redlined or stricken and the carrier received the time". (Tr. 951, 953, 960, 975). According to Ritchey, "no carriers lost time because their facility was on any sort of report." (Tr. 960).

Pacific Area: On February 8, 2002, Pacific Area Manager of Delivery Programs Support F. D. Porterbutterfield, forwarded to all Pacific Area managers the memo and statistical data he received from Vice-President Delivery and Retail Pankey on February 7, 2002 (NRLCA Exhibit 102, *supra*). In addition to providing these materials which set the stage for the “Managing the Opportunity” presentations, he added: “[W]e have allowed **unacceptable levels of Column R time (Other Suitable Allowances) and Column Q time (Loading Time) to be built into Rural Routes during the count.**” (NRLCA Exhibit 44, emphasis added.)

Western Area: As currently configured, the Western Area covers Far West and Middle America states: Washington, Oregon, Utah, the Dakotas, Kansas, Nebraska, Colorado, Wyoming, Minnesota, parts of Iowa and Missouri, as well as Alaska. [During the 2002 mail count, it also encompassed Nevada, Arizona and New Mexico]. At that time, the Western Area had between 12,000 and 13,000 rural mail routes. On February 5, 2002 Manager of Operations Support Walter Olsen sent a memorandum to all Western Area, District Managers, telling them (NRLCA Exhibit 41; bold in original, underlining added.)⁴:

To ensure that the maximum amount of savings is captured as a result of this year’s count efforts, below are 10 core issues that need to be addressed prior to the count dates. ...

* * * * *

3. “R” time reviews – Review 4241s from last count in offices with high “R” times. **Managers, Post Office Operations, Postmasters, and Managers, Customer Service Operations must get directly involved with offices using more Col. R time than the DPARS target for their respective peer group, to remedy this situation prior to the count.**

* * * * *

⁴The Eastern Area sent an almost identical memorandum (NRLCA Exhibit 35) to its District Managers on February 7, 2002, the same date Vice President Hankey sent his memo to Area managers, “to assist districts in focusing on the issues and offices where evaluated Column R and Column Q Time exceeded the national average.” (NRLCA Exhibit 112, *supra*).

7. Monitor loading time – Excessive time, as identified as the gap between actual performance and the DPARS⁵ target, must be eliminated prior to the count.

Operations Programs Analyst Patrick Conrad, the primary author of that Memo, testified that “excessive time” references in the Memorandum were expressed in terms of DPARS numbers “to alert managers that their operations might not be as efficient as they could be” and “as a way to show managers where to focus” (Tr. 996-97).

On February 8, 2002, the day after the Pankey Memo, *supra*, the Western Area convened a “Telecon & Net meeting” with all of its Districts concerning the upcoming mail count. District managers were instructed on “**three key areas to target for improvement in DPARS: DPS, Load Time, Other Suitable Allowance [Column R] Time**”. (NRLCA Exhibit 42, page 17, emphasis added.) Charts were provided on “Load Time Opportunity” and “Other [Column R] Time Opportunity”, listing each District in the Western Area with its 2000 mail count actual average Column Q load times and Column R times, compared with its “DPARS benchmark targets” for the immanent 2002 NMC. (*Id.*, pages 22, 25.)

For example, the Hawkeye District had averaged 48 weekly minutes of load time per route in 2000 but the Hawkeye District’s load time “DPARS benchmark target” for the 2002 NMC was set at 24 minutes per week. (*Id.*, page 22.) In other words, post offices in the Hawkeye District were urged to reduce the average load time per route by 100%, *i.e.*, to cut load time in half. In that connection, Operations Programs Analyst Conrad candidly testified: “**That’s effectively the target. 24 minutes is what we’re actually asking, or telling them is the goal to, you know, to meet on average load time per route.**” (Tr. 1042, emphasis added.) Similar reductions, articulated as

⁵ DPARS (Delivery Performance Achievement and Recognition System) sets “benchmark targets” at the average of the top quartile – *i.e.*, 87.5% of post offices have an average loading time and Column R time per rural route greater than the DPARS benchmark target

“DPARS benchmark targets” were sought in all Western Area Districts ⁶. Like the other Areas, however, the Western Area did not establish low-end “benchmarks” or “guidelines” or mandate daily reporting, higher management review and justification when supervisors recorded “abnormally low” J, Q or R numbers.

Conrad testified that there was “no suggestion” during Area conversations with the Districts that there would be any “unpleasant consequences for not making any certain numbers” (Tr. 1005). Western Area postal managers were encouraged to place as much mail in DPS as possible, but no suggestion was made to alter the mail flow just for the count because, as Conrad stated, “once you commit to processing DPS, you never go back” (Tr. 999-1000). He asserted that, after the teleconference, he approved and endorsed Area-wide use of a pre-count conference template from the Spokane District, which states that the purpose of the Pre-count Conference was “to ensure that mail counts are properly conducted and that data is accurately reported.” In an italicized “Note,” the document further stated that “[t]he Count is intended to be a true reflection of the route under normal conditions” (USPS Exhibit 33 at page 1). He also reminded the Districts that because “there would be closer Union scrutiny than ever before of how the count was conducted”, postal managers should be sure that “[w]e were following the prescribed count procedures, as discussed, that we’re giving credit where credit was due, and essentially making sure that we’re... dotting our I’s and crossing our T’s to ensure that we’re not creating our own problems by not following our own procedures” (Tr. 1018).

⁶ For the Western Area as a whole, the 2000 average weekly load time per route had been 55 minutes. The Western Area DPARS “benchmark target for the 2002 NMC was 31 minutes. (*Id.*, page 24.)

District and Local Responses to the J-Q-R Initiative

Northeast Area

Southeast New England District On February 22, 2002, Manager of Operations Programs

Support Jenny McKay-Fazzina, sent the following memo to all rural postmasters in the District (NRLCA Exhibit 45, emphasis added.)

The upcoming rural counts present us with a **crucial opportunity to contain future delivery costs**, as we have emphasized. **A particularly vulnerable area for our cluster has been our historically poor control over mark-ups, loading time, and other suitable allowances. The following is a list of materials we have enclosed to insure that you have all the tools you need to control those items:**

A 3 page listing summarizing do's and don'ts, and other pertinent information, to provide you easy reference to line item issues.

A list of target times for mark-ups, loading time, and other suitable allowances, to insure that you know right away when observed performance during the count requires your attention and corrective action. These target times are by post office groups, which is determined by office size.⁷

A list of offices showing which group they belong to so that you can easily highlight which target times apply to your routes.

A printout of every rural route in the cluster, by office, showing the times they used during the last count. **This will allow you to target, ahead of time, those areas requiring your hands-on attention.**

Western New York District: On February 26, 2002, the day prior to the start of the 2002

NMC, Assistant Manager of Operations Programs Support Ignatius Vaccaro , sent the following e-mail to all District and local post office managers (NRLCA Exhibit 50, emphasis added.):

We are only 1 day away from the rural count and I am sure that many of you have been getting questions from your rural carriers regarding several issues. The USPS has conducted it rural count training and the rural carriers conducted their own training this past weekend. As a result I am sure that conflicting information exists. Although we recognize the union's position on many of these issues, we have to maintain consistency in our position.

The information provided to you during your training reflects the USPS' position. Operations sent you a "reference sheet" specific to column R, J, and Q issues that should clarify our

⁷ The description of “target times by post office groups, determined by office size”, is more suggestive of DPARS “benchmarks” or “targets” than of national or area averages.

position on most issues. Please apply the information provided to you consistently throughout the count. If you still have questions that need answers we have resource people in the field available 6 days a week. They have been assigned cell phones specifically for the rural count. Please take advantage of their expertise.

Lucy Schaefer can be reached at cell phone number 716-432-6121 and Tony D'Alonzo can be reached at 716-329-0608.

It is also important to be aware of the National daily averages for Mark-ups, Load Time, and Column "R" time. These averages are:

Column R time 7 minutes and 34 seconds
Load Time 8 minutes and 51 seconds
Mark-ups 19 pieces per day

You are required to report any excess to these daily averages by any route on any given day to your POOM by 11:00 AM that day.

Eastern Area

Appalachian District On February 25, 2002 Manager of Operations Programs Support Marcia Stemple, forwarded copies of the "Rural Mail Count Exception Report", *supra*, to the District's postmasters, instructing them: "**Any route exceeding any one of those benchmarks must be reported daily and *requires an explanation in the comment section.***" (NRLCA Exhibit 98, bold and italics in original.) During the count, on March 1, 2002, Post Office Operations Manager Millard Flora, sent an email to District postmasters, as follows (NRLCA Exhibit 97, capitals in original, bold added.):

BENCHMARK EXCEPTIONS: Exception reports must be submitted on a daily basis when actual time (loading, Col. R) or markups exceeds on the benchmarks established by the Eastern Area.

Based on my observations this morning, it is emphasized that each office should use the requested form. **Telephone calls or e-mail narratives are not acceptable due to their lack of standardization. Also, a justification for the overages must be shown in the comments section.**

Having just returned from a district meeting, it is emphasized that the Eastern Area is really scrutinizing these functions.

At the risk of being redundant, I don't want us to be the ones who appear on another kind of "exception" report at the area office.

Lancaster District The following memorandum was sent to the Postmaster at Ronks, Pennsylvania by District Manager Michael Benson on February 23, 2002 (NLRCA Exhibit 61, emphasis in original.):

Subject: "Load" Time

...Operations Programs Support is in receipt of prior history for your office for "***Load Vehicle, Column Q***". The average daily load time per route was 8.56 minutes. For the 2002 Mail Count, Eastern Area has listed a benchmark of 8 minutes daily/48 minutes per week.

* * * * *

The statement listed below is to be signed and received ... no later than **COB FRIDAY MARCH 1, 2002** indicating your commitment to monitor loading activities.

The statement which the Postmaster was required to sign reads as follows: "**I agree to correct past mistakes pertaining to excessive time for "Loading Vehicle" for the 2002 National Rural Mail Count**". (*Id.*, emphasis added.)⁸

South Jersey District On February 25, 2002, all postmasters received an e-mail from Gary Dunham, Manager of Operations Programs Support, providing (NRLCA Exhibit 57, capitals in original, bold added.):

Attached is a copy of the MANDATORY Eastern Area Rural Mail Count Exception Report. This report MUST be completed for every rural route that exceeds the noted daily benchmarks

* * * * *

Any route exceeding any one of those benchmarks must be reported daily and requires an explanation in the comment section.⁹

(Note: Accuracy of the count is imperative. A route may actually exceed some of these benchmarks, but if the credit is correct and warranted by National counting procedures and guidelines, then your explanation would so state that. On the other hand, these bench marks may bring situations to your attention that are not being properly counted per Chapter 5 of the P.O. 603 handbook).

⁸ It is noted that the "past mistake" which the Postmaster acknowledged and agreed to "correct" during the 2002 NMC was recording a daily average of 8.56 minutes of load time per route during the 2000 mail count, *i.e.*, ½ minute above the 2002 Eastern Area "benchmark" of 8 minutes per day. [The Ronks, PA 2000 Column J average was actually below the 2000 national average of 8.87 minutes per day (53.2 average weekly minutes divided by 6 days)].

⁹On the same date, virtually identical e-mails were sent to postmasters in the Akron District by Randall King, Manager of Operations Programs Support and in the Pittsburgh District by District Manager Ronald Lincoln. (NRLCA Exhibits 58 and 99)

Greensboro District On February 14, 2002, District Manager David C. Fields, Sr. sent a memorandum to all District Postmasters, as follows (NRLCA Exhibit 53, emphasis in original.):

In an effort to contain rising costs of rural delivery, the Eastern Area is monitoring certain items of this year's National Rural Mail Count. The Area has developed the attached exception reports that each office with rural delivery must report to the District *DAILY* ... with explanations in the comment section for any route that exceeds any one of the following benchmarks:

[J-Q-R benchmarks set out]

If an office exceeds any of these benchmarks, they must receive District approval or when reporting the overages, provide an action plan to correct overuse of these items.

[See also, NRLCA Exhibit 52, part of a Power Point® presentation used in 2002 mail count training for Greensboro District postmasters, which also references J-Q-R benchmarks, reporting of times in excess of the benchmarks, and “an action plan to prevent re-occurrence.”]¹⁰

On February 26, 2002, Fields sent another memorandum to Greensboro District postmasters, emphasizing that disciplinary action awaited those who failed to comply with daily reporting of any J, Q or R numbers which exceeded the established benchmarks (NRLCA Exhibit 55, emphasis added.):

The Greensboro District requires a report and explanation every time that the following thresholds are exceeded during the rural mail count:

- * **Column ‘R’ Time in excess of 4.5 minutes per day.¹¹**
- * **20 or more markups in a day.**
- * **More than 8 minutes loading time on any day.**

¹⁰ Mr. Fields testified that the District did not actually follow through with the mandated “action plan” requirements to “correct” any “excessive” J, Q, R numbers during the count. (Tr. 1180-1182.) But he was unable to provide any written or other corroboration of that assertion which is contrary to other record evidence. The power point presentation and memorandum clearly informed District postmasters that “corrective action” was required during the 2002 count, and there is no evidence that they understood anything otherwise. Furthermore, the Greensboro District is part of the Eastern Area and Ms. Schaeffer’s instructions to all Eastern Area districts was for the preparation of “an action plan to correct overuse of these items.” (NRLCA Exhibit 36.)

¹¹It is noted that the Greensboro District “thresholds” required reporting any route in excess of 4.5 minutes per day of Column R time during the 2002 NMC, even though the “national average” for R time during the 2002 count had been more than 7.5 minutes per day. .

Each afternoon, you must report any exceptions for that day, by route... **Please do not submit routes that did not exceed the thresholds and do not submit data for all three items if the route only exceeded one of them**

* * * * *

Each unit manager should know that Operations Program Support will check count sheets against the web page at the conclusion of the count. Failing to submit exceptions may be considered grounds for disciplinary action. Do not fail to report exceptions, and report all data each day within the time frames shown above. Do not wait until the following day to submit data.

The next day, Fields sent another e-mail to postmasters, re-emphasizing the J-Q-R “thresholds”, the exceptions reporting requirement for any route that exceeded any such benchmark on any day, and that failure to timely report “may be grounds for disciplinary action”; explaining that “**this is a critical element of our rural count strategy.**” (NRLCA Exhibit 56, emphasis added).

Cap Metro Area

Richmond District On February 14, 2002, Manager of Post Office Operations Bobby Abernethy wrote to his postmasters as follows (NRLCA Exhibit 64, underlining in original, bold added.):

During the upcoming mail count a lot of **attention will be focused on Loading Time (column Q) and Other Suitable Allowance (column R)**. The reason for the attention is that those two columns represent an opportunity for the Postal Service to save money. ... Our effectiveness in capturing that opportunity will be measured by DPARS.

The importance of assuring an accurate count is essential because the manner in which we count routes now will dictate our performance for one year. **Our goal is to be accurate and assure that we do not overstate, or understate, column R and column Q time. We want the count to be fair and at the same time equitable for all parties concerned.** The Mountain Area cannot afford to have any time in column R or column Q that is not authorized by you.

DPARS stands for Delivery performance Achievement and recognition System. DPARS takes the best 25 percent of the offices of the country and calculates the average loading time and the average other suitable allowances.

* * * * *

Our goal is to make sure the weekly minutes per route do not exceed the combined DPARS column R and column Q weekly minutes per route. ... I’m sure that anything over [the DPARS benchmark] will have to be explained in detail and will also negatively affect our DPARS achievement for one year (until the next count).

Great Lakes Area

Central Illinois District Senior Customer Service Analyst Donna Wisek sent an email on February 27, 2002 to all District postmasters,(NRLCA Exhibit 67, emphasis added.), as follows:

The Area has given us final daily benchmarks:

Loading Time:	9.1 minutes per day
Column R Time:	6.07 minutes per day
Mark Ups:	15 pieces per day

The following is how we will monitor these benchmarked items:

For the first six days of the count if you have a route(s) that exceeds the benchmark times/pieces above, please either fax, cc, or call the following listed individuals, with an explanation annotated on the back of the PS 4239, of what drove the line/pieces over the benchmarks.¹²

Southwest Area

Rio Grande District On February 27, 2002, Manager Delivery & Customer Service Programs P.L. Casias sent a memorandum to all District post offices stating (NRLCA Exhibit 78, emphasis added.): “Our focus during the upcoming mail count must be on reducing unwarranted Column “R” time, reducing loading time and monitoring markups”. He then instructed: “Any route that exceeds the mail pieces and time standards set below must have a complete explanation in the comment section of the daily PS Form 4239.” [Column R -15 minutes daily; loading time 8 minutes daily and mark-ups 20 pieces daily].

Louisiana District On March 1, 2002, about a week into the 2002 NMC, District Manager Jim Zepp e-mailed post offices to advise that the Southwest Area was closely monitoring the Districts and stating (NRLCA Exhibit 77, emphasis added.): “We are still looking at col. J, Q, and

¹²See also, NRLCA Exhibit 68 (Similar District thresholds given and Great Lakes Area post offices told they “must manage columns J, Q and R during count on a daily basis” during the count by reporting daily each route that exceeds any threshold with an “explanation and justification”) and NRLCA Exhibit 73 (benchmarks given and Great Lakes Area post offices told they must report daily with a narrative “explaining the reason(s) for exceeding any one of these benchmarks.”).

R and will need supporting documentation for routes that exceed 20 mark-ups, 5 minutes col. R or 8 minutes of load time.”

Oklahoma District On March 1, 2002, Post Office Operations Manager Mike Brooks sent an email to all District postmasters setting forth daily J-Q-R “thresholds” [L Routes: 9 minutes “R” time, 9 minutes loading time and 15 pieces markups; Non-L Routes: 9 minutes “R” time, 9 minutes loading time and 30 pieces markups] and instructing his postmasters: “If any of your Routes are over the thresholds on any of these categories on any days, **you MUST be able to explain the excessive time.**” (NRLCA Exhibit 80, capitals in original, bold added.) A similar March 1, 2002 e-mail was sent by Alphonso Alexander, also a POOM in the Oklahoma District, to his postmasters, likewise telling them “[i]f you have (sic) over the thresholds **you must be able to explain the excessive amount.**” (NRLCA Exhibit 79, emphasis added.)

Western Area

Colorado/Wyoming District Post Office Operations Manager Tim Padden e-mailed all District postmasters on February 13, 2002, instructing them: “**WE MUST MINIMIZE R AND LOADING TIME. A good rule to follow for loading is no more than 5.5 minutes per day.**” (NRLCA Exhibit 84, capitals in original, bold added.)

Northland District On March 5, 2002, in the middle of the mail count, Robert Kunowski e-mailed District postmasters, reminding them that the District Manager was reviewing J-Q-R reports from the post offices daily and advising that any J, Q or R numbers above the District averages from the last count would “get attention”(NRLCA Exhibit 87, emphasis added.):

Several offices are having difficulty reporting. Remember the DM reviews these daily. Missing offices is not a good thing. **Markups over 14 pieces per day will get attention and need to be watched carefully. “R” times in excess of 6 minutes and 20 seconds will gain attention. Load times over 8 minutes will also get attention.**

Do not get comfortable with the times. **Make sure you are minimizing the impact of this count. This could be a serious cost savings for the USPS, at a time when we need every penny possible.**¹³

Dakotas District In a February 11, 2002 e-mail Post Office Operations Manager Paul Nistler informed District postmasters (NRLCA Exhibit 82, emphasis added.):

I just attended a meeting on the national rural count. ... The following items were discussed:

* * *

7. **Keep safety talks to 5 minute maximum.**

* * *

9. **Improving DPARS:**

– **Load Time** – the district averaged 43 minutes of load time – the goal is to be below 26 minutes. Look at your data from last year. **If you are above 26 minutes start working with your carrier now to reduce it.**

– **'R' time** columns averaged 25 minutes for the Dakotas district. **The goal is 14 minutes.** Again check last years data. **If you are over 14 minutes you need to take immediate action to reduce.**

These items will take one-on-one interaction with you and your rural route. You may need to correct behavior which should start immediately. **If you don't find any wasted time and your still over the average you will need to be able to justify this.**

Mid-America District On February 27, 2002, the day before the mail count began, Manager of Operations and Programs Support Victor King sent the following e-mail to all District postmasters: (NRLCA Exhibit 113, capitals in original, bold added.)

I need each of you to read this very carefully and make sure you do not become part of the problem.

* * *

Instructions not to be ignored:

* * *

You better make sure you do not exceed the benchmarks for the critical areas taught during the training. Loading now 6 minutes per day, R time 3.5 minutes per day and markups are not to exceed 15 per day.¹⁴

¹³Like the Headquarters and Area documentation, the record reflects not a single District or local document requiring or suggesting that any attention, reporting, or action was to be taken, or in fact was taken, with respect to "low" J, Q or R numbers which were below the "benchmarks", "targets" or "guidelines".

¹⁴ It is noted that these Mid America District "benchmarks" for loading, R time, and mark ups --6 minutes, 3.5 minutes, and 15 pieces, respectively- - are significantly lower than the "national daily averages" of almost 9 minutes, over 7.5 minutes, and over 19 pieces, respectively.

Anyone using more than these numbers MUST report it to me with an explanation EACH day. You have been told many times to get this corrected and now it is the time it will show if you followed the instructions.

* * * * *

Trainers make sure your offices are aware of these instructions. It is a sad thing we even have to send messages like this, but you would be surprised how hard it is in some offices to distinguish between the postmaster and the rural carriers. **Some postmasters are forgetting who puts food on their tables, and when they do that, it makes it hard on everyone trying to do the right thing.**

Headquarters Monitoring of Area and District J-Q-R Activities

During the 2002 mail count, Postal Service Headquarters kept itself informed of and approved the foregoing actions taken by the Areas and their Districts with respect to J, Q and R and “Managing the Opportunity”. In that connection, Great Lakes Area manager Mark Rosenwinkel testified on direct examination, as follows: (Tr. 834-836, emphasis added.):

* * * * *

- Q: Okay. Do you recall who the audience was on these telecons, except yourself and/or your boss?**
- A: Well, these were national telecons hosted by postal headquarters, delivery and support managers and there were representatives from each area office on the telecons.**
- Q: Now what, if anything, do you recall regarding communications to the field about these numbers that were being – that were out, had been placed, for example, in the Denver training and how they were being handled out in the field?**
- A: Well, my recollection is the information and data was simply shared at Denver with no instruction on what to do with it. It was very detailed information, but headquarters was very interested in what each area was doing with that information. And there was – they had gotten feedback that, like in Great Lakes, there had been instruction put out based on the data. It was just reinforced on what – how it should be used. If we were doing something similar to this, headquarters was very interested in what each area was doing and asked for a roll call, if you will, of report out on what each area was doing as far as count activities.**

Operations Specialist Robert West, who is generally recognized as the Postal Service Headquarters’ resident expert concerning rural mail delivery, testified as follows concerning his participation in all or most of the many Headquarters teleconferences with the Area representatives during the 2002 NMC (Tr. 1296-1299, emphasis added.):

- Q: [At the Denver and Potomac training] there was a special presentation done by Mr. Kiser with regard to JQ&R? Managing the Opportunity, I believe is what it was called?**
- A: That’s correct.**

Q: And isn't it true that the headquarters level here in Washington was very interested in knowing what the areas were doing with that information? Isn't that true?

A: My recollection is we wanted to know if they were taking this information and disseminating it.

* * * * *

Q: And you were aware that there were areas and districts that were using benchmarks and targets and thresholds for the 2002 count, correct?

A: I recall that we actually asked everybody if they were, and people responded yes or no.

Q: And at no time did headquarters suggest that was an improper thing to do, correct?

A: An improper thing to do?

Q: That's right.

A: We did not suggest it to be improper, no.

RESULTS OF THE 2002 NATIONAL MAIL COUNT

According to Postal Service calculations, rural routes fell from an average of 48.17 standard hours to an average of 44.99 standard hours, a 6.6% decrease of 3 hours, 11 minutes. (NRLCA Exhibit 95, page 4.) As discussed earlier, almost 3 hours of that decrease was in fact due solely to the standard changes imposed by the Wells Award. (*See also* USPS Exhibit 61; testimony of Robert West, Tr. 1262-1266.) As noted, *supra*, it was well understood and anticipated by both the USPS and the NRLCA that the Wells Award standard changes would produce a significant diminution in time for each rural route during the 2002 NMC. However, the recorded times for Columns J, Q and R dropped even more dramatically during the 2002 NMC than those mail count items addressed in the Wells Award; even though, as previously noted, the Wells Award made no changes at all in the standards or count methodology for Columns J, Q and R.

A publication titled "Results of National Rural Mail Count", produced by the Postal Service in May 2002, immediately after the 2002 NMC, prominently displayed the results on Columns J, Q and R of "Managing the Opportunity"; with charts and text comparing the 2002 NMC averages with the national J-Q-R averages for the 1995-2000 mail counts. (NRLCA Exhibit 95, pages 9, 11 and 13.) *See also*, USPS Exhibit 62). By the Postal Service calculations, in the 2002 NMC average load time

(Column Q) was reduced by 14 %-- a reduction of 7.4 minutes from 53.2 minutes to 45.8 minutes; average Column R time went down by 7.3% from 45.4 minutes to 42.1 minutes--a reduction of 3.3 minutes; and average mark ups (Column J) fell from 115.8 to 105.9 pieces--an 8.6% reduction, equivalent to a reduction of 2.48 minutes.

Thus, it is not disputed that the total Column J-Q-R time reduction from 2000 to 2002 was an average of 13.18 minutes per rural route. Nor is that dramatic drop-off in J-Q-R times for the 2002 NMC credibly attributable to anything other than the benchmarks, guidelines, standards and DPARS targets which were generated, implemented and enforced by Area, District and local managers, with guidance, monitoring and supervision by Postal Headquarters management; all consequences of the policy of "Managing the Opportunity", which emanated directly from the Headquarters office of former Postal Service Vice-President Henry Pankey. In the candid words of Robert West, the Postal Service's rural route expert: "The impact of the efforts by the Postal Service in managing the J, Q & R columns [during the 2002 NMC] was the 13.18, I think it was, minutes a week." (Tr. 1343).

POSITIONS OF THE PARTIES

The following statements of position have been edited from the respective posthearing briefs and reply briefs.

NRLCA

Case No. O95R4Q-C 02101253 ("Mail Count Training Course")

There are two distinct but related issues involving the Mail Count Course. The first issue concerns the Postal Service's unilateral creation and implementation of the Mail Count Course to the total exclusion of NRLCA representatives. The second issue concerns six substantive errors contained in the Mail Count Course when it was used to train Postal managers nationwide in advance of the 2002 national mail count. In other words, did the Postal Service violate the PO-603 and Articles 19 and 5 of the National Agreement, when it published and disseminated Rural Carrier Mail Count Course #44Q0105 for use in the 2002 national mail count?

The mail count procedures and each of the 32 elements counted, timed, measured, and recorded are set forth in detail in Chapter 5 of Handbook PO-603, Rural Carrier Duties and Responsibilities ("PO-603"). The allowance factors (work standards) applied to the data collected from the mail count are collectively bargained. (Tr. 335; NRLCA Exhibit 11, p. 100). These Parties have a long history of jointly determining how mail counts should be conducted and how the PO-603 should be interpreted. Accordingly, it came as quite a shock to the Association that not only was the Postal Service going to do national training before the 2002 national mail count but that the Union would be excluded from that training, contrary to the parties' established past practice.

The unilaterally created and disseminated "Mail Count Course" contained numerous false or misleading statements. Postal Service Headquarters ignored decades of cooperation, as well Article 19, when Postal Service managers went ahead and trained each other using a flawed Mail Count Course drafted without any discussion or input from the Association's National Office. The Mail Count Course errors effectively changed the terms and conditions of employment for rural carriers by rewriting the clear language of the PO-603. These errors adversely affected the way in which rural carrier job functions were counted, timed, measured, and recorded during the 2002 National Mail Count.

Not only did the Mail Count Course violate the PO-603 and Article 19 of the National Agreement, the fact that the Mail Count Course was never shown to NRLCA officers or otherwise approved before its dissemination nationwide, constitutes a separate and independent violation of Article 5 of the National Agreement which prohibits unilateral action. The six unilateral changes at issue in this case similarly violate Sections 8(a)(1) and (5) of the National Labor Relations Act. Finally, through the unilateral implementation of the Mail Count Course, without input from the NRLCA, and because of the multiple false and misleading statements directly controverting the clear language of the PO-603, the Postal Service violated a recent Memorandum of Understanding between the parties.

In addition to the remedy requested in National Level grievance Q95R-4Q-C0210267, below, the NRLCA further requests that the Arbitrator (1) order the Postal Service to cease and desist from any further use or publication of Mail Count Course materials without first following the requisite Article 19 procedures, (2) declare that the Mail Count Course statements at issue in this case were incorrect and violated the clear language of the PO-603 (as the Postal Service has already suggested by its actions after the 2002 national mail count), and (3) order the Postal Service to make whole rural carriers harmed by these erroneous Mail Count Course statements.

Case No. Q95R-4Q-C 02101267 ("Mail Count Conduct")

In 2002 the Postal Service was experiencing financial difficulties, so it embarked on a terribly misguided plan to decrease the cost of rural delivery through the special targeting of three mail count elements -- mark ups (Column J), loading (Column Q), and other suitable allowances (Column R) -- during the 2002 national mail count. The plan worked and the Postal Service saved millions of dollars in rural carrier compensation, but at what cost? The integrity of the 2002 national mail count was destroyed and nothing less is at stake in this case.

Instead of treating the mail count as an objective exercise in counting, timing, measuring, and recording some 32 different rural carrier job functions over a two-week period from February

28 through March 13, 2002, in order to set rural carrier salaries, the Postal Service approached the 2002 national mail count with a singular purpose: reduce the time credits for Columns J, Q, and R nationwide thereby reducing rural route evaluations and saving the Postal Service millions. No longer was the Postal Service committed to the time-tested requirement that mail counts be "fair and accurate." No longer did the Postal Service accept the bedrock principle that a mail count "is what it is" -- that count results were not to be influenced or manipulated by anyone. Never before had the Postal Service approached the mail count in this way. In 2002, however, to the Postal Service the mail count was about "managing the opportunity" to capture savings, by manipulating the conduct of the count to take every penny it could away from rural carriers.

The Association's evidence details how the Postal Service went about violating the cardinal principle of the mail count that no one -- employer, union, or employee -- interfere with the natural consequences of counting, timing, measuring, and recording of the 32 mail count elements. Indeed, the record reflects that the Postal Service made a concerted effort to get the word out to every postal manager involved in the 2002 national mail count that Columns J, Q, and R needed to be "managed and controlled". Accordingly, benchmarks, targets, and thresholds were established all over the country and managers were implored to notify their superiors each and every time the benchmarks were exceeded during the count. While the count was in progress, Managers were told to come up with and implement "action plans to prevent reoccurrence" of any departures from the "targets" and "benchmarks". The message from Postal Service Headquarters was clear and unmistakable and the record evidence amply proves that it was received and acted upon by postal managers conducting the 2002 National Mail Count.

It most certainly was Postal Service Headquarters' goal to "manage to the numbers" and to reduce rural carrier time credits in Columns J, Q, and R. It was all about saving money at the expense of the time honored evaluated system. And with the pressures and daily monitoring of adherence to "benchmarks" and "targets" exerted from the highest levels in the Postal Service, it is no surprise that its effort was a success. But congratulations are not in order. In conducting the 2002 national mail count, the Postal Service trampled on the rights of every rural carrier and left in its wake, a battered, but not broken, mail count process. Not only does the mutual intent and design of the mail count prohibit the kind of brazen effort made by the Postal Service to interfere with nature -- to force a desired result of lowered J, Q and R numbers, but the National Agreement, Handbook PO-603, and other relevant sources do too.

There can be no question that the integrity of the 2002 national mail count was fatally compromised by the Postal Service's single-minded focus to reduce rural carrier time credits for Columns J-Q-R, consistent with its strategic vision, as clearly set forth in "Managing the Opportunity." The 2002 national mail count -- at least with respect to Columns J-Q-R -- was not "fair and equitable," or otherwise in accord with the parties' view that mail counts provide an unadorned "snapshot" of what is happening on an individual rural route during the count, but it is not possible to ever really know exactly how much rural carriers were actually cheated. We do know that the Postal Service claims that by "Managing the Opportunity" nationwide the time for each of the three targeted mail count elements -- J-Q-R -- was reduced in the 2002 mail count by 8.6%, 14%, and 7.3%, respectively. The recorded impact, in minutes, for the three columns was a total of 13.18 minutes per week, or a savings to the Postal Service of more than 18 million dollars. [The annual savings of over \$18 million

dollars was computed from page 7-4 of "Managing the Opportunity" (NRLCA Exhibit 23), which indicates that cutting a minute per day per route (6 minutes total) would save \$8,204,543 annually. That is \$1,367,424 per minute x 13.18 minutes = \$18,022,645].

It follows then that as part of the remedy, at a minimum, the Postal Service should be ordered to return, with more than three years of interest, its ill-gotten gains (13.18 minutes/\$18 million) to the regular and relief carriers then serving on 69,394 rural routes. [For rural routes that were not counted in 2003, and each consecutive year thereafter, the financial remedy must continue annually because without a new mail count, the route evaluation remains static, and the affected carriers would continue to be compensated based on invalid 2002 national mail count data].

We leave to the Arbitrator's discretion what additional amounts over and above the 13.18 minutes/\$18 million, plus interest, should be paid to rural carriers. In addition to this important monetary remedy, the NRLCA further asks the Arbitrator to order the Postal Service to immediately cease and desist from utilizing programs such as "Managing the Opportunity" and DPARS to influence and adversely affect future mail count results. There is simply no place in the parties' evaluated pay system for a corporate objective aimed at lowering mail count results in Columns J-Q-R or any other columns, for that matter. In mail counts, "it is what it is." There should be no benchmarks, targets, thresholds, or any other artificial goal-setting that interferes with the natural consequences of the counting, timing, measuring, and recording of any item during the mail count period.

USPS

Case No. Q95R40-C 02101253 ("Mail Count Training Course")

What are the props on which the Union rests its contention that its grievances in Case No. 253 have merit? It has claimed it had a contractual and historical right to be present at the training, and to be provided in advance with the training materials. It has asserted that the training was riddled with false and misleading information deliberately designed to lower the upcoming mail count evaluations. It has argued that emphasis on Columns J, Q and R numbers was all consuming, and that national averages and DPARS data was deliberately disseminated with the express intention to force Area and District personnel to lower J, Q and R results in the 2002 mail count, or else face drastic professional consequences. However, none of these assertions, as well as others claimed in this grievance, is accurate. Indeed, the Postal Service's refutation of these points was essentially undisputed.

Thus, as to Case "253," the record evidence shows: 1) That the Union had no "right" under Article 19 or by past practice to be present at the Potomac or Denver training sessions; 2) The training was based upon legitimate and documented concerns over mail count irregularities, especially in the areas of markups, loading and "R" time; 3) None of the information or presentations suggested or implied, let alone required, that field personnel impose limits or caps on J, Q or R tabulations, nor was any information disseminated for that purpose; 4) Presenters made it quite clear that the upcoming count was to be fair and accurate; and 5) Ms. Tomes' training material did not contain any false or misleading information designed to lower the mail count evaluations.

Case No. O95R-4Q-C 02101267 (“Mail Count Conduct”)

The Union’s second grievance in these consolidated cases deals with the mail count itself. That is not surprising, since the Union’s attack on the Denver and Potomac training, standing alone, would be worthless without the claim that its alleged message to destroy the integrity of the count was really implemented. The Union’s evidence consisted almost entirely of selected communications from Area and District personnel, with some testimony from Union witnesses as to how they interpreted those communications. It rested its entire case on the premise that the “master plan” to cheat the rural carriers emanated from Headquarters, as the “top of the pyramid,” through the Potomac and Denver training, and was carried out by the Areas and Districts in the field through the use of DPARS statistics and/or national averages.

While the Union introduced scores of e-mails and other communications, its witnesses really had only one point to make about them. They asserted the only possible interpretation of all of those documents was that the documents ordered caps or limits on what could be recorded as markups, loading time and “R” time in the upcoming mail count—“or else”. The Union asserted that saving money, even at the cost of an accurate and fair count, was the Postal Service’s sole concern; that suggesting any sort of guidelines was unprecedented and contrary to the parties’ conduct in past mail counts; and that the lower J, Q and R numbers in the 2002 mail count were due solely to the coercion of those numbers by improper and contractually impermissible caps or limits. Once again, as in its 253 grievance, the Union has it all wrong.

Thus, as to Case “267”, the evidence shows: 1) The use of benchmarks, thresholds and exception reports were used in many Areas and Districts for mail counts prior to the 2002 mail count, and such measuring devices have been common in the Postal Service for years in all crafts and operations; 2) The Union was aware of Area and District use of benchmarks, thresholds and exception reports in mail counts prior to the 2002 mail count; 3) The use of such performance measurements does not violate either the rural contract or Postal handbooks, manuals or published regulations, and moreover is consistent with the Postal Reorganization Act and required by Congressional mandates to find best practices and improve efficiency; 4) Headquarters, Area and District personnel made every effort in the 2002 mail count to hold a fair and accurate count, favoring neither the rural carriers nor the Postal Service; 5) No instructions, communications or any other information provided by Postal Service Headquarters was viewed or understood by Areas or District personnel as requiring, suggesting or implying that caps or limits had to be imposed on J, Q or R tabulations regardless of the actual count; 6) None of the Area or subordinate field units intended the numbers they developed for markups, loading time or “R” time to be caps or limits, and they were neither so used nor perceived as such by managers or postmasters; 7) The Union provided no evidence that any carrier had his or her markups, loading time or “R” time deliberately miscounted by Postal managers or supervisors in order to lower their evaluations; and 8) The record reflects persuasive operational reasons for any reductions in J, Q or R time for any individual rural carrier.

Conclusion

In United States Postal Service and APWU with NALC (Intervenor), Case No. HOC-NA-C 12 (2001), at pp. 18-19, Arbitrator Snow observed:

The Unions had the affirmative of the issue and needed to show by at least a preponderance of the evidence that there is a direct causal connection between the conflicting data and a violation of the parties' labor contract. Facts are stubborn things and must provide the basis for an interpretative decision. Speculation will not suffice.

What the Union has provided in the present cases is just such speculation; nothing more. The Wells interest arbitration had been contentious. Union members were very angry with the Wells award and angry with their leadership. With the 2002 mail count barely started, the Union decided to file national level grievances, accusing Postal management of essentially running a crooked game, of a deliberate and massive fraud, from senior Postal leadership down to the lowest supervisor. No one checked with the Postal Service before making this most serious charge. No one waited to the end of the count to see if the accusations were really true. The Union simply clung to its pre-decided theory in the face of reasonable Step 4 explanations from the Postal Service, and in the face of numerous documents it had in its possession which refuted its allegations.

At one point in the arbitration, a Union witness tried to equate what the Postal Service had done as trying to fit everyone's foot into the same size shoe. But in actuality, that analogy really belongs to the actions of the Union in this case—it is the Union which has tried to “shoehorn” a theory into facts and law that will not fit. The Union, which has the “affirmative of the issue,” has failed to meet its burden. On the contrary it is the Postal Service that has provided the factual evidence showing that its actions were in conformity with the contract, and not the reverse. The Postal Service therefore submits that these grievances should be denied in their entirety.

The short answer to the Union's demands for relief in both its “267” case and its “253” case is that no relief is warranted. The Union has proved no contract violations in either case. There is simply no basis for the Union to assume that fixing outliers alone would not have materially lowered J, Q, and R results. The Union's also conceded an inability to show that markups decreased because of improper Postal Service actions during the 2002 mail count. But in constructing a dollar figure as compensation for the Service's alleged “ill-gotten gains,” the Union appears to rely upon those markup reductions anyway by using 13.18 minutes per week as its multiplier. The other number for valuing saved minutes, \$1,367,424, is simply pulled out of a hat because the “minutes” discussed in the “Managing the Opportunity” presentation are different from the “minutes” 13.18 minutes discussed in USPS Exh. 62. The Union has obviously just cobbled together unrelated numbers in order to demand a massive and unjustified payoff.

The Union also demands that the Postal Service “make whole rural carriers harmed by these erroneous Mail Count Course statements”. Even assuming for the sake of argument that some of the statements in the draft edition of the “Mail Count Course” were erroneous, however, there is nothing in the record to suggest that any employee evaluation suffered because of them. As Arbitrator Snow observed in Case No. HOC-NA-C 12, p. 19, there is a lack of “sufficient evidence of harm to ascertain damages.

OPINION OF THE IMPARTIAL ARBITRATOR

It is not open to debate that Chapter 5 of Handbook PO-603, Rural Carrier Duties and Responsibilities, *supra*, devoted exclusively to the conduct of rural route mail counts and the establishment of rural route evaluations, comes under the terms of Article 19, §1 of the National Agreement (Emphasis added):

Those parts of all **handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect** except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable.

PO-603 §§ 531.1, 533.21 emphasize that both rural carriers and postal managers should “ensure accuracy of mail count data” and “ensure that mail counts are properly conducted and that data is accurately recorded”. Other Postal Service manuals, including the —38, Management of Rural Delivery Services, and its predecessor, the —37, similarly discuss the requirements of propriety, fairness and accuracy in NMC procedures. It should be self-evident that utmost accuracy in measuring and recording the actual hours and minutes expended on a particular rural route during the NMC is critically important to the Postal Service, the NRLCA and the individual rural carriers. Indeed, it would be hard to overstate the significance to the Parties of an accurate NMC since its results establish, at least until the next valid NMC, both the compensation for each rural delivery carrier and the Postal Service’s fixed labor cost for operating rural delivery service.

It must be noted at the outset that the PO-603, released in June 1991, was actually drafted over a period of several years by representatives of the Postal Service and the NRLCA. The collaborative give-and-take between the Parties during the drafting of the original PO-603 language is well-illustrated by a December 18, 1990, Memorandum from Postal Headquarters to NRLCA Resident Officers, regarding changes to the PO-603 (NRLCA Exhibit 111). In that regard, Scottie Hicks, who

served as the NRLCA's point person in the cooperative drafting of the PO-603 manual, followed by a term as NRLCA National President from 1994 to 1997, testified to the genesis of PO-603 and his personal participation in forty years worth of mail counts, as follows:

...[There was an] ongoing, consistent application between the parties of sharing information, of sharing documents, of trying to be on the same page, of trying to make particularly mail counts transparent, meaning there would be no disagreement over what management was saying and what the union was saying. . . .

The record before me establishes, through express contract language as well as long-standing past practice, including myriad mutual public pronouncements, the intent of these Parties that the NMC should be a fair, objective, open and transparent real-time "freeze-frame" or "snapshot" recording of each of 32 workload elements actually observed on a particular rural route during the days of the count period. For example, Gus Baffa, who served as NRLCA President during the 2002 mail count, testified without contradiction that NRLCA officers and USPS Headquarters personnel had always considered the mail count to be "[A] snapshot of what happens or what is happening during a certain time frame. . . . So, for a two-week, three-week, or four-week period a snapshot is taken of what happens during that time on that individual route. As far as how much mail they get; what functions they are required to do; what time elements need to be timed and recorded, just what happens during that particular period of time on that particular route". Former NRLCA President Scottie Hicks testified without contradiction that the mail count was to be "totally transparent" and the outcome "is what it is--you get what you get based on the individuality of each individual carrier, each individual route".

Similarly, Postal Service management at the highest levels historically is on record, in written communications to managers in the field, expressly emphasizing that attempted interference with or manipulation of the natural consequences of a mail count by any interested party would undermine

the integrity of the NMC itself. In that regard, the following April 7, 1999 memorandum, from then Acting Manager-Delivery Policies and Programs W. J. Bothwell to all Area and District Delivery and Operations Program Support Managers is an eloquent evocation of the “hands off” objectivity which both the Postal Service and NRLCA Parties traditionally have considered essential to conducting a proper, fair, equitable and accurate NMC (NRLCA Exhibit 16, emphasis added):

SUBJECT: Influencing Mail Count

It has come to the attention of this office that, in some instances, efforts have been made to unduly influence rural mail count volume. No one should attempt to influence mailers to avoid mailing during mail count periods or to send out special mailings specifically during mail count periods.

This issue, while originally brought forward through the grievance process, is applicable to both management and craft. Postmasters and supervisors should not influence customers to change their mailing dates solely for the purpose of affecting the results of the mail count. While personal gains are not realized by postmasters and supervisors, and customers ultimately decide when to mail, influence from interested parties may have the appearance of affecting the integrity of the count.

Conversely, carriers should not attempt to coerce mailers to send out mailings specifically during a mail count or to have friends or relatives send mailings to addresses on their routes or to themselves (if they live on their own route). This type of influencing does realize personal gain and would most definitely have the appearance of affecting the integrity of the count.

The count period is established to be a period where the parties can expect normal mail volume affected only by the mailers and our customers. The mission of the Postal Service with respect to a normal rural mail count is to count, case, and deliver the mail, not to add to or take away from the volume by contrived schemes.

The Bothwell Memorandum, *supra*, addressed manipulation or attempted manipulation of mail count volume but the commitment to refrain from manipulation or interference with the normal and natural accumulation of count data is equally applicable in the present dispute about alleged Postal Service interference with the count results to steer outcomes relative to “mark ups” (Column J), “loading time” (Column Q), and “other suitable allowances” (Column R) toward predetermined targets. Moreover, the record also contains persuasive evidence that Postal Service senior management traditionally required local managers to follow the mutually recognized “It is what it is” principle even in connection with the usually contentious Column R “other suitable allowances” element of the NMC.

Another good example of this traditional managerial commitment to "hands off" objectivity during a mail count is found in the following September 1999 memorandum, sent to Western Area District Managers during the 1999 NMC, by then Western Area manager, Delivery Programs Tom Peterson (NRLCA Exhibit 17, emphasis added):

RE: Annual Rural Carrier Mail Count

Mail Count for rural carriers is now into the second week of a four-week count. **I want to remind all Postal Managers that the purpose of the count is not to decrease the cost of rural delivery, but to provide a fair and accurate evaluation of each rural route being counted. This evaluation process is the very heart of the generally good relationship we have forged with our rural carriers.**

During the first week of the count, several issues surrounding the count have surfaced that give me cause for concern. I request that you share these concerns with your postmasters and managers who may be involved in the count.

Each year, the largest number of grievances during and immediately after the count involves column 'R' entries. We have sent correspondence to the field in the past reminding managers of the criteria for 'R' time. To be justified, the following questions must be answered:

1. Does management authorize the action?
2. Is the action "unusual" or not accounted for under normal work functions?
3. Does the action occur on a daily or weekly basis?
4. Is the time allowance claimed "reasonable"?

Problems and even grievances tend to occur over the definition of "reasonable". Many offices even put some parameters on what might ordinarily be considered "reasonable". In addition, some offices may even require postmasters and managers to call the rural CSA and discuss 'R' entries that may exceed these parameters. According to Webster's dictionary, reasonable is defined as "within the bounds of common sense or not extreme or excessive." I believe **it is sound management to educate our postmasters and managers on the purpose and application of 'R' time entries. On the other hand many of our postmasters, managers, and analysts are confusing parameters with limits. There are no time standards or limits to 'R' time entries. It is responsible management to question 'R' column entries that exceed certain parameter. It is not good management to simply set some management created standard and then "red line" all entries over that standard.** As has been pointed out to me by the NRLCA, management rarely puts R time into an evaluation if the rural carrier has made no entries when clearly some entries are appropriate.

There is a perception that somehow column R time from the count must be held to some number. That is absolutely false. R time should reflect those rural carrier duties not accounted for in any other way. It will be whatever is accurately counted. In other words, R time is counted as 'actual time' and not some arbitrary time agreed upon by craft and management during the pre-count conference.

There also seems to be a perception that there exists some rule prohibiting any entries to column R for work on edit books. The contract allows for address additions, deletions, or changes to edit sheets (red books) beyond the time that would have been required on the back of the PS Form 4240 Trip Sheets. If the Postal Service requires more than those basic Trip Sheet entries, we must account for it as column

R time. To have a blanket policy that eliminates edit book entries as a legitimate column R entry is not sound management.

As we move through the last two weeks of the count, I ask you to remind your managers that the count is to provide a fair and accurate evaluation of work performed by our rural carrier's. It establishes the cost of rural delivery but it also establishes each rural carrier's pay. It is in the best interest of both the USPS and the NRLCA to complete the count as fairly, honestly, and accurately as possible.

The foregoing evidence amply demonstrates a mutually accepted understanding of these Parties that the Postal Service, the rural carriers and the NRLCA must refrain absolutely from “gaming the count” *i.e.*, from interfering with or attempting to interfere with the objective conduct of the NMC and/or from manipulating or attempting to manipulate the observation and recording of any particular element to achieve some preconceived preferred outcomes in the count data. On the other hand, it must be emphasized also that PO-603 Chapter 5 §531.1 expressly authorizes education, training and guidance of rural carriers and postal managers in the proper understanding and application of standardized and uniform procedures set forth PO-603 to help ensure accuracy of mail count data. [It must be emphasized, however, that by mutually recognized custom, practice and tradition, such “hands-on” training and correction from above occurs at times other than during an ongoing NMC].

Thus, the fundamental question presented by these cases is whether the Postal Service crossed the traditional mutually recognized bright line which differentiates training and educating of postal managers to ensure fair and accurate recording of count data during an anticipated NMC (in conformity with PO-603 and the National Agreement) from improper interference with and manipulation of an ongoing NMC to achieve a preferred outcome (in violation of PO-603 and the National Agreement).

As the Postal Service quite properly points out, the burden in these cases was on the Association to prove its charges that the Employer violated the Agreement and/or mutually binding past practice, as claimed in the two consolidated grievances. In that regard, it is well-established that

the charging party in a non-disciplinary grievance bears the burden of proof, by a preponderance of the record evidence, that the responding party violated the parties' agreement as alleged in the grievance(s). *See, Certainfeed Corp., 88 L.A. 995, 998 (Nicholas, Arb. 1987):*

In a nondisciplinary matter, . . . the grieving party must come forward and properly show with good and substantial evidence that Management did, in fact, violate the Agreement as asserted in the given grievance. This is to say the Union's proof must demonstrate that the preponderance of the evidence runs in its favor.

See also Entex, Inc., 73 L.A. 330, 333 (Fox, Arb. 1979); Portec, Inc., 73 L.A. 56, 58 (Jason, Arb. 1979); City of Cincinnati, 69 L.A. 682, 685 (Bell, Arb. 1977).

As explained in detail, *infra*, I am not fully persuaded that the Postal Service crossed the line into contract violation by its conduct of the “2002 Mail Count Course” to the extent claimed in Case No. Q95R4Q-C 02101253. It is my judgement, however, that the Postal Service strayed far over that line and egregiously violated the Agreement when, immediately preceding and during the ongoing 2002 NMC, Area managers unilaterally implemented, utilized and enforced Column J, Q and R “benchmarks”, “targets” “standards” and “DPARS guidelines” for District and local postal managers to follow; instigated, monitored and approved by Postal Service Headquarters management, under the rubric “Managing the Opportunity”.

Case No. O95R4Q-C 02101253 (“Mail Count Training Course”)

The NRLCA cites Article 19 and alleged related “past practice” in support of its claims that Postal Service exclusion of Association representatives from the course development, conduct and presentation of the Mail Count Training Course and its presentation at Denver, Colorado and Potomac, Maryland in mid-February 2002 constituted, *per se*, violations of the Agreement, *supra*. However, close examination of the record evidence leaves me unpersuaded that Article 19 lends any express support to that aspect of the Association’s in Case No. Q95R4Q-C 02101253.

A fundamental maxim of contract construction holds that understandable language means what it says, despite the contentions of one of the parties that something other than the apparent meaning was intended. Independent School Dist. No. 47, 86 LA 97, 103 (1985) (Gallagher). This rule is both practical and equitable: it brings order to contract construction by excluding as a subject for dispute the clear language contained in the contract; and, if language is clear and unambiguous, both parties to a contract should clearly understand and unambiguously know how they are bound when they execute the contract.

A related corollary is the principle that words used by the Parties should be given their ordinary and popular meaning in the absence of an indication that they were intended mutually to convey some special meaning. The Restatement (Second) of Contracts is in accord: "In the absence of some contrary indication, therefore, English words are read as having the meaning given them by general usage, if there is one. This rule is a rule of interpretation in the absence of contrary evidence, not a rule excluding contrary evidence." (Restatement, N.13 at § 202, comment e.) A host of reported arbitration decisions all turn on these principles. See Parker White Metal Company, 86 LA 512, 516 (Ipavec, 1985); Anaheim Union School District, 84 LA 101, 104 (Chance, 1984); Arco Pipe Line Company, 84 LA 907, 901 (Nicholas, 1985) and Tri-County Metropolitan Transportation District, 68 LA 1369, 1370 (Tilbury, 1977). See also D. Nolan, Arbitration Law and Practice (1979), N.8 at 168; Walter Jaeger, Williston on Contracts, § 618 at 705 4th Ed. 1961).

In clear and unambiguous language, Article 19 speaks to "handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement". The language of Article 19 says nothing about prohibiting unilateral development and presentation or requiring joint involvement in training manuals, handouts, presentations and in-service courses by one or the other of the parties to train,

educate and guide its own members, officers and managers in the do's and don'ts of conducting a fair and accurate NMC.

In the absence of support in the literal language of Article 19, the Associations claim that failure or refusal of the Postal Service to include NRLCA representatives in the development and presentation of the "National Mail Count Training Course" must rise or fall on the NRLCA's allegation that such joint involvement/participation was mandated by mutually recognized binding "past practice". It is now well settled that, absent very clear and explicit contract language barring such evidence, "past practice" is admissible and may be relied upon by an arbitrator in determining the mutual intent of the parties under a written collective bargaining agreement.

The Supreme Court of the United States has endorsed the admissibility and utility of "past practice" evidence for that purpose:

The collective bargaining agreement states the rights and duties of the parties. It is more than a contract; it is a generalized code to govern the myriad of cases which the draftsmen cannot wholly anticipate....The collective agreement covers the whole employment relationship. It calls into being a new common law--the common law of a particular industry or of a particular plant. As one observer put it:

...[I]t is not unqualifiedly true that a collective-bargaining agreement is simply a document by which the union and employees have imposed upon management limited express restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail if he cannot point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforeseen contingencies to make the words of the contract the exclusive source of rights and duties. One cannot reduce all the rules governing a community like an industrial plant to fifteen or even fifty pages. Within the sphere of collective bargaining, the institutional characteristics and the governmental nature of the collective-bargaining process demand a common law of the shop which implements and furnishes the context of the agreement. We must assume that intelligent negotiators acknowledge so plain a need unless they stated a contrary rule in plain words.

(Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1482, 1498-99 (1959), cited by the Court at 363 U.S. 579 n.6).

A collective bargaining agreement is an effort to erect a system of industrial self-government....Gaps may be left to be filled in by reference to the practices of the particular industry and of the various shops covered by the agreement. The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law-practices of the industry and the shop-is equally a part of the collective bargaining agreement although not expressed in it....

United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578-82, 80 S.Ct. 1347, 46 LRRM 2416 1960).

The weight to be accorded evidence of “past practice” may vary given the facts of a case and the purpose for which it is introduced, *e.g.*, 1) to inform the interpretation of disputed general or ambiguous language in the written contract; 2) to evidence a mutual agreement upon a term or condition of employment in an area in which the written contract is silent [as in the present case]; or, 3) to supersede or vary clear but contrary language in the written agreement. Indeed, Elkouri & Elkouri observe that the use of past practice to give meaning to ambiguous contract language is now so common that no citation of arbitrable authority is necessary. How Arbitration Works, Fourth Edition, 1984, page 451. However, as Professor Clyde W. Summers has accurately observed. “for interpreting a collective agreement, nothing is more capable of constructive use or susceptible to serious abuse than appeals to custom and practice”. Standard Bag Corp. 45 LA 1149, 1151 (1965).

The Party urging a dispositive custom or practice has the overall burden of proving the existence of that “past practice.” In a frequently-cited decision, Arbitrator Jules Justin observed: “In the absence of a written agreement, ‘past practice’ to be binding on both Parties, must be 1) unequivocal; 2) clearly enunciated and acted upon; and 3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both Parties.” Celanese Corp. of America, 24 LA 168, 172 (1954). *See also* Great Atlantic & Pacific Tea Company, 46 LA 372. 374 (Scheiber, 1966). The Association’s evidence in these cases concerning a contractually binding requirement of joint mail count training falls far short of demonstrating those elements of consistency and unequivocal mutual commitment which are hallmarks of a true binding “past practice”.

Thus, the Associations claim that the Postal Service violated the express language of the Agreement and/or related mutually binding past practice by unilateral development and presentation of "Rural Carrier Mail Count Course #44Q0105" ("Mail Count Course") is denied for failure of proof. The Association also claimed in Case No. Q95R4Q-C 02101253 that the "draft" Mail Count Course #44Q0105 materials published and disseminated to Postal Service managers prior to the 2002 NMC contained substantive errors in the interpretation/application of PO-603 Chapter 5 §535.12 relative to "high rise", "rigid articles", "box-holders" and "drawbridges", which adversely affected the 2002 NMC count results for Columns A, B, C, D, E and R on Form 4239. Based on careful evaluation of the record evidence, those claims also are dismissed for failure of proof. Likewise, the NRLCA's claim that the Postal Service "intimidated and harassed rural craft employees in an attempt to secure a more favorable count for the Postal Service and restricted rural craft employees in the exercise of their Section 7 rights under the National Labor Relations Act" are dismissed for failure of proof.

Finally, the following claims by NRLCA in Case No. Q95R4Q-C 02101253 are subsumed within the holdings and remedy issued in the disposition of Case No. Q95R-4Q-C 02101267: 1) that the "draft" Mail Count Course #44Q0105 materials published and disseminated to Postal Service managers prior to the 2002 NMC contained substantive errors in the interpretation/application of PO-603 Chapter 5 §535.12 relative to "enhanced talks", which adversely affected the 2002 NMC count results for Column R in Form 4239 and 2) that the Postal Service violated the National Agreement when it failed to comply with the provisions of Article 19, §§1, 2 and 3 before disseminating for use during the 2002 NMC national average "benchmarks/targets/thresholds" for Columns J, Q and R data entry on Form 4239.

Case No. O95R-4Q-C 02101267 (“Mail Count Conduct”)

The record in these cases abounds with probative evidence that, for many decades, the Postal Service and the NRLCA have agreed and acted upon the principle that no interested party should manipulate or attempt to manipulate the mail count to achieve a particular preordained outcome. In the vernacular mutually endorsing this “hands off” custom, practice and tradition, both Postal Service managers and NRLCA officers describe data collection during a properly conducted NMC as: “It is what it is”. Thus, by long-standing past practice, the application of PO-603 Chapter 5 during an active mail count has been immune from unilateral intervention or attempted self-help by any interested party to inflate or deflate the times and pieces actually observed and recorded.

It is of course unavoidable that differences of opinion about the accuracy or propriety of a particular mail count tabulation will arise, especially in the amorphous Column R category of “other suitable allowances”. But these inevitable controversies are properly addressed under the controlling Agreement language and past practice by channeling disputes which arise before and during a mail count into appeals or grievances and by training, educating and coaching count participants in the correct application of PO-603 Chapter 5 at times other than when they are actively engaged in conducting an ongoing mail count.

In short, until the 2002 NMC, these parties mutually recognized an obligation under Article 19 and PO-603 Chapter 5 to refrain from “gaming the count” by attempted or actual direct intervention in the data collection process to steer the results of an ongoing mail count toward a preconceived result. However, the record in these cases persuasively establishes that, through the application of “Managing the Opportunity” benchmarks, guidelines and standards for Columns J, Q and R during the conduct of the 2002 National Mail Count, the Postal Service unilaterally departed

from these previously recognized and mutually endorsed standards of fairness, objectivity and propriety in the interpretation and application of Chapter 5 of PO-603, §535.

The architect of “Managing the Opportunity” was James Kiser, a self-described “financial analyst” with an accounting background, who developed and implemented this special project while on detail assignment to the Postal Service Headquarters office of Vice-President Henry Pankey. As noted, *supra*, Pankey was personally involved in the development, implementation and monitoring of “Managing the Opportunity”. It is also noted that Kiser and Pankey were credited by the Postal Service for the final results of that Headquarters initiative— an average diminution of 13.18 minutes per week in Column J, Q and R times on the 70,000 rural routes counted in the 2002 NMC. (*See* NRLCA Exhibit 95 Postal Service Exhibits. 61 and 62).¹⁵

Thus, it is disingenuous and unpersuasive of the Employer to suggest that the development, implementation and monitoring of “corrective action” mandates by Area and District managers, to prevent deviation from Column J, Q and R “benchmarks, standards and DPARS guidelines” by local managers and supervisors during the 2002 NMC, were merely unfortunate and unforeseeable aberrations of “Managing the Opportunity”, which were not known to or approved by Postal Service Headquarters.¹⁶

¹⁵Since Fall 2001 Kiser had been “on detail assignment” to the Postal Headquarters office of then Vice-President for Delivery and Retail, Henry Pankey from his regular assignment as the Manager of Finance in the Richmond, Virginia District. Immediately after the results of the 2002 NMC were tabulated and published in NRLCA exhibit 95, Kiser was promoted from his District manager position to the Headquarters executive position of Manager of Integrated Modeling and Analysis.

¹⁶Such unpersuasive attempts at *post-hoc* dissociation from desired and foreseeable consequences of actions by underlings set in motion by hierarchical superiors are not unknown to history. In the 12th century, Henry II attempted to distance himself from the assassination of Archbishop Thomas Becket at the altar in Canterbury Cathedral by two armed knights, in whose presence Henry had lamented plaintively: “Will none of you rid me of this meddlesome priest?”.

Moreover, the Association has made out a persuasive showing that examples of nation-wide misconduct during the 2002 NMC by local and District managers, demonstrated by NRLCA Exhibits 45-94, were not just isolated instances of deviation from the traditional standard of “hands-off” objectivity previously honored by both parties in national mail counts. Given the provenance of those incriminating documents in this record, it is likely they are representative of a much more pervasive phenomenon of District, State and local managers taking extraordinary measures to satisfy the mandates of their Headquarters and Area superiors to “measure success” in the 2002 NMC by reducing Column J, Q and R times recorded by each post office, District and Area.¹⁷ In other words, the NRLCA made a persuasive showing that NRLCA Exhibits 45-94 are merely the “tip of the iceberg”.

The clear message of “Managing the Opportunity” disseminated by Headquarters to the field at the national mail count training sessions is that to be “successful” in the 2002 NMC (and thus avoid negative attention by District, Area and Headquarters superiors), local postal manager should not merely record observed J-Q-R count entries and let “it is what it is” occur naturally. Rather, the “measure of success” standard communicated by “Managing the Opportunity to the local postmasters, or supervisors who actually conducted the 2002 NMC”, was expressed by one thing only: Successful managers will record declining Column J-Q-R numbers in the 2002 NMC and unsuccessful managers will record Column J-Q-R numbers which stay the same or go up in the 2002 NMC.

¹⁷In that regard, it is noted that the Headquarters and Area office documents which appear in the record as NRLCA Exhibits 16-44 were produced by the Postal Service during discovery in this case. (See NRLCA Exhibit 4, page 3, item 9.) However, the District and local office documents which appear in this record as NRLCA Exhibits 45-94 were all provided voluntarily to NRLCA officials by Postal Service managers at the state and local level. (See NRLCA Exhibit 3).

That message was clearly received by the Areas and Districts, which uniformly instructed postal managers to be “concerned” with any route that showed “excessive” J, Q and R counts; *i.e.*, anything higher than the 2000 mail count “averages” for J, Q or R – whether it be a national, area or district average. Even though these respective times and pieces are calculated and evaluated under PO-603 based on weekly basis numbers, daily J-Q-R benchmarks, thresholds, or targets were set under “Managing the Opportunity”--“to ensure that the maximum amount of savings is captured as a result of this year’s count efforts.”

Most often the Area and District “benchmarks” were set at the national or area averages from the 2000 count but in other cases they were set at levels even lower than the averages.¹⁸ Various daily reporting requirements were imposed but postmasters in much of the country were required to report to superiors every day on every route that exceeded any one of the J, Q or R “benchmarks/guidelines/standards”. For each route that exceeded a daily benchmark or threshold limit, countless postmasters were required to give a written explanation for why the route was not at or below the benchmark on that day. Many were required to provide a written “action plan to correct overuse” for every route that exceeded the daily benchmarks on any day of the 2002 mail count, while others were threatened with discipline if they failed to report and correct such “excessive” J-Q-R numbers daily.¹⁹

¹⁸ The “averages” used as benchmarks or targets were even much lower under DPARS (average of the top quartile), where 87.5% of routes were above the “average”. Rather than use national, area or district averages, the Western Area used DPARS for its load time and R time targets. With almost all routes not meeting those targets, it was impossible for local managers in the Western Area to succeed in their J-Q-R mission legitimately. As the Western Area told its field managers, “excessive” loading time is “identified as the gap between actual performance and the DPARS target”. (NRLCA Exhibit 41.) In addition to the Western Area, at least the Cap Metro Area also utilized DPARS targets rather than national averages. (NRLCA Exhibit 64.)

¹⁹ As already noted, rural routes receive a weekly evaluation. Yet, in almost all instances, daily (not weekly) thresholds or benchmarks were set, and daily reporting of excesses, with explanations, was required. Use of daily averages is worse than use of weekly averages. For example, if the national weekly average is 54 minutes,

Most egregiously, during the entire count period, as they were actually conducting the count, local managers were bombarded with instructions from above to examine every route every day with respect to J, Q and R times and to report each day every route that went over a single “benchmark, guideline or standard”. They were told to file “exception reports” explaining why any route was over the benchmark or standard set by the District or Area on any given day and, in many cases, directed to take “corrective action” to meet the benchmark on subsequent days of the count period. That is what their bosses demanded, that is what their bosses’ bosses demanded and that is what Headquarters knew – without objection -- was happening in the field.

In the final analysis, it does not matter that Headquarters, Areas and some Districts may not have told field managers explicitly to “do whatever is necessary” to get the J-Q-R numbers down (*Cf.* NRLCA Exhibit 87 and 113). Nor is it evident that every local postmaster and supervisor actually succumbed to the relentless pressure from above to make sure the numbers matched the standards under “Managing the Opportunity”. However, given the impossible task demanded of them, the absence of explicit instruction on how to achieve the “benchmark averages” and “DPARS guidelines”(something not legitimately possible) and the green light to take “corrective action” to bring “excessive” numbers into line, the devolution of “Managing the Opportunity” to shaving of time and counts by some local managers was probably inevitable.

daily reporting is required any day a route goes over the daily average of 9 minutes. A route may have daily times during the week of 10, 8, 10, 9, 10 and 7 minutes – not unusual given the daily fluctuations in mail volume that a rural route naturally will encounter. That is a total of 54 minutes for the week, exactly equal to the national average. Yet, the postmaster would be required to report and explain the 3 days the route used 10 minutes. Three out of six days that week, the postmaster would have to report to his boss that he had failed to keep the route under the daily 9-minute benchmark. That, even though the weekly total for the route was not over the national average.

Especially in organizations structured along paramilitary lines, human nature would naturally impel those on the front-line of the mail count to take extraordinary measures to avoid the admission of failure and the inherent opprobrium associated with filing daily “exception reports” with superiors and/or to receive the accolades associated with “managing the numbers” to achieve the benchmark standards established and monitored daily by higher authority. As ancient history and recent headlines show, specific intent is not dispositive when higher authority puts into motion a scheme that ineluctably leads underlings to “get the numbers” that their bosses so explicitly desire want; and who then proudly announce and benefit from improperly obtained results.

Under the regimen of “Managing the Opportunity”, mark ups (Column J) decreased by 8.6%; from a national weekly average of 115.8 pieces per route in 2000, to an average of 105.9 pieces in the 2002 count. Some of that decrease could have been due to the increasing use of Postal Service programs aimed at speeding up the provision of address correction and undeliverable mail information to mailers and by increased compliance by such customers with those programs, leading to less need for carriers to “mark up” mail pieces. (Testimony of James Kiser, Tr. 715-727.) However, the effect of those programs cannot be quantified with respect to the potential reduction of mark ups any more than it is possible to know with certainty how much of an adverse affect the Column J “benchmarks and DPARS guidelines” of “Managing the Opportunity” had on the reduction of mark ups in the 2002 mail count.

With respect to loading time (Column Q), all other things being equal, long-term historical data predicted no more than a nominal change – up or down – in the average weekly load time as a result of the 2002 mail count. Although NRLCA Exhibit 95, page 13 -- the Postal Service’s 2002 mail count results analysis -- refers to the “National Growth in Evaluated Load Time”, an

examination of average weekly load times from 1995 through 2000 shows not “growth” but rather a small up and down pattern over the last 6 mail counts. The average for all 6 counts was 53.2 minutes per week, which also happens to be exactly the 2000 mail count average – 53.2 minutes. Thus, the historic 1995-2000 load time data most certainly did not support any expectation of a 14% reduction in average load time - - a drop of nearly 8 minutes per rural route down to 45.8 average minutes-- as was the case in the 2002 mail count. The Wells Award had no effect on Column Q and the only discernable change between the 2000 and 2002 mail counts with respect to load time was the imposition and enforcement of “Managing the Opportunity” benchmarks, standards and guidelines.

As previously discussed, Column R (“other suitable allowances”) is a catchall for a myriad of activities that a rural carrier may be required to perform on a regular basis, but which are not reflected in any of the other mail count elements. One such activity relates to the scanning function. In 1998, the Postal Service began to introduce the use of scanners by rural carriers in conjunction with “delivery confirmation”; a new service available for an extra fee to provide customers with on-line confirmation of when an item was delivered. The carrier uses the scanner on the route to electronically record delivery confirmation mail piece bar-codes and “accountable” mail item bar-codes. (Tr. 1484-1485.)²⁰

For the 1998 mail count, those rural carriers assigned a scanner (they were not yet in use on all routes) were allotted three (3) minutes “R” time per week, for obtaining and preparing the scanner for daily use on the route and for returning the scanner to a charging cradle after return from the route. In addition, they received an allowance of 12 seconds “R” time for each item scanned

²⁰ “Accountables” are certified, registered and insured items.

(including manually inputting the bar-code number on items on which the bar-code could not be read by the scanner). (NRLCA Exhibit 114, pages 1-3; testimony of NRLCA President Dale Holton, Tr. 1485.) The national average Column R time in the 1995-1997 (pre-scanner) mail counts was 23.5, 23.3 and 26.4 minutes per week, respectively – a relatively constant figure. In 1998, with the addition of scanner time to Column R for the first time, the national average predictably jumped, to 30.8 minutes per week. (NRLCA Exhibit 95, page 11.)

For the 1999 mail count, the parties negotiated new standards for Column R scanner time. The weekly allowance for obtaining and returning the scanners was increased from 3 minutes to 6 minutes per week. The allowance for each scanned item was increased from 12 seconds to 20 seconds (again including those items for which manual inputting is necessary). Express Mail services were also added to those requiring use of the scanner. (NRLCA Exhibit 114, pages 1, 4-5; Tr. 1486.) Additionally, the increasing use by the public of delivery confirmation services raised the number of scans. The increased use of scanners by more rural routes, the increased public use of delivery confirmation services, plus the significantly increased time standards all naturally contributed to a large jump in national average Column R time for the 1999 mail count – from 30.8 average minutes in 1998 to 39.8 average minutes in 1999. (NRLCA Exhibit 95, page 11.)

The 2000 mail count brought even more increased standards for scanner use. The 6 minute weekly allowance and the 20 seconds per item allowance remained. However, now rural carriers received an additional 17 seconds for each piece requiring manual inputting of the barcode (no extra allowance was granted in 1998 and 1999), and an additional 28 seconds for data entry of the recipient's name for each Express Mail piece delivered. (NRLCA Exhibit 114, pages 1, 6-8; Tr. 1488-1489.) In addition, the public use of delivery receipt services continued to climb, nationwide

from 249 million pieces in FY 1999 to 357 million pieces in FY 2000, a jump of 43%. (NRLCA Exhibit 9, page 57; Tr.1491-1492.) Consequently, Column R time continued its natural climb, to 45.4 average minutes under the 2000 mail count. (NRLCA Exhibit 95, page 11.)

Thus, the “national growth” annually in Column R time since the introduction of scanners to rural routes in 1995 was expected, predictable and by all accounts warranted. Rural carriers were being required by the Postal Service to perform increasingly more work – by the introduction of, and the continually rising use of scanners – at increasingly greater time standards. Payment for those new and increasing duties – in the form of rising route evaluations – was a natural consequence of this additional Column R time. Indeed, even James Kiser, author of “Managing the Opportunity”, acknowledged that, with the inception of scanner use by rural carriers, the raising of the time standards for scanner use, and the increasing use by the public of delivery confirmation services, it was expected that Column R time would go up from mail count to mail count. (Tr. 746-747.

The Wells Award had no impact on Column R and time standards for scanner use remained the same for the 2002 NMC count as they had been in 2000. However, public use of delivery receipt services continued to grow significantly nationwide; with delivery confirmation usage at over 535 million pieces in FY 2002, up a full 50% from FY 2000. (NRLCA Exhibit 9, page 57.) Therefore, due to scanner time credits alone, it should have been expected that Column R time would increase again with the 2002 mail count, up from the average 45.4 minutes recorded in the 2000 count.

That was not what happened in the 2002 NMC, however. Contrary to the historical growth trend warranted by the above-described evolution of scanner usage and pay credits, Column R time recorded under “Managing the Opportunity” during the 2002 NMC went down from 45.4 average minutes nationally in 2000 to 42.1 minutes in 2002, a reduction of over 7%. Given that, all other

things being equal, Column R time should have increased in 2002 as a result of greater delivery confirmation use, this unexpected reduction in Column R time was probably more than 7%.²¹

One particular area which "Managing the Opportunity" targeted for reduction in Column R time involved safety and service talks. The Postal Service requires that post office employees, including rural carriers, be given weekly safety talks. Under the evaluated system, there is no set time standard for such talks but, during the mail count, each safety talk is timed and the actual time is to be recorded in Column R, i.e., "It is what it is". For the 2002 mail count, however, the Postal Service made an extensive effort to cap or limit the amount of time afforded to carriers under Column R to 5 minutes per week. If actual safety talk time was over 5 minutes, the extra minutes often were paid to the carriers separately by means of a Form 8127, and such extra time was not recorded in Column R and built into the route's evaluated time.²²

²¹ As noted supra, "accountables" (registered, certified, and insured) are scanned items, in addition to delivery confirmation items. For the 2002 count, the average rural route had 16 accountables per week. (See NRLCA Exhibit 96 – 2,222,117 total "reg cert ins" items in the two-week 2002 count, divided by 2 weeks, divided by 69,394 rural routes = average of 16 accountables per week per route.) The average rural route had the same number of accountables – 16 – for the 2000 count. (See NRLCA Exhibit 105 – two week average of 31,949 "reg cert ins" pieces per route divided by 2 weeks = 16.) Each of those 16 accountables received Column R scan credit. For FY 2000 and FY 2002 the Postal Service delivered 341.8 and 352.4 million pieces of registered, certified, and insured mail, respectively. (NRLCA Exhibit 9, page 57.) In addition to the scans attributable to accountables, scans for delivery confirmation pieces are also included in Column R. A "rough" approximation of the number of scanned pieces due to delivery confirmation items for the 2000 count is an additional 16. (356.9 million delivery receipt services pieces delivered nationwide by the Postal Service in FY 2000 – See NRLCA Exhibit 9, page 57 -- is approximately the same as the number of accountables delivered that year. Thus, a rough approximation of the average number of weekly delivery confirmation scans per rural route in 2000 is also 16.) A 50% increase in delivery confirmation items nationwide for the Postal Service from 2000 to 2002 would roughly yield a 50% increase in delivery confirmation scans on average per rural route, or a weekly increase from 16 to 24. These rough estimates are not made for the purpose of computing precisely the amount of increase in Column R scanner time to be expected in the 2002 count, but to show that the increase is significant.

²² Form 8127 is a mechanism to pay rural carriers for time spent on activities that are not accounted for in the route's evaluation. The time is paid to the carrier at an hourly rate equal to the national average hourly rate of all evaluated routes. Payment via Form 8127 is to be used for work activities not usually a part of a rural carrier's duties or for activities and not recurring on a daily or weekly basis.

The 2002 mail count policy relative to safety talk limits was initially presented at the Denver and Potomac national training sessions as part of the Rural Carrier Mail Count Course #44Q0105, where it is stated:

Safety and/or Service Talks: Ensure that one talk is given each week and includes regular and relief carriers. These talks should average 5-minutes each.

* * * * *

Expanded talks (videos and other presentations) are not included as Column "R" time. If compensation is needed, pay on Form 8127.

(NRLCA Exhibit 22, page 39, emphasis added.)²³ Following the national training at Denver and Potomac, Areas instructed their District Managers that in order “[to] ensure that the maximum amount of savings is captured as a result of this year’s count efforts” they should “set limits on safety and service talks at five minutes (Column R).” (See NRLCA Exhibits 35, 37, 39, 41; emphasis added. See also, Exhibit 36.) Representations by various Area managers at the arbitration hearings that local managers in fact did not comply with these directives simply are not consistent with the record evidence.

Thus, the Western New York District instructed that “One 5 minute safety talk per week” was an acceptable Column R entry. (NRLCA Exhibit 51.) The Greensboro District told its postmasters to “Set limits on safety talks at a **MAXIMUM** of five minutes”. (NRLCA Exhibit 53, emphasis in original.) The Columbus District instructed:

Safety Talks – up to 5 minutes only – pay on PS Form 8127 for additional time.
This is true for all service and safety talks.
Videos for training, etc. – **NO** column R time.

(NRLCA Exhibit 60, emphasis in original.) Dakotas District postmasters were instructed to “**Keep safety talks to 5 minute maximum.**” (NRLCA Exhibit 82, emphasis added; likewise, see NRLCA Exhibits 75 (Arkansas District) and 90 (Arizona District).

²³ As noted, *supra*, this particular passage is also a part of the “mail count training course” grievance.

Tim Padden, Post Office Operations Manager for the Colorado/Wyoming District, e-mailed his postmasters: “Safety talks will be no more than 5 minutes. ... **The corporate strategy dictates this.**” (NRLCA Exhibit 85, emphasis added.) In response to a rural carrier’s mail count disagreement, the Woodburn, Oregon Postmaster wrote:

The carrier states that the safety standup 5 minute allowance is not proper because one of the weekly talks during the count lasted 9 minutes. ...

Any additional time spent on weekly safety/service talks will be paid on form 8127....

(NRLCA Exhibit 88, emphasis added.) Likewise, the Station Manager in Lexington, Kentucky responded to a carrier’s mail count complaint:

Your second issue was regarding the five-minute limit imposed on the total amount of time that we were allowed to credit service/safety talks, regardless of the actual length of these talks. Once again, I was merely following instructions given to me through the District Analyst’s office. **We were instructed that in the event of a service/safety talk extending beyond five (5) minutes, we were to give a five (5) minute credit to Column R and pay the additional time on a Form 8127.**

(NRLCA Exhibit 63, emphasis added.) [The effect, for example, of a 9 minute safety talk being credited 5 minutes to Column R and the remaining 4 minutes paid on a Form 8127, as in Woodburn, Oregon, is that every rural route in the post office will lose 2 minutes of evaluated time – time which could have been enough to move the route from, for example, an evaluation of 44 hours to an evaluation of 45 hours. (See testimony of Randy Anderson, Tr. 443-445.)]²⁴

The originally stated purpose behind “Managing the Opportunity” was to provide managers in the field with statistical data on historical J-Q-R times prior to the 2002 NMC that would allow them to identify “outliers”, *i.e.*, aberrant numbers significantly above or below statistically predictable norms, so they could “verify and validate” such numbers and correct problems if they

²⁴ The loss is 2 minutes evaluated time per route, not 4 minutes, because all counted and timed items during a two-week mail count are divided by 2 to get a weekly average.

could not be validated. However, in statistical analysis of normal distributions in a data set, standard deviation (plus and minus) from the mean, not just a number higher than an “average”, is the effective tool for identifying and targeting entries that truly are statistical “outliers”. An “average” is merely a mathematical measurement of a range of numbers – about ½ above and about ½ below the average.

By definition, an average presupposes a range above and below that number. Moreover, the previously discussed individuality of and wide variance between rural routes – testified to at length by both Association and Postal Service witnesses – postulates not uniformity but an expectation of variances in the J, Q, and R numbers among the 70,000 diverse rural routes. Thus, during an objective “it is what it is” mail count one should expect to find wide variances rather than conformance to an artificially imposed national, area or district “average”. Indeed, even Mr. Kiser testified: “If this were a chart of individual rural routes, we would expect to see – we could see a tremendous range in R-time allocation for anomalies, indigenous issues that have been testified to at length.” (Tr. 705, emphasis added.)²⁵

Under the actual implementation of “Managing the Opportunity”, with its imposition and enforcement of “benchmarks, guidelines and standards” premised on various “averages”, the drops in J-Q-R times went far beyond the detection and correction of erroneous “outliers”. As discussed, *supra*, load time, which had been relatively constant over the past 6 mail counts, dropped 7.4 minutes, or 14% on average nationwide in 2002. That is 14% if every one of the almost 70,000

²⁵Rural routes vary even more than that when auxiliary routes are taken into account also. Auxiliary routes can have as few as 11:30 standard hours. (Joint Exhibit 1, page 27.) And auxiliary routes are included in the mail counts, as well as regular routes. Auxiliary route count results are included in the Postal Service’s computations of national, area and district “averages” as well as regular routes. The smaller count results for auxiliary routes (see USPS Exhibit 64) would push the “national averages” for J-Q-R lower, meaning that even more than 50% of regular routes will show actual numbers above the “national average”.

routes were reduced on average by 7.4 minutes but, since only numbers above the average were targeted in “Managing the Opportunity”, if only the approximately 35,000 routes with numbers above the “national average” had actually dropped, each would have experienced a 28% drop on average in load time. Of course, from a statistical analysis viewpoint, it is ludicrous to suggest that anything remotely approaching 50% of the routes would have constitute troublesome “outliers”. [If only the top 25% of routes were reduced, it would take an average reduction of 56% each – or almost 30 minutes -- to create a nationwide average drop of 14% in all routes, as was the result of the cumulative 2002 figures]. In any event, fixing true and properly identified “outliers” would have resulted in mere blips in the averages from 2000 to 2002 (and probably not even any blips at all, if low outliers had received attention as well as high outliers).

Contrary to the spirit and intent of the parties expressed in the Bothwell and Petersen Memoranda, *supra*, (NRLCA Exhibits 16 and 17), “Managing the Opportunity” morphed, through a process of top-down devolution, from an announced policy of educating local postal managers to recognize “outliers” in Column J-Q and R numbers into a contractually impermissible contrived scheme to manipulate and influence the results of the Column J-Q and R data collection during the 2002 NMC, by creating, imposing and enforcing “benchmarks, guidelines and standards”. The net result was a dramatic and otherwise largely inexplicable drop in Column J-Q-and R entries, achieved at the cost of undermining the integrity of the 2002 NMC.²⁶

²⁶Comparison of the total pieces of mail handled by the Postal Service in 2000 and 2002 shows that mail volume fell overall by about 2.5% from 2000 to 2002; but this was offset by an almost equal increase in average mail volume per rural route from 2000 to 2002. (See NRLCA Exhibits 9 and 112). Nor does the record come close to suggesting that virtually all local postal managers nationwide were so ignorant of the correct way to measure J-Q-R numbers and times prior to the 2002 NMC that the prior count numbers for Columns J-Q-R had been wrongly inflated by more than 13 minutes of true “outliers” and/or incorrectly credited mail count entries which “Managing the Opportunity” identified, corrected and flushed out of the system.

Based on all of the foregoing, I conclude that the Postal Service crossed the mutually recognized line which differentiates proper training and education (to ensure proper conduct and accurate recording of that mail count data in conformity with PO-603 and the National Agreement) from interfering with and attempting to manipulate the count results (in violation of PO-603 and the National Agreement), by unilaterally creating, publishing, imposing and enforcing standards or limitations on Columns J-Q and R , prior to and/or during the 2002 NMC, so as to make the count data for those targeted elements conform to preconceived intended outcomes. I am persuaded beyond cavil that, during the 2002 NMC, Postal Service management departed significantly from the time-honored requirement of “hands-off” objectivity required by Article 19, PO-603 and many years of mutually-recognized past practice. Accordingly, the national arbitration grievance filed by NRLCA in Case No. Q95R-4Q-C 02101267 (“Mail Count Conduct”) is sustained.

The Appropriate Remedy

The plea of the Postal Service that no relief is warranted because the Union proved no Agreement violations in either case is rejected. Just because the passage of time, the paucity of hard data and certain confounding variables might make it difficult to quantify with precision liquidated damages to remedy the manifest harm wrought by “Managing the Opportunity” to the integrity of the 2002 NMC, to individual rural carriers and to the relationship between the NRLCA and the Postal Service, is no reason to refrain from fashioning an appropriate remedy.

The originally-filed grievance in Case No. Q95R-4Q-C 02101267 (“Mail Count Conduct”) sought as arbitral remedies:

[A]n immediate cessation of any further counting of mail, the complete and total nullification of any counts or results of any portion of the February-March 2002 National Mail Count as well as the future conduct of a proper National Mail Count at a time and for a period mutually agreeable to the parties or as directed by the National Arbitrator. Every individual carrier shall have the right to elect which of the two counts shall be used to determine the new evaluation of the route. This choice by the rural

carrier may not be rejected or otherwise overridden by the Postal Service. All bargaining unit employees shall likewise be made whole in any and all respects. . . .

In the posthearing briefs, however, the NRLCA urged somewhat differing remedies:

It follows then that as part of the remedy, at a minimum, the Postal Service should be ordered to return, with more than three years of interest, its ill-gotten gains (13.18 minutes/\$18 million) to the regular and relief carriers then serving on 69,394 rural routes. [For rural routes that were not counted in 2003, and each consecutive year thereafter, the financial remedy must continue annually because without a new mail count, the route evaluation remains static, and the affected carriers would continue to be compensated based on invalid 2002 national mail count data]. . . . We leave to the Arbitrator's discretion what additional amounts over and above the 13.18 minutes/\$18 million, plus interest, should be paid to rural carriers. In addition to this important monetary remedy, the NRLCA further asks the Arbitrator to order the Postal Service to immediately cease and desist from utilizing programs such as "Managing the Opportunity" and DPARS to influence and adversely affect future mail count results.

It seems to me that issuance of "cease and desist" orders would be inappropriate and futile for two related reasons: 1) "Managing the Opportunity" is a *fait accompli* with respect to the 2002 NMC and 2) my arbitral jurisdiction and authority does not entail powers to enforce such injunctive relief *in futuro*. Nor am I persuaded by the record in these cases to grant the Association's plea for a grant of interest on any remedial monetary damages awarded in this case.

For many years, interest on compensatory damages awarded in labor-management arbitration has been the exception rather than the rule; at least in part because, prior to 1962, the NLRB did not award interest on such damages. *See Sinicropi, Remedies in Arbitration*, Ch. 20 "Interest, Costs and Attorney's Fees", pp. 450-60 (BNA: Washington, DC, 2nd ed., 1991). However, the same noted authority points out that more recently, when a timely request for interest is made and logically justified, arbitrators are more willing to follow the dictum that historical denials of interest by labor arbitrators "may be an unsolved mystery, but that is no reason to ignore reason". *See Kaiser Permanente Medical Care Program* 89 LA 841, 845 (Alleyne, 1987); *see also Allied Chemical Co.* 47 LA 686 (Hilpert, 1966).

Unless the contract or mutually recognized past practice require otherwise, arbitrators these days are more responsive to the logic that timely requested interest should be included in an award of monies due under an arbitration award; both to make those financially injured by contract violations “whole” and to prevent unjust enrichment of the contract violator. In this particular case, however, I decline to grant the Association’s plea for interest on money damages because it was not raised expressly until the concluding portion of the post-hearing brief.

Black letter law in labor arbitration holds that, when written grievances and grievance procedure discussions define and limit the issues in dispute, arbitrators should foreclose introduction of new claims at the time of the hearing (other than fundamental jurisdictional challenges). *See, International Paper*, 105 LA 970, 974 (Duda, 1996); *Mason & Dixon Tank Lines*, 94 LA 1225, 1228 (Byars, 1990); *City of Cadillac*, 88 LA 924, 925 (Huston, 1987); *NLRB Union*, 76 LA 450, 456 (Gentile, 1981); *Ralston Purina Co.*, 71 LA 519, 523-24 (Andrews, 1978). Were the rule otherwise, the most basic purpose of the Parties' grievance resolution mechanism would be frustrated, *i.e.*, full disclosure, discussion and consideration of all issues in dispute at informal and earlier stages of the grievance procedure, with the goal of resolution short of arbitration.

Properly exercised remedial power of an arbitrator who finds violations of a collective bargaining agreement should be “situational”; depending upon many factors, “including the specific facts of a case, the labor agreement in force at the time, and (especially in the public sector) the statutes and the case law governing the jurisdiction in question”. Marvin F. Hill, Jr., “*Remedies in Arbitration*”, Ch. 10 in Theodore St. Antoine, Ed., *The Common Law of the Workplace: The Views of Arbitrators*, (BNA, Washington, D.C.: 1998). [Citing the *Steelworkers Trilogy: Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 2414 (1960); *Steelworkers v. Warrior & Gulf*

Navigation Co., 363 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960)].

After holding that the labor-management arbitrator's "source of law is not confined to the express provisions of the contract, as the industrial common law- -the practices of the industry and the shop- -is equally a part of the collective bargaining agreement although not expressed in it."(*Steelworkers v. Warrior & Gulf Navigation Co.*, above, at 581-82); the Court went on to hold that an arbitral remedy must "draw its essence" from that contract rather than from the arbitrator's "own brand of industrial justice". (*Steelworkers v. Enterprise Wheel & Car Corp.*, above, at 597). Adherence to these *Steelworkers Trilogy* principles leads me to redress the Employer's proven Agreement violations by fashioning remedial measures which reflect the collective bargaining institutions by which the Postal Service and NRLCA have mutually developed, through contract and many years of past practice, the unique mail count/evaluated pay system by which rural letter carriers are compensated.

All of the forgoing considerations lead me reject, as overly broad and insufficiently precise, the Association's pleas for "complete and total nullification of any counts or results of any portion of the February-March 2002 National Mail Count" and retroactive monetary damages of \$18,022,645, *per annum/pro rata*, to the to the regular and relief carriers then serving on the 69,394 rural routes. In my judgement, it is more appropriate to prune only the tainted branches and fruit from the 2002 NMC and heal the proximate damage, without cutting down or uprooting the whole tree. On that basis, my remedial measures include: 1) Partial restoration of the *status quo ante* by voiding and rescinding only the 2002 NMC counts or results relative to Columns J-Q and R; 2) Re-evaluation of each route counted during the 2002 NMC to calculate an interim "hybrid" evaluation,

using the 2002 NMC data set for all other elements except Columns J-Q and R but the data set for Columns J-Q and R from the mail count of that particular route which most recently precedes the 2002 NMC; 3) Payment of the difference between the “hybrid” evaluated pay calculated in accordance with this Award and the invalid 2002 NMC evaluated pay to each regular and relief carrier serving on the rural routes counted during the 2002 NMC, for the period beginning with the effective date of the 2002 NMC evaluated pay and ending with a new evaluation based upon the properly conducted mail count of that particular route which most recently follows the 2002 NMC.

In accordance with the last sentence of Article 15, §5 of the Agreement, costs of the arbitration of these two consolidated cases are assessed 2/3 to the Postal Service and 1/3 to the NRLCA. Finally, arbitral jurisdiction is retained to resolve any disputes which may arise between the Parties regarding the meaning, application or implementation of this National Arbitration Award in Cases Nos. Q95R-4Q-C02101253 and Q95R-4Q-C02101267.

AWARD OF THE IMPARTIAL ARBITRATOR**MERITS****Case No. O95R4Q-C 02101253 (“Mail Count Training Course”)**

The Postal Service did not violate the National Agreement when it failed/refused to include NRLCA representatives in the creation of Mail Count Training Course #44Q0105 used to train Postal managers prior to the 2002 National Mail Count or in the presentation of Mail Count Training Course #44Q0105 at pre-count training seminars for Postal Service managers.

The Postal Service did violate the National Agreement when it failed to comply with the provisions of Article 19, §§1, 2 and 3 before issuing and disseminating for use during the 2002 NMC, under the rubric “Managing the Opportunity”, national average “benchmarks/targets/thresholds” for the following PO-603 Chapter 5 Form 4239 guidelines: §535.12.j-“mark ups” (Column J); §535.12.q-loading time (Column Q); and, §535.12.r-“other suitable allowances” (Column R).

The claims that the “draft” Mail Count Course #44Q0105 materials published and disseminated to Postal Service managers prior to the 2002 NMC contained substantive errors in the interpretation/application of PO-603 Chapter 5 §535.12 relative to “high rise”, “rigid articles”, “boxholders” and “drawbridges”, which adversely affected the 2002 NMC count results for Columns A, B, C, D, E and R on Form 4239, are dismissed for failure of proof.

The claims that the Postal service intimidated and harassed rural craft employees in an attempt to secure a more favorable count for the Postal Service and restricted rural craft employees in the exercise of their Section 7 rights under the National Labor Relations Act are dismissed for failure of proof.

The claim that the “draft” Mail Count Course #44Q0105 materials published and disseminated to Postal Service managers prior to the 2002 NMC contained substantive errors in the interpretation/application of PO-603 Chapter 5 §535.12 relative to “enhanced talks”, which adversely affected the 2002 NMC count results for Column R in Form 4239, is subsumed in the disposition of Case No. Q95R-4Q-C 02101267, *infra*.

Case No. Q95R-4Q-C 02101267 ("Mail Count Conduct")

The Postal Service did violate the National Agreement, before and during the 2002 NMC, by instructing and requiring managers and supervisors, to "target and correct" count totals in Column J, Column Q and Column R of Form 4239 which exceeded certain national average "benchmark/target/threshold" standards unilaterally established, issued, promulgated and enforced by Postal Service managers.

REMEDY

- 1) The counts or results of the 2002 NMC relative to Columns J-Q and R are hereby rendered null and void.
- 2) The Postal Service is directed to "re-build" the Standard Hours of each rural route counted during the tainted 2002 NMC, using the data set for Columns J-Q and R from the mail count of that particular route which most recently precedes the 2002 NMC and the 2002 NMC data set for all other elements except Columns J-Q and R, and to calculate for each such rural route constructive Evaluated Hours based on that "hybrid" mail count data;
- 3) The Postal Service is directed to pay to each regular and relief carrier serving on the rural routes counted during the 2002 NMC, for the time period beginning with the effective date of the 2002 NMC evaluated pay and ending with a new evaluation based upon the properly conducted mail count of that particular route which next follows the 2002 NMC, the difference between the "hybrid" evaluated pay calculated in accordance with ¶ 2 of this Award and the 2002 NMC evaluated pay invalidated by ¶ 1 of this Award.
- 4) In accordance with the last sentence of Article 15, §5 of the Agreement, costs of the arbitration of these two consolidated cases are assessed 2/3 to the Postal Service and 1/3 to the NRLCA.
- 5) Arbitral jurisdiction is retained to resolve any disputes which may arise between the Parties regarding the meaning, application or implementation of this National Arbitration Award in Cases Nos. Q95R-4Q-C02101253 and Q95R-4Q-C02101267.


 Dana Edward Eischen

STATE OF NEW YORK }
 COUNTY OF TOMPKINS } SS:

On this 15th day of May 2006, I, DANA E. EISCHEN, upon my oath as National Arbitrator, do hereby affirm and certify, pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that I have executed and issued the foregoing instrument and I acknowledge that it is my Opinion and Award in Case Nos. Q95R-4Q-C02101253 and Q95R-4Q-C02101267.