

Capital Reporting Company
Postal Police Officers Association Interest Arbitration 02-07-2014

1667

BEFORE THE BOARD OF INTEREST ARBITRATION

-----:
In the Matter of: :
 :
UNITED STATES POSTAL SERVICE :
 : Volume 8
 and : (Pgs. 1667 to 1790)
 :
POSTAL POLICE OFFICERS :
 ASSOCIATION :
-----:

Washington, D.C.
Friday, February 7, 2014

The following pages constitute the proceedings held in the above-captioned matter at the United States Postal Service, 475 L'Enfant Plaza, Southwest, Washington, D.C. before Erick M. Thacker, RPR, of Capital Reporting Company, a Notary Public in and for the District of Columbia, commencing at 9:31 a.m., when were present on behalf of the respective parties:

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1 A P P E A R A N C E S

2 Before Arbitrators:

3 James C. Oldham, Impartial Chair
4 Robert A. Dufek, USPS Member
5 James Bjork, PPOA Member

6 On behalf of the PPOA:

7 ARLUS J. STEPHENS, ESQUIRE
8 DONNA MCKINNON, ESQUIRE
9 MURPHY ANDERSON, PLLC
10 1701 K Street, Northwest
11 Suite 210
12 Washington, D.C. 20006
13 (202) 223-2620

14 On behalf of the U.S. Postal Service:

15 TERESA A. GONSALVES, ESQUIRE
16 JULIENNE BRAMESCO, ESQUIRE
17 United States Postal Service
18 475 L'Enfant Plaza, Southwest
19 Washington, D.C. 20260
20 (202) 268-6704

21 ALSO PRESENT:

22 Chris Vitolo, PPOA
Eric Freeman, PPOA
Joshua Pierce, PPOA
Mike Plaughter, PPOA
Joe Alexandrovich, USPS
Sonya J. Penn, USPS
Katherine P. Sullivan, USPS
Janet Peterson, USPS

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C O N T E N T S

| WITNESS: | DIRECT | CROSS | REDIRECT | RECROSS |
|--------------------------|--------|-------|----------|---------|
| JOE ALEXANDROVICH | -- | 1670 | -- | -- |
| MICHAEL BILLINGSLEY 1775 | | 1776 | -- | -- |

(Exhibit books were tendered to the arbitrator.)

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1 P R O C E E D I N G S

2 ARBITRATOR OLDHAM: Folks, are we all
3 here ready to go?

4 MR. STEPHENS: Yes.

5 ARBITRATOR OLDHAM: Joe, consider
6 yourself still sworn.

7 THE WITNESS: Yes, sir.

8 ARBITRATOR OLDHAM: All right. We're
9 having cross-examination this morning, I believe.
10 Arlus, whenever you're ready.

11 WHEREUPON,

12 JOE ALEXANDROVICH

13 was called for continued examination, and having
14 been previously duly sworn was examined and
15 testified further as follows:

16 CROSS-EXAMINATION BY COUNSEL FOR THE
17 UNION

18 BY MR. STEPHENS

19 Q Okay. Good morning, Joe.

20 A Good morning, Arlus.

21 Q So I'm going to ask you some questions
22 today, and I think I'm just going to largely --

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1 largely do it based off of the -- off of the
2 PowerPoint for a point of reference. So I guess
3 the -- the first slide I'd like to ask you about
4 would be Slide No. 4.

5 ARBITRATOR DUFEK: Just a second,
6 Arlus.

7 ARBITRATOR OLDHAM: Yeah, I've just got
8 to get --

9 MR. STEPHENS: I'm sorry. This is --

10 ARBITRATOR DUFEK: Volume 2 --

11 MS. GONSALVES: Tab I.

12 MR. STEPHENS: Volume 2, Tab I.

13 ARBITRATOR OLDHAM: Okay. Thanks.

14 BY MR. STEPHENS

15 Q First, just a couple questions about
16 the limitations of the -- of the OES data. Well,
17 first of all, I guess -- well, I'll get there in
18 a second.

19 The -- the estimates are obviously not
20 100 percent of American workers. It's based on
21 a -- it's a big sample, but it's not 100 percent?

22 A A very large sample, yes.

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1 Q Right. And we're dealing with -- in
2 terms of the Union's claim that we're police
3 officers, we're dealing with an even smaller
4 sample size; is that correct?

5 A The sample size is 1.2 million
6 establishments.

7 Q Correct. But the number of police
8 officers is far smaller than that, correct?

9 A There -- there are about 700,000 police
10 officers nationwide.

11 Q Okay. Well, we'll get there. The
12 question is -- the private sector area -- I'll
13 just get there in a second.

14 On the third bullet point, it's correct
15 that you can find the OES data not just by sector
16 and industry, but also by locality; is that
17 correct?

18 A Yes, you can. It has some very
19 detailed locality data.

20 Q Okay. Let's go on to Slide No. 7. The
21 data we have here is national data. It's not
22 broken out by locality; is that correct?

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1 A That's national data, correct.

2 Q So the locality data -- the locality
3 data for the metropolitan areas in which the
4 Postal Police work would all be -- are all going
5 to be individually probably higher than what --
6 the mean that's been chosen here; is that right?

7 A Well, I -- I don't know. I mean, you
8 say probably. I don't know without looking at
9 it.

10 Q Okay. But the only data that's been
11 given here is mean national data?

12 A Mean national data, correct.

13 Q Okay. And my question about the small
14 sample size was pertaining to the -- what's
15 listed here as the private sector police of whom
16 the OES found only 4,800 across the country; is
17 that right?

18 A Well, you say small sample size. The
19 sample size is the number of establishments that
20 were surveyed. It's very, very large. It's the
21 largest sample size of any survey that I'm aware
22 of, not even close. 1.2 million is the sample

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1 size. What you're talking about is the number of
2 employees that were identified through that very
3 large sample size of 1.2 million establishments.
4 The number of private sector in postal -- excuse
5 me -- police and sheriff's patrol officers is
6 quite small, 4,880, but you're able to estimate
7 that with a high degree of -- of significance
8 because of the very large sample size. So these
9 are statistically significant.

10 And then the OES does publish the --
11 the relative error in their estimates. They're
12 very low because of the very large sample size
13 that's used.

14 Q Okay.

15 A So the number of employees that are
16 identified, that's not the sample size. The
17 sample size is 1.2 million individual surveys.

18 Q I'm not here to quibble about the
19 economic terms. What I'm saying is, we're
20 dealing here only -- 62 percent of work -- of
21 workplaces were -- were -- 60 is -- purports to
22 get coverage of 62 percent of --

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1 A The American workforce.

2 Q The American workforce, correct. But
3 out of that, it found -- out of that 62 percent,
4 only 4,880 private sector employees. That's
5 my -- that's my point I'm driving at.

6 A And that's correct.

7 Q Because the post office has not offered
8 any individual workplaces and actual salaries of
9 any particular workers to compare the Postal
10 Police to; is that correct?

11 A Yeah. And the Postal Service -- that's
12 typical. The private sector comparability in
13 the -- in the statute doesn't say comparability
14 to firms, you know. It is private sector
15 comparability in general. So the Postal Service
16 looks at an occupation not for any particular
17 firm, but -- but across all firms and the average
18 salary for those. So this is consistent with the
19 way the Postal Service typically looks at -- at
20 private sector comparability.

21 Q Okay. Well, one of my other questions
22 about this was -- you testified yesterday that

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1 fully 100 percent of the coverage was
2 universities and hospitals, correct?

3 A Yes.

4 Q But --

5 A Private sector universities --

6 Q Correct.

7 A -- and hospitals.

8 Q But there was no discussion of rail,
9 which we haven't -- we've only had the evidence
10 from Amtrak, but there's -- other private rail
11 companies also have police forces, don't they?

12 A I'm not aware of that. And if they --
13 you know, Amtrak, I'm not sure how they're
14 classified by OES. It could very well be that
15 they are classified as public sector. I don't
16 know.

17 Q Okay. But you -- you would agree that
18 no rail -- none of the rail companies are covered
19 by this number, then?

20 A No. All in universities and hospitals.

21 Q Okay. And this number, also, is not
22 broken down by locality, although that number

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1 could be obtained; is that right?

2 A Yes, it could be obtained, but, no,
3 it's not broken down by locality. It's a
4 national number.

5 Q Right. And the other thing about this
6 mean data here -- we're still on Slide 7 -- the
7 mean is across age groups; is that right?

8 A The mean is the average salary across
9 all workers within that occupation.

10 Q Correct.

11 A Yes.

12 Q So from the most junior to the most
13 senior?

14 A All workers, yes.

15 Q Correct. And I don't know if it's
16 still up there, but -- is Union Exhibit 101 up
17 there? This is a chart we received from the post
18 office.

19 ARBITRATOR DUFEK: Where would we find
20 that?

21 MR. STEPHENS: There was one that was
22 distributed yesterday.

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1 THE WITNESS: Give me a chance to find
2 it here.

3 MS. GONSALVES: It's this one.

4 THE WITNESS: This only goes up to 65.

5 MR. STEPHENS: Okay.

6 ARBITRATOR DUFEK: Yeah, I've got it
7 right here.

8 THE WITNESS: This is all mine. Okay.

9 MR. STEPHENS: If you can't find it, I
10 can just give him this copy.

11 THE WITNESS: I know what you're
12 referring to, so --

13 MR. STEPHENS: Okay.

14 THE WITNESS: -- if you just hand it to
15 me.

16 ARBITRATOR BJORK: Arlus --

17 MR. STEPHENS: Yeah.

18 THE WITNESS: Okay.

19 BY MR. STEPHENS

20 Q Now, when you're comparing to the PPO
21 average salary of 53,000, isn't it correct that
22 almost all the PPOs are at the very top step?

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1 A A high proportion of them are.

2 Q Well, it is fair to say that, in
3 Atlanta, 100 percent of them are?

4 A Yes.

5 Q 14 out of 14?

6 A Uh-huh.

7 Q And in Boston, 12 out of 13?

8 A It looks like 13 out of 14.

9 Q 13 out of 14. I'm sorry. And in
10 Chicago, 18 out of 19?

11 A Yes.

12 Q And in St. Louis, 11 out of 13?

13 A Uh-huh.

14 Q And so on, including, in New York, 120
15 out of the 145 are all at the top step?

16 A That's what this shows, yes.

17 Q And it's much the same for the other
18 ones. So when you're comparing the -- the
19 averages, if you're comparing to a national
20 average, it would be your guess, would it not,
21 that the national average for postal -- for
22 patrol officers is not going to be as skewed

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1 toward the top end of the scale as it is for
2 Postal Police Officers?

3 A I have no way of knowing that. I don't
4 know what the distribution of private sector
5 police officers are. I have no idea.

6 Q But if it's --

7 A And it's unknowable, really, without
8 looking at --

9 Q So it's --

10 A -- information that we don't have
11 available.

12 Q So that's a limitation of this --

13 A This --

14 Q -- comparison, then, correct?

15 A Well, limitation -- it is what it is.

16 It's the distribution -- you know, the
17 distribution is what the distribution is. I
18 don't know how much different it is than the PPOA
19 distribution.

20 Q It's fair to say that probably not
21 every police force has 384 -- is not 86 percent
22 at the top step?

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1 A I have no way of knowing -- no way of
2 knowing that.

3 Q You don't know that?

4 A I don't know that.

5 Q Okay. If I can -- if we can move on
6 just a couple of slides to -- well, actually, why
7 don't we go to Slide 8 for a moment?

8 A Okay.

9 Q We're at Slide 8. So this suggests
10 that although the mean for private sector police
11 is 52,000, there's actually quite a range, going
12 up to 74,940.

13 So if I understand your testimony, it's
14 impossible to know what the age distribution is
15 among the officers who make up this private
16 sector component; is that right?

17 A Yes. There's no information on -- on
18 the age distribution in the OES.

19 Q Okay. So it could be that some of
20 these private sector police forces pay all their
21 workers, notwithstanding their age, a very high
22 salary, or it could be that they actually -- the

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1 range varies, and as one grows with seniority,
2 they approach the 90th percentile in terms of
3 salary? It's impossible to know that, correct?

4 A Is there a question?

5 Q It's mostly a point, but the question
6 is whether it's correct.

7 A What's correct?

8 Q Whether that's true, that it's
9 impossible --

10 A What's true?

11 Q It's impossible --

12 A I guess I don't know --

13 Q -- to know from -- from this data?

14 A It -- OES has no information whatsoever
15 about the age distribution of the employees
16 involved.

17 Q Okay. Take a second to go to slide
18 number -- Slide No. 11. So my question here -- I
19 guess first -- my first question is -- and I
20 think this is repeating what you said earlier,
21 but what -- what you've taken for this slide to
22 show the panel is national data; is that right?

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1 A It's national data, yes.

2 Q And again, to reiterate, it's not
3 broken out by level of seniority. It's just a
4 mean; is that right? The age of the workforce,
5 the -- the length of time -- length of service in
6 a particular police force is not separately
7 measured?

8 A Tenure and age of -- of the workforce
9 is not part of the National Compensation Survey.

10 Q Okay. Now, we went back and dug a
11 little bit into this -- into this data, and are
12 you aware that there -- for example, in --
13 there's a -- let me step back for a moment.

14 Just by way of example on -- looking at
15 Union Exhibit 101, is it correct to say there's a
16 fair number of PPOs employed in Los Angeles, 24,
17 and in San Francisco and Oakland, 32; is that
18 right?

19 A Yes.

20 Q There's far more employed there than
21 there's employed in Atlanta or Memphis, for
22 example, right?

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1 A Yes.

2 Q And were you aware that in San
3 Francisco and Los Angeles, based on this OES
4 data, there's not a single Level 5 or a single
5 Level 6 officer in either of those locations?

6 A In the NCS data?

7 Q This data, correct.

8 A NCS. You said OES.

9 Q The data --

10 A I was not aware of that, no.

11 Q So, again, that's a possible limitation
12 of using national data for this purpose?

13 A Well, the Postal Service doesn't pay
14 locality pay, so we're interested in the national
15 wage rate. So, no, I don't see that as a
16 limitation.

17 Q But the post office operates -- the
18 post office, of course, delivers mail in every
19 state of the Union, correct?

20 A They do.

21 Q Fargo, North Dakota, Minot, North
22 Dakota, just as it does in San Francisco or Los

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1 Angeles, correct?

2 A Correct.

3 Q But it doesn't employ Postal Police
4 Officers in all those locations, does it?

5 A Correct.

6 Q Okay. Let me turn you to Slide No. 12
7 for a second, please. Now, I believe you
8 testified that the -- you did not believe that
9 the Service Contract Act is a minimum wage.

10 Is that your testimony?

11 A It doesn't represent a minimum wage in
12 the terms of -- it's a minimum wage that -- that
13 the contractor has to pay to its employees, but
14 that -- that wage level itself is not based on
15 any sort of minimum wage. It's the prevailing
16 wage, which is the central tendency, the mean or
17 the median of workers in that occupation in that
18 particular locality.

19 Q Right.

20 A So in the -- in the sense -- it's not a
21 minimum wage that -- you know, it doesn't
22 represent the lowest wage that can be paid to

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1 those workers in that -- that locality. It
2 represents the mean or median wage of workers
3 within that occupation in that locality.

4 Q Well, the minimum wage is \$8.65 an hour
5 or whatever it is; is that right?

6 A It depends on where -- different
7 localities have different minimum wages, yes.

8 Q But if the post office wanted to hire
9 police officers from a private firm, it would
10 have to pay the Service Contract Act minimum
11 wage, correct, or it -- better said, the
12 contractors it hired would have to pay those
13 police officers the Service Contract Act wage,
14 correct?

15 A And -- and the Postal Service does
16 employ the ABM security guards and -- as -- as
17 under -- and it has to pay at least the Service
18 Contract Act wages for those people.

19 Q Right. And then pays ABM a profit --
20 profit amount on top of that so that ABM can make
21 money off of the deal, correct?

22 A Sure.

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1 Q So -- but going back to the minimum
2 wage, if -- if -- there's been discussion about
3 the post office contracting out all of the police
4 officer functions, and if it were to do so, it
5 would -- it would have to employ contractors who
6 would have to pay at least the service contract
7 minimum, correct?

8 A Yes.

9 Q Okay. Now, one question -- one real
10 quick on the fringe benefits.

11 It's correct, isn't it, that the
12 Department of Labor does not actually break out a
13 separate fringe benefit for every classification?

14 A It does not. It used to. It now
15 employs a national -- a unitary fringe benefit
16 rate that's applied to all occupations.

17 Q Every occupation everywhere in the
18 country, correct?

19 A (Nodding.)

20 Q So custodians in Minot, North Dakota
21 get the same fringe benefit as a police officer
22 in New York would get, correct?

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1 A Correct.

2 Q So let me -- let's turn to Slide 15, if
3 we could. Now, looking just at the wages for
4 Police I, how did you get the -- the \$27.60 rate
5 for PPOs?

6 A That was on -- I'm looking for the
7 exhibit. I think it's Exhibit No. 5, Tab No. 5.

8 Q Okay. Now, you were present for
9 Professor Belman's testimony, correct?

10 A I was, yeah.

11 Q And when Professor Belman did his
12 exhibit, he did what he called a weighted
13 average; isn't that right?

14 A He did a weighted average, correct.

15 Q And under that weighted average, he
16 deduced that the -- the average annual service
17 contract wage that would be -- the post office
18 would be required to pay, assuming the same
19 distribution of workers today, would be \$29.45 an
20 hour; is that correct?

21 A I -- I don't have it in front of me,
22 but that sounds about right.

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1 Q Okay. But the number you come up with
2 is less than that. First of all, it's \$26 --
3 before we get to the -- the shift differential,
4 it's 26.88, correct?

5 A Right. And that represents an average
6 across all those localities.

7 Q Right. So -- but most of the PPOs, in
8 fact, are in New York --

9 A A very --

10 Q -- correct?

11 A -- large number of them are in New
12 York, yes.

13 Q In fact, it's correct that 100 -- a
14 full third of the workforce is New York; is that
15 right?

16 A That sounds about right.

17 Q And New York's rate is \$32?

18 A Uh-huh.

19 Q Which is about \$14 more an hour than
20 New Orleans, right? Based on your --

21 A Yes.

22 Q -- Exhibit 5.

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1 A Uh-huh.

2 Q But for the purpose of this analysis,
3 you've given them exactly the same weight?

4 A Right.

5 Q How does that -- how is that
6 illustrative of what -- of the Service Contract
7 Act minimum?

8 A It's -- it represents the average
9 weight across the locations where PPOs are -- are
10 employed.

11 Q But if the post office --

12 A Dr. Belman chose to use a weighted
13 average. I -- I used a simple average. There's
14 no correct methodological way, and I -- a simple
15 average across the -- the wage -- the localities
16 where they work is -- is the correct way to do it
17 in my opinion.

18 Q Well, it does help to reduce the number
19 significantly; is that right?

20 A I'm not sure how significant it is,
21 but --

22 Q Well, let's --

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1 A -- yeah, it does reduce --

2 Q Let's go through the -- let's go
3 through where the low numbers are.

4 \$19 dollars in Atlanta, correct?

5 A Yes.

6 Q And there's 14 PPOs in Atlanta, right?

7 A Uh-huh.

8 Q And then Memphis is a low one, I think.
9 Memphis is 21, and there's 11 PPOs in Atlanta?

10 A Fourteen.

11 Q I'm counting 11 on my sheet. Maybe

12 I'm --

13 A In Atlanta?

14 Q No. In --

15 A Memphis is --

16 Q 14 in Atlanta and 11 in Memphis.

17 A That's correct.

18 Q And -- but in San Francisco, it's \$42,
19 which is almost -- well over twice what -- what
20 Atlanta is, but there's 32 in San Francisco.

21 I mean, if the post office were to
22 contract out the police functions, it would have

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1 to pay the police officers -- it would have to
2 build into the contract enough money to pay the
3 police officers the amount of money that Dr.
4 Belman testified was the rate, not this number,
5 correct?

6 A But you're assuming that the -- the
7 work that the Postal Service would be contracting
8 for would be classified as Police I. We don't
9 think it is.

10 Q Oh, I understand. No, I --

11 A We think it's Guard II.

12 Q Oh, I understand. I understand the
13 position. I'm just -- my -- my question is only
14 about this chart for now.

15 A If -- if -- if the Postal Service were
16 to contract out in those locations for Police
17 Officer I positions that we don't believe
18 currently exist, then it would pay the Service
19 Contract Act wage you see there.

20 Q Right. It would pay the service
21 contract rates on Dr. Belman's or on this one?

22 A It depends on how many people we

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1 employed. It's --

2 Q So if the choice were made to employ
3 the same -- the same number in Atlanta, but to
4 eliminate all of the New York, then, obviously,
5 that would drive down the cost, right?

6 A It's -- there -- there are lot of
7 factors that would go into it. I -- it's hard to
8 speculate how that would turn out.

9 Q Now, I think going back to the -- the
10 PowerPoint for a moment, it's correct, under the
11 Service Contract Act, that it's -- a contractor
12 cannot excuse failure to pay the minimum wage by
13 borrowing, say, from maybe extra benefits it may
14 pay the worker, correct?

15 ARBITRATOR OLDHAM: Do you mean
16 prevailing wage?

17 MR. STEPHENS: The prevailing wage,
18 correct.

19 THE WITNESS: The prevailing wage has
20 to be paid, yes. And then the benefits can be
21 given either as an additional cash payment or
22 benefits in kind, health benefits, pension

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1 benefits.

2 BY MR. STEPHENS

3 Q But you can't -- an employer cannot
4 excuse compliance with failure to pay the minimum
5 wage, the minimum wage set by the wage survey --

6 A Correct.

7 Q -- by pointing to the fact that it
8 pays the --

9 A Well, they can't pay, for example -- if
10 the wage is \$25 an hour and the benefits are \$4
11 an hour and the total is \$29, the Postal
12 Service -- I mean, the employer cannot pay, say,
13 \$5 an hour in benefits in kind and then reduce
14 the wage, no.

15 Q Right.

16 A They have to pay the wage.

17 Q Correct. That's the point I wanted to
18 make. So let's go to Slide No. 16.

19 Now, there was a lot of discussion
20 yesterday about quit rates. And referring you
21 back again to Union Exhibit 101 -- and I believe
22 it also is indicative of some testimony you gave

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1 yesterday -- most of the PPO workforce is --
2 has -- is in the -- is -- is looking at
3 retirement; is that correct?

4 A We have -- I don't know what the
5 average age is, but -- but, you know, I would say
6 the average age of PPOs is somewhere in the early
7 50s. So I guess they -- you could say they are
8 approaching -- they're closer to the end of the
9 career than they are to the beginning of their
10 career.

11 Q And is it correct that under the --
12 under either FERS or SERS, there's incentive to
13 remain at one's job, because if you leave before
14 you hit the -- your early retirement age, you
15 have to wait longer to get your accrued benefit;
16 is that right?

17 A Yeah. And that would explain the
18 voluntary quits, the resignations from the Postal
19 Service, but what it doesn't explain is -- is
20 the -- the -- the small number of PPOs that
21 transfer to other agencies. If the PPO transfers
22 to another federal agency, benefits-wise, it's

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1 seamless. They have no impact whatsoever on
2 their retirement. They have no impact whatsoever
3 on the benefits they receive. They're in the
4 same health plan. Their -- their leave balance
5 is transferred over, sick leave and annual leave.
6 They don't lose any credit in terms of leave
7 accruals. So it's a seamless transfer, so that
8 doesn't apply to transfers to other agencies.
9 And that's the other element of the quit rate.

10 Q But isn't it correct, actually, that --
11 and it's not reflected in the numbers that we've
12 seen here -- but that the quit rate in the years
13 after 9/11, the early parts of the 2000s, the
14 level of -- the quit rate was so high it became a
15 cause for concern with the Inspection Service
16 management, correct?

17 A The quit rate in all of federal law
18 enforcement was a cause for concern after 2001.
19 In 2004, the OPM actually commissioned and
20 studied -- did a study on this, and it was a
21 report to Congress. And it was dealing with that
22 very issue, that since 2001, there was a lot of

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1 upheaval and turmoil among all law enforcement
2 officers within the federal sector and -- and
3 they were looking at ways to address that.

4 Now, I've looked -- they have an
5 appendix in -- in that report that has nothing
6 but information on quit rates by -- by grade
7 level, by agency and -- and the Postal Police
8 quit rates fall within the range of what we were
9 seeing with the federal -- other federal
10 agencies. So, no, I wouldn't say that it was
11 unusual -- unusually high.

12 It was, you know, something --
13 something that occurred after 2001 with the
14 creation of the Department of Homeland Security,
15 the renewed emphasis or increased emphasis on --
16 on security, the TSA, the start-up of the TSA,
17 the Air Marshals program. There was just a lot
18 of -- a lot of change, a lot of upheaval, and,
19 you know, that was reflected in -- in transfers
20 and quit rates across all federal agencies, not
21 just the Postal Service. So, no, I wouldn't say
22 it was unusual.

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1 Q It was -- and I think you made the
2 point that I was hoping you'd make, that there
3 was actually quite a lot and it was the same as
4 all other agencies?

5 A Right. And that's since settled down.

6 Q Oh, it has, because if you --

7 A Considerably.

8 Q -- look at the -- Slide 17, the numbers
9 we see here are mostly Great Recession numbers;
10 isn't that correct?

11 A Well, they're numbers from 2008 since
12 the last contract, and -- and over that period of
13 time, yes, we had a financial crisis, the
14 recession.

15 Q Not -- not much hiring going on for --
16 even for police officers; is that correct?

17 A Certainly not by the Postal Service. I
18 can't speak to other agencies or other
19 jurisdictions.

20 Q Okay. So that's -- but that's the
21 numbers that the panel has on -- on the quit
22 rates are mostly Great Recession numbers?

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1 A Right. And I think that's why it's
2 important to reference those to -- to -- to other
3 quit rates, and that's why I included the federal
4 sector on the next slide, just to give a point of
5 reference.

6 And the federal sector isn't normally
7 what you would think of when you, you know, think
8 of large numbers of people leaving because
9 they're dissatisfied with the pay and benefits.
10 But even there, the quit rates over the same
11 period of time are -- are multiples higher than
12 they are for Postal Police Officers.

13 Q Is it fair to say on Slide 18 that the
14 Postal Police Officer quit rate is far higher
15 than any other postal unit measured here?

16 A I think far higher would be a stretch,
17 but they are slightly higher. Nonetheless,
18 they're all incredibly small.

19 Q Just another point that -- question,
20 and I -- I'm going to make a point.

21 But on the private sector and federal
22 sector JOLTS data, this is across professions and

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1 is not limited to police officers, correct?

2 A That's correct.

3 Q Now, going back to Slide 16 for a
4 moment and referring you back to Union 101, the
5 flip side of quit rates data is -- is hire data,
6 correct?

7 A No, I wouldn't say that's the flip side
8 of it.

9 Q Well, the question is: Looking at it
10 from a market perspective and assuming --
11 assuming you have -- I mean, the theory behind
12 the use of the quit rate data here, I take it, is
13 one that assumes rational actors in the labor
14 markets are going to move where their skills and
15 wherever will take them, right?

16 A Uh-huh.

17 Q So now we have here -- made the point
18 that we have an aging workforce, but in terms of
19 new hiring, the -- the wages should be
20 competitive to bring people in, correct?

21 A Sure. Not just for Postal Police, but
22 in general, yes.

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1 Q Correct. And you've mentioned -- you
2 testified yesterday that the hiring -- for
3 whatever policy reasons, the Inspection Service
4 has hired PPOs from the other crafts, correct?

5 A And that's been the practice for many
6 years, I understand.

7 Q And you're also aware, of course, that
8 custodians for the post office make more money
9 than police officers?

10 A They absolutely do not make more money
11 than Postal Police Officers --

12 Q Well --

13 A -- at the top step. They just don't.
14 And if you -- they -- it's -- that's just a
15 fallacy. They do not make more money.

16 Q Well, we had testimony from Bill
17 Scarpello. You were present for that, correct?

18 A I was present for that.

19 Q And he, at that point, took -- when he
20 left last year, he took -- ended up, when he
21 became a full-time custodian, it was about a
22 \$200 difference, correct?

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1 A Right.

2 Q And since that time, had the APWU has
3 gotten a -- the percentage and COLAs, correct?

4 A The APWU is under a new collective
5 bargaining agreement. Under that collective
6 bargaining agreement, there was two-year wage
7 freeze. In November of 2012, the APWU received a
8 1 percent general wage increase, and they
9 received COLA increases in 2013, correct --

10 Q And they received again --

11 A -- under the terms of the new
12 agreement.

13 Q And again in 2014, correct?

14 A And in 2014, yes.

15 Q Okay. And are you aware that at
16 locations where the post office has sought to
17 hire new Postal Police Officers, it had a
18 difficult time hiring anyone because people would
19 have to take a pay cut to leave their other
20 postal job to become a police officer?

21 A I -- I am not aware of that at all, and
22 I -- I've got nothing to say on that. I've not

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1 heard that, so --

2 Q Okay.

3 A We just -- we just recruited a class,
4 though. I do know that -- that a class of 20
5 was -- was -- just graduated, because we actually
6 happened to be out at the academy the day they
7 graduated. So, you know, I didn't hear that they
8 had any problem whatsoever recruiting that class.
9 I understand they recruited a new class of 20
10 or -- or so. So I -- I don't know where the idea
11 that we have trouble or are unable to recruit
12 people into PPO jobs comes from. To my
13 understanding, we have not had that problem.

14 Q Okay. And, again, I guess I'll refer
15 you to Slide 21 for a moment. And I think the --
16 the age -- the year distribution here, of
17 course -- I'll just make the same point I made
18 earlier, that had the quit rate data that you
19 used for years going back further than 2010, it
20 would have shown a different number for the PPO
21 quit rate; is that correct?

22 A Well, you know, quit rates do vary

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1 slightly over time, so, yeah, I mean, it's --
2 every year -- you can see here each of those four
3 years is different.

4 Q Right. But these four years are all --
5 these four years for the PPO quit rate are all
6 Great Recession years?

7 A No, they're not. I mean, the recession
8 was in 2008, ended in 2009. The recovery's been
9 slow, but there has been a recovery since then.
10 So I think it's just, you know, factually
11 inaccurate to say it was the Great Recession
12 in -- that's continuing to this day.

13 Q I thought that was Mr. Whiteman's
14 testimony.

15 A Well, the Great Recession was in 2008
16 and 2009, yes, but the -- we're -- since then,
17 there -- there's been a recovery, so...

18 Q Okay.

19 A And I'd like to point out here that in
20 2000 and 2001, we were also in -- in a --
21 actually in a recession at that period of time,
22 so...

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1 Q It was a stock market -- the stock
2 market crisis, though.

3 A Recession has a very specific
4 definition, and -- and there was technically a
5 recession in 2000 and 2001 by that definition.
6 There was not in 2010 through 2013.

7 Q Okay. Okay. Well, I'll just -- I'll
8 just -- I think we can maybe -- if we disagree
9 about the definition of recession, perhaps we can
10 agree that the unemployment rate was different
11 during these time periods?

12 A Sure. We can agree on that.

13 Q Okay. And on Slide 23, I had a
14 question about the -- the -- the box on the
15 right, the other bargaining.

16 And I believe you said -- I read your
17 testimony about -- I can't remember what the
18 promotion was, but I know the lateral was --
19 considered lateral positions being like an
20 equivalent position in another craft; is that
21 right?

22 A Yes. Yes.

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1 Q And for the Letter Carriers, that was a
2 city carrier position; is that right?

3 A City Carrier Grade 1 position, yes.

4 Q And how about -- what were the lower
5 level?

6 A Lower level are -- are custodians and a
7 Mail Handler Grade 4.

8 Q Okay. The were a number of people who
9 left, at least nine of them, to become
10 custodians?

11 A Right. And many of those took pay cuts
12 to do so.

13 Q Let me go ahead and move up to Slide
14 27. And we have not had our own witness testify
15 about bargaining history, and we had hoped to
16 have Jim Sauber from the Letter Carriers, but he
17 was unable to -- as you know from the -- because
18 of the markup of the Senate bill.

19 But during the 2000 -- the last
20 interest arbitration, the Letter Carriers'
21 attorney, Keith Secular, presented an opening
22 brief to the panel that had an alternative view

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1 of the bargaining history; is that fair to say?

2 A I was there. Yes.

3 MR. STEPHENS: Okay. I'd like to
4 introduce -- just since we don't have a witness
5 on this, to introduce for the panel's benefit
6 the -- that brief, which, in the background
7 section, contains an alternate view of bargaining
8 history at the post office.

9 BY MR. STEPHENS

10 Q Is it correct to say that the -- not --
11 the other postal unions don't necessarily agree
12 with the facts as -- the conclusions as laid out
13 in your testimony?

14 A Which conclusions? I guess I'm not --

15 Q Well, the conclusion that every
16 arbitrator has found a wage premium, for example,
17 by postal employees.

18 A I don't think I said that every
19 arbitrator's found a wage premium.

20 Q Okay.

21 A I said that arbitrators have
22 consistently -- many arbitrators have found the

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1 existence of a wage premium.

2 Q Okay.

3 MS. GONSALVES: And, typically, I would
4 make an objection here about relevance and all
5 that sort of stuff, but I -- the panel can give
6 it whatever weight it believes is due.

7 MR. STEPHENS: And I'm offering it
8 largely because it's, I think, very well written,
9 and it -- it does give an alternate view of
10 background that the -- because of the inability
11 to have our own witness here, we were unable to
12 provide that.

13 MS. GONSALVES: I'll just proffer for
14 the record that the Postal Service had its own
15 presentations in each of these cases. We
16 submitted our own briefs and appendices on this
17 issue, and I'm not going to burden the panel with
18 copies of all the Postal Service's briefs and the
19 transcripts from the proceedings, but it is what
20 it is, unless the panel wants it.

21 ARBITRATOR DUFEK: Not me.

22 THE WITNESS: I've suffered through

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1 this already.

2 BY MR. STEPHENS

3 Q I'm not going to go through all -- all
4 of these in detail. Is it fair to say you've
5 selected from these opinions the points that are
6 helpful to the post office's case in -- in this
7 proceeding?

8 A I think I've characterized accurately
9 the -- the message that arbitrator was conveying.

10 Q Well, let's go -- let's go through a
11 couple of them.

12 A Okay.

13 Q And let's start off with David Vaughn
14 from 1996 in Slide 34. And this is Tab 12 in --

15 MS. GONSALVES: Volume 3.

16 MR. STEPHENS: Volume 3, Tab 12. And
17 I'm going to be looking at page 11, Arbitrator
18 Vaughn's decision.

19 ARBITRATOR BJORK: Page 11?

20 MR. STEPHENS: Yes.

21 ARBITRATOR DUFEK: Arlus, what page did
22 you say?

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1 MR. STEPHENS: Page 11.

2 BY MR. STEPHENS

3 Q And, Joe, I believe you testified
4 yesterday that every arbitrator has rejected
5 explicitly any notion of internal comparability.
6 Is that -- was that your testimony yesterday?

7 A I don't know if I said every
8 arbitrator.

9 Q Okay. I thought you made a point of
10 mentioning --

11 A That it's been --

12 Q -- David Vaughn's --

13 A -- a consistent message -- has been a
14 consistent message across arbitrations.

15 Q But you cited Vaughn as -- as one of
16 the arbitrators who supported that message; is
17 that correct?

18 A I may have. I'd have to look at the
19 transcript.

20 Q Well, isn't it correct that Arbitrator
21 Vaughn actually rejected the post office's
22 argument on this point?

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1 A Rejected what argument? The internal
2 equity should not be considered?

3 Q Correct. Just -- let's just read it
4 into the -- let's just read it. And I'm -- this
5 is the -- the -- the first full paragraph. If I
6 can direct you to the third sentence, and if you
7 could just read that into the record.

8 A Okay. Just one moment here. The third
9 sentence in -- in what -- where?

10 Q On --

11 A Page 11?

12 Q Yeah. The paragraph on page 11.

13 A Okay. The first paragraph. Okay.
14 Third sentence: The Postal Service argues that
15 the external comparability directed by the act is
16 the exclusive standard which PRA interest
17 arbitrators may consider. I am not persuaded.

18 Q And does it go on to explain why he
19 thinks internal comparability actually could be
20 appropriate? I mean, is it fair to say that --
21 if you can just read into the record the last
22 sentence in that paragraph.

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1 A On page 12?

2 Q Yes, sir.

3 A Thus, I conclude that the panel is not
4 precluded from considering internal equity as a
5 standard in determining the proper resolution of
6 the debate -- dispute.

7 Q Is it fair to say that Arbitrator
8 Vaughn, then, is not someone who supports the
9 theory that the post office posited yesterday?

10 A Well, you know, it depends on how you
11 look at how they consider internal equity. I
12 mean, I -- I was referring to Vaughn to the --
13 the Mail Handlers' demand for a catch-up for the
14 APWU, that their wages ought to be set equivalent
15 to that of the APWU, that there was some sort of
16 internal equity that demanded that. And he did
17 reject that. He did reject the catch-up, and
18 that's what I was referring to.

19 Q So let's just think -- let's just
20 then -- maybe we should go back and figure out
21 what exactly the testimony was from yesterday,
22 what the proper testimony is.

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1 It's correct, then, that Arbitrator
2 Fleischli is not at all the only arbitrator who
3 thinks internal comparability is appropriate for
4 interest arbitrations?

5 A Well, you know, I think what Fleischli
6 did was different. And -- and -- and maybe I'm
7 not conveying this the proper way, but internal
8 equity where a union demands that they be paid
9 equivalent or -- or that their wages be set based
10 on the wages of other bargaining unit employees,
11 strict comparability, that the wages ought to be
12 equal, that's what the Mail Handlers were arguing
13 in front of Vaughn, that they were entitled to
14 catch up to the wages that they had lost in
15 previous agreements to those of the APWU.

16 Now, did -- does that mean that
17 arbitrations -- arbitrators don't look at --
18 at -- at relative standing among the bargaining
19 units in fashioning their award? Maybe. But --
20 but what I was saying was that, you know, demand
21 for a catch-up and for strict pay comparability
22 with another bargaining unit was rejected by

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1 Arbitrator Vaughn.

2 Q Well, on that point, what was the
3 purpose of your presentation yesterday in all
4 these other arbitration decisions?

5 A It was to provide some context to --
6 to -- for this proceeding in terms of the Union's
7 demand for comparability, internal
8 comparability --

9 Q Well --

10 A -- and --

11 Q But if the argument is that these --

12 MS. GONSALVES: Wait, wait.

13 MR. STEPHENS: I'm sorry.

14 MS. GONSALVES: I don't think the
15 witness was finished. And you've done it a few
16 times, and I haven't said anything. But I'd like
17 you to just give --

18 MR. STEPHENS: Sure.

19 MS. GONSALVES: -- him a chance to
20 finish his answer before you ask the next
21 question.

22 THE WITNESS: So it was to provide some

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1 context with interest arbitration history on how
2 previous arbitration panels have dealt with the
3 issues that are before this panel.

4 BY MR. STEPHENS

5 Q But doesn't that undercut your argument
6 that comparability is actually something that is
7 an irrelevant concern here?

8 A That -- I'm not sure I'm -- I don't
9 understand the question. Could you repeat that?

10 Q On the one hand, you were arguing
11 that -- that comparability is irrelevant, but on
12 the other hand, we spent an hour-and-a-half or so
13 talking about the bargaining history of other
14 unions at the post office, and the -- the revised
15 proposal that the post office is offering here is
16 that the panel should award what the other
17 arbitrators awarded.

18 A Those are two different things. I
19 mean, internal comparability is city letter -- or
20 excuse me -- Postal Police Officers ought to be
21 paid the same as city letter carriers or that --
22 that -- you know, in this case, Mail Handlers

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1 ought to be paid the same as APWU. That's strict
2 pay comparability. That's been rejected by many
3 arbitrators.

4 Q Let's go to another decision that was
5 cited yesterday on this point, and that was the
6 Collins award from Slide No. 37.

7 MS. GONSALVES: I object to the
8 characterization of this award being cited as on
9 this point.

10 BY MR. STEPHENS

11 Q Why did you cite the Collins award
12 yesterday? What was the purpose of discussing
13 the Collins award?

14 A It was -- it followed Fleischli. He --
15 he -- Arbitrator Collins, in that award -- the
16 Union was arguing for -- for upgrade -- an
17 upgrade, and -- and based on the Fleischli award,
18 the Union argued that -- that -- that ITAS or ISC
19 bargaining unit employees were entitled to -- to
20 pay increases on the basis of internal equity,
21 and he rejected them.

22 Q Well, if I can direct you to -- this is

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1 Tab No. 14. And page 8 of the -- of the Collins
2 award. And you see the paragraph in the middle
3 of the page beginning with "the APWU contends"?

4 A Uh-huh.

5 Q If I can direct you down one, two,
6 three -- I think it's the fourth sentence,
7 beginning with the word "of course."

8 A All right.

9 Q And if you can read that into the
10 record, please.

11 A Of course, if Postal Service wages and
12 benefits fell absolutely below the wages and
13 benefits of private sector employees, the Postal
14 Reorganization -- Reorganization Act would
15 require some correction. However, that is not
16 the situation here. There is considerable
17 evidence in the record on the issue of whether
18 the ISC employees enjoy a substantial wage and
19 benefit differential with -- with respect to
20 their private sector counterparts. Whether that
21 differential is anywhere near as great as the 14
22 percent the Service claims is very problematical.

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1 However, the chairman is convinced that the ISC
2 employees generally enjoy some differential and
3 that even if the employees in computer
4 programming do not, there is no persuasive
5 evidence if their wages and benefits are less
6 than their private sector programs.

7 Q Okay. Let's go to the next slide,
8 Slide No. 38. I believe -- there's been a fair
9 number -- fair amount of discussion of this -- of
10 this award, and I want -- I'd like to ask you a
11 couple of questions about it.

12 First of all, you -- you referenced
13 yesterday the -- Professor Belman's testimony
14 about upgrades, and I believe you suggested he
15 was incorrect in saying that there was -- that
16 the Goldberg panel awarded upgrades?

17 A No, I didn't say that. Professor
18 Belman indicated that Arbitrator Goldberg issued
19 a wage package for the entire bargaining unit
20 that didn't call it an upgrade, but included
21 what -- what was essentially an upgrade. That --
22 that's just factually incorrect. There were some

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1 upgrades awarded by Arbitrator Goldberg, and I
2 think I mentioned this yesterday, some skilled
3 programmers -- I mean, skilled maintenance
4 positions, tractor-trailer drivers, electronic
5 technicians, others who whose wages were at
6 market, and they were -- they were given an
7 upgrade based on comparability grounds and
8 external comparability basis.

9 There was also an upgrade that was
10 given to Grade 4, a grade -- it was a settlement
11 of a dispute, a long-standing dispute over the
12 classification of mail processors. And I think
13 we can find --

14 Q Yes, on page 4 of Tab 15.

15 MS. GONSALVES: This is the main award
16 or the supplemental award?

17 MR. STEPHENS: The main award.

18 THE WITNESS: Yeah. And there he
19 awards that, but I would --

20 BY MR. STEPHENS

21 Q But he -- is it fair to say that he
22 awarded it based on what he claimed -- what he

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1 found were changed expanding duties and
2 responsibilities?

3 A He -- if you'd look at page 14 of the
4 supplemental award -- so go to the back. And --
5 and page 14, where he expands on the --

6 Q Well, I -- my question was pertaining
7 to -- I had a question about page 4 of the main
8 award. And my question was: Is it correct to
9 say that Arbitrator Goldberg awarded a pay
10 upgrade to those two positions based on evidence
11 of expanding duties and responsibilities? Is
12 that a correct statement?

13 A Based on the two Mittenthal national
14 level arbitration awards and certain other
15 evidence dealing with expanding duties and
16 responsibilities, the mail processor and senior
17 mail processor position, the panel has concluded
18 that this contentious matter, which is the
19 subject of hundreds of grievances in the field,
20 should be brought to closure in order to improve
21 the labor relations climate between the parties.

22 And if you go back to page 14 of the

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1 supplemental award, he expands on that, and he
2 makes it clear that this was not -- had nothing
3 to do with expanding duties and responsibilities.
4 It was a settlement of -- he said hundreds there,
5 but it was literally thousands of grievances, and
6 he mentions that at the page -- top of 14.

7 These upgrades were not based on a
8 conclusion that mail processors and senior mail
9 processors are entitled to a one pay level
10 upgrade -- he was very clear about that -- a
11 matter on which the parties are sharply divided
12 and on -- and on which I express no opinion.
13 Rather, it was my judgment that the dispute
14 concerning the appropriate pay level for these
15 employees, which has divided the parties for
16 approximately 20 years and which is the subject
17 of thousands of pending grievances, should be
18 terminated. I --

19 Q So --

20 A -- don't think you can be any more
21 clear than that that --

22 Q So Arbitrator Goldberg did not award an

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1 upgrade based on comparability at all, even
2 private sector comparability?

3 A He settled a dispute.

4 Q Is that permitted under the PRA in
5 the --

6 A This --

7 Q -- post office --

8 A This wasn't the wage package. This
9 wasn't the wage -- this is for a subset of
10 employees in the APWU in one particular
11 occupation where there was a long-standing
12 classification dispute whether they were Grade 4
13 or Grade 5. He settled that dispute.

14 Q But not based on comparability grounds,
15 correct?

16 A This has nothing to do with
17 comparability. The --

18 Q Okay. That's --

19 A -- comparability is in the wage package
20 that he awarded, and in his wage package, he did
21 indicate that Postal Service employees, in
22 general, receive a wage premium, and he awarded

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1 a -- a pay package that reflected that finding.

2 MS. GONSALVES: Arlus, I'm wondering --
3 we're almost an hour into cross. Do you think it
4 might be a good time to take a break or --

5 MR. STEPHENS: If the witness wants
6 one.

7 ARBITRATOR OLDHAM: I think everyone
8 might like one. Let's --

9 THE WITNESS: The witness would like
10 one, yes.

11 MR. STEPHENS: Okay. The witness --

12 ARBITRATOR OLDHAM: Ten minutes.

13 (Brief recess.)

14 ARBITRATOR OLDHAM: Okay. Ready to
15 proceed, please.

16 BY MR. STEPHENS

17 Q I just had one more question for you
18 regarding the Goldberg award.

19 A Yes.

20 Q And that's -- let's see. The
21 supplemental opinion -- again, this is Tab 15.
22 It's a supplemental opinion at page 11.

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1 A Okay.

2 Q Now, is it correct that in that case,
3 the post office made several arguments about its
4 financial condition?

5 A It did, yes.

6 Q And it argued that the -- the long-term
7 and short-term referred to the structural deficit
8 should be factored into -- in the arbitration
9 award; is that right?

10 A That's correct.

11 Q And that Arbitrator Goldberg largely
12 rejected that argument; is that correct?

13 A I don't think I would agree necessarily
14 with that characterization. He did say -- he did
15 not disagree that there was a long-term
16 structural problem facing the Postal Service.
17 What he did say was that for -- for many parts of
18 that problem, it was a congressional issue and
19 not something that an interest arbitrator --
20 interest arbitrator could address.

21 Q Okay. And, again, the central focus of
22 Arbitrator Goldberg's award was comparability; is

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1 that right?

2 A Correct.

3 Q And on page 11, the paragraph beginning
4 under analysis, he says, the Postal
5 Reorganization Act provides for comparable wages
6 and benefits and does not condition that
7 comparability on the long-term financial health
8 of the Postal Service; is that correct?

9 A The PRA is silent on financial
10 condition of the Postal Service.

11 Q Now, there's a bill in Congress,
12 though, that would make the financial status
13 relevant to -- to comparability or relevant to
14 that consideration; is that right?

15 A I don't know if the -- the current bill
16 in Congress includes that. I know it's been
17 discussed.

18 Q Okay.

19 A It's also worth noting that the unions
20 have -- our major unions, at least, have
21 indicated that that is -- that language is
22 unnecessary since arbitrators routinely consider

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1 the financial condition of the Postal Service in
2 its awards. I know that's the official position
3 of the APWU and I believe some of the other
4 larger unions.

5 Q Let me direct you to Slide 40, please.

6 Isn't it correct that at no time during this
7 interest arbitration proceeding before Arbitrator
8 Fishgold did anyone make the argument that
9 1003(c) provided the correct standard for
10 comparability?

11 A I -- you -- please repeat that. I --

12 Q Sure. Let's go back -- you remember
13 discussion about 39 U.S.C. 1003(a), correct?
14 That's the statute providing for private sector
15 comparability, right?

16 A Right. Right.

17 Q And as you recall, the Union's argument
18 is that the correct comparability statute is 39
19 U.S.C. 1003(c); is that correct?

20 A Correct.

21 Q The whole issue about any investigative
22 authority?

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1 A Right.

2 Q Under 18 U.S.C. 3061, correct?

3 A Yes.

4 Q At no time during the 2008 proceeding
5 before Arbitrator Fishgold was that argument ever
6 made; is that correct?

7 A The specific reference to 1003(c) was
8 not made. However, the Union did argue very
9 strenuously that the proper comparison for Postal
10 Police Officers was federal -- were federal
11 sector or public sector police.

12 So, yeah, I mean, did they reference
13 1003(c)? No. But did they say their
14 comparability ought to be to federal police
15 officers? Yes, they did. They made that -- that
16 argument very clear.

17 Q And did they make that argument because
18 they -- because of the dearth of private sector
19 comparables for private sector police?

20 A Well, I don't know what the -- the
21 rationale for why they made the argument was. I
22 know what was made.

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1 Q But there was no legal argument made --
2 I mean, just -- if we can get clarity -- no legal
3 argument was made that 1003(c) provided the
4 correct measure for comparability; is that
5 correct?

6 A I don't recall 1003(c) being mentioned
7 in that proceeding.

8 Q Okay. And just going to Slide 41 for a
9 moment, these were your conclusions; is that
10 right?

11 A Yes. Well, they're what I believe are
12 the precedents that have been established over 35
13 years of interest arbitration history that may be
14 relevant to this panel.

15 Q Well, let's go through them one at a
16 time. On the first bullet point, I believe you
17 said, actually, that not every arbitrator has
18 found a wage premium; is that right?

19 A Not every arbitrator has made a finding
20 in the award of a wage premium, explicitly
21 addressed the wage premium.

22 Q Has any arbitrator ever awarded a pay

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1 cut to any postal employee?

2 A Yes.

3 Q When -- when did that happen?

4 A Three times in this last round of
5 negotiations.

6 Q For new hires?

7 A No. For -- for -- non-career city
8 letter carriers had their wage cut -- wages cut
9 between 27 and 32 percent.

10 Q Non-career employees?

11 A Non-career employees. Future career
12 employees, which you're referring to, will come
13 in at a lower wage, but -- but there were --
14 there were employees that got their wages cut.
15 There are employees on the rolls today that are
16 working for less than they were before the
17 arbitration award.

18 Q Okay. This last round?

19 A Yes.

20 Q The private sector -- on the second
21 bullet point -- one other -- I want to ask a
22 question about an earlier one. One moment,

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1 please. The bullet point regarding private
2 sector comparability mandate applies to PPOs,
3 that just comes from the Fishgold award; is
4 that --

5 A It is -- if you -- there was a very
6 early interest arbitration in 1978 with one of
7 the predecessors to the PPOA. There was no
8 language in there on private sector
9 comparability. Outside of that, the only
10 interest arbitration award we have with the PPOA
11 was the Fishgold report, and, yes, he did -- he
12 did say that private sector comparability applied
13 to PPOs.

14 Q But without anyone making a
15 presentation regarding 39 U.S.C. 1003(c); is that
16 correct?

17 MS. GONSALVES: Asked and answered.

18 BY MR. STEPHENS

19 Q Is that correct?

20 A There was no discussion as far as I
21 know of a 1003(c) argument in the Fishgold
22 proceeding.

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1 Q Now, the last bullet point, internal
2 comparability with other bargaining units is --
3 is not appropriate; is that --

4 A It's --

5 Q Is it fair to say that that's more
6 controversial than -- than the testimony was
7 yesterday?

8 A I -- I -- I don't think so. I think
9 that, you know, many -- many times, unions have
10 asked for catch-up with other bargaining units to
11 have their pay restored to the level received by
12 other bargaining units, and each time that
13 argument has come up, it's been rejected.

14 Q Okay. Let's go to Slide 44. I believe
15 you testified yesterday that this 1991 agreement
16 is where the pay parity was first broken with the
17 APWU and NALC; is that correct?

18 A That's correct.

19 Q And the union officers, instead of a
20 wage increase, just bargained for lump sum
21 payments; is that right?

22 A That's correct.

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1 Q And is it correct that the officers on
2 the bargaining committee were all promoted to
3 sergeant within a year of that negotiation?

4 A I have no idea.

5 Q And that the -- the FPPO is -- was
6 decertified by the membership right after that
7 agreement; is that correct?

8 A Right after they ratified that
9 agreement.

10 Q Okay. And, in fact, the -- the former
11 officers, the post office used them against the
12 Postal Police in -- for -- in the subsequent
13 negotiations; is that -- is that -- are you aware
14 of that?

15 A I've never heard that.

16 Q Okay. Now, Slide 45, the 1994 report,
17 was before Section 1003(c) was even enacted; is
18 that correct?

19 A I believe that -- I -- I don't know. I
20 think it was 1996 we heard testimony.

21 Q Yes, sir.

22 A I don't speak from personal

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1 experience -- personal knowledge, but I think I
2 heard it testified that it was 1996 that that was
3 received.

4 Q And that was after this report; is that
5 correct?

6 A 1994 was before 1996.

7 Q Okay.

8 (Cell phone interruption.)

9 MS. GONSALVES: Please silence all
10 electronic devices.

11 BY MR. STEPHENS

12 Q Now, Slide 46 for a moment.

13 You testified that collective
14 bargaining agreements can be the result of --
15 assuming a perfect market, each side gets its
16 priorities. Is that -- is that a fair summation
17 of your testimony yesterday?

18 A I don't -- I don't think I testified to
19 that, but -- but in a collective bargaining
20 process, yes, it's an agreement. Both sides get
21 some of what they want and some of what they
22 don't want. That's the essence of negotiation.

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1 Q That's assuming a market that does not
2 have inefficiencies in it; is that -- would that
3 be correct to say?

4 A I think an agreement between two
5 parties, they -- they come to some agreement
6 regardless of whether or not there's free and
7 full competition. I don't know what the --

8 Q But there is differing -- when the post
9 office bargains with the Letter Carriers, the
10 Letter Carriers have loads of experts they bring
11 into the proceedings; is that -- is that a
12 correct statement?

13 A Not -- not generally in negotiations.

14 Q No, in --

15 A Negotiations are generally just the --

16 Q But interest arbitrations.

17 A -- parties themselves.

18 Q In interest arbitration.

19 A In interest arbitration, it has been
20 the case that -- that the rural -- that the city
21 letter carriers do bring in experts. That was
22 less so, I think, in this last round of -- this

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1 last interest arbitration. We did have testimony
2 from experts, but -- but I don't think --
3 compared to previous arbitrations, it was
4 relatively limited.

5 Q The Letter Carriers, among other things
6 own a building, their own headquarters building;
7 isn't that correct?

8 A A very nice one, too.

9 Q A very nice one.

10 A Yes.

11 Q Just about a block or two from the
12 Capitol building?

13 A It's got to be worth a fortune.

14 Q So when -- when they approach
15 bargaining, they're able to make presentations in
16 interest arbitration more readily than a smaller
17 union without much resources; is that -- would
18 that be a fair statement to make?

19 MS. GONSALVES: I -- you know, a lot
20 of -- couple questions here. I just -- personal
21 knowledge, relevance, all of these things are
22 floating out there, so --

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1 MR. STEPHENS: I will --

2 MS. GONSALVES: I don't think that this
3 necessarily is the correct witness to be
4 testifying about the relative economic power of
5 various unions.

6 MR. STEPHENS: Well, there's testimony
7 yesterday that assumed an efficient economy in
8 bargaining, where each side gets what it wants
9 and get its own priorities based on -- so my
10 question is relating to --

11 MS. GONSALVES: To tell you the truth,
12 I think that's a mischaracterization of what the
13 testimony yesterday was. I don't think there was
14 testimony on that point.

15 THE WITNESS: I did not testify to
16 that.

17 BY MR. STEPHENS

18 Q I thought you said each side gets it's
19 priorities. For example, the --

20 A I said, over time, the different
21 bargaining priorities of the various unions
22 demerged and --

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1 ARBITRATOR OLDHAM: But --

2 THE WITNESS: -- and those -- those
3 bargaining priorities were different than -- than
4 other units.

5 ARBITRATOR OLDHAM: Let's -- let's try
6 and move forward. I think that's such a basic
7 point that we hardly need to be reminded of it.

8 BY MR. STEPHENS

9 Q Okay. So the point was, in terms of
10 the -- the 1994 agreement, ECI minus one was a --
11 as you testified yesterday, was a proposal to
12 reduce wages over time; is that right?

13 A No, it was not. And I never testified
14 to that.

15 Q I thought --

16 A ECI minus one, as I testified to
17 yesterday, was -- was -- was the embodiment of
18 the moderate restraint doctrine that Clark Kerr
19 came up with in 1984 to address the wage premium
20 that had developed over time.

21 Q Right. His proposal was to slowly
22 reduce -- to slowly reduce --

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1 A The growth.

2 Q -- wages --

3 A The growth.

4 Q -- of the --

5 A The growth. Not to reduce wages, but
6 to reduce the growth rate -- rate of future wages
7 to bring those -- the employees back in line with
8 their counterparts in the private sector.

9 Q Right. So --

10 A It was never -- it was never intended
11 to reduce wages.

12 Q It was to reduce the growth of
13 wages over time --

14 A But those aren't the same thing.

15 Q -- but over time with the -- that
16 the -- whatever alleged wage premium there was
17 would disappear, correct?

18 A That's -- that was the concept, yes.

19 Q So private sector wages would grow at a
20 more rapid rate than would postal wages using the
21 ECI minus one model?

22 A That's correct. And though we got ECI

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1 minus one explicitly in the agreement with the
2 FOP, the other arbitrators at that same point in
3 time were awarding contracts that were less than
4 ECI minus one, explicitly so.

5 Arbitrator Stark found that -- or
6 that -- that wage growth even more modest than
7 that that was found in the Mittenthal award
8 should be awarded. So you saw in the -- in my
9 exhibit yesterday over that '94 contract that the
10 wage growth of the PPOs of ECI minus one far
11 exceeded that of the APWU, and the APWU was the
12 same package as the NALC.

13 Q I'm not going to argue with you about
14 the -- we don't have the resources to -- to -- to
15 question you on -- on all those awards.

16 But I'm -- my point is -- my question
17 to you is: The ECI minus one was a proposal to
18 slowly reduce the growth of PPO wages over time;
19 is that right?

20 A To bring them back in line with private
21 sector counterparts, right.

22 Q And what did the PPO get -- if it was a

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1 matter of bargaining priorities, what did the
2 PPOs get in exchange for that?

3 A I -- I don't know if there's an answer
4 to that question.

5 Q You mentioned the Rural Letter
6 Carriers, for example, at one point, gave up some
7 growth in wages in exchange for job protection,
8 right?

9 A I mean, you can -- you can look at that
10 package and say that, but -- but, you know, the
11 -- the fact that the FOP agreed to it, not only
12 in 1994, but in 1996, 1999 and 2003, suggests
13 that the -- that -- and ratified that in each of
14 those years suggests that there was something of
15 value in that agreement for the -- for the union.

16 I -- I -- you know, to ask me to point
17 out specifically was there a -- a quid quo for
18 the ECI minus one, that we gave them something
19 explicitly, I don't know, but -- but I think the
20 fact that it was negotiated and ratified on four
21 separate occasions suggests that there was
22 something of value in it to the membership.

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1 Q Well, there was a cost to going to
2 arbitration, is there not, at least for -- at
3 least on -- for the PPOs' union; is that correct?

4 A There is a cost to arbitration, yes.

5 Q Right. A financial cost?

6 A Financial cost, yes.

7 Q And under -- let me ask -- let me ask
8 it this way. One second. Just one second, Joe.

9 Let me move on for a moment to -- oh,
10 yeah. Joe, if I could direct you to -- on the --
11 the union binder, and it should be in there.
12 It's Union Exhibit No. 77. There wasn't one of
13 the original exhibits. It was one of the ones
14 Professor Belman testified to.

15 A I don't have a copy of that.

16 MS. GONSALVES: We should have another
17 copy.

18 THE WITNESS: Okay.

19 MS. GONSALVES: I'm not ready yet. I'm
20 sorry.

21 ARBITRATOR OLDHAM: I'm having trouble
22 finding it.

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1 ARBITRATOR BJORK: I have it here.

2 ARBITRATOR OLDHAM: You got it?

3 ARBITRATOR BJORK: Yeah.

4 ARBITRATOR OLDHAM: All right. Thanks.

5 BY MR. STEPHENS

6 Q Okay. My first question about this
7 document, Union Exhibit 77, is -- looking at
8 these salary numbers for PPO and Carrier 1, top
9 step, are those numbers correct, to your
10 knowledge?

11 A I didn't verify them. I haven't -- I
12 don't know.

13 Q Is it correct to say that the pay of
14 PPOs has fallen relative to letter -- city letter
15 carriers in the years since 2008?

16 A Since the years since --

17 Q 2008.

18 A I -- has -- has city carrier wage
19 growth been faster than that of PPOA since 2008?
20 I would say yes. And the reason for that,
21 largely, is the result of the contracts that were
22 negotiated in 2006 with our bargaining units,

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1 including the city letter carriers.

2 Q And those contracts were signed before
3 the 2008 Fishgold award; is that right?

4 A They were, yes. Now, just to -- to
5 expand on that, in the 2006 round of bargaining,
6 the Postal Service again had a goal of reducing
7 unit labor costs and to -- to go after total
8 labor costs, what we were calling total labor
9 costs at the time. And so we had a target for
10 wage growth overall at ECI minus one or labor
11 costs overall of ECI minus one are less with all
12 the four bargaining units.

13 We achieved that without regard to a
14 set wage pattern, and in terms of the -- for
15 example, in the -- in the city letter carrier
16 craft, they got higher wage increases than the
17 other three bargaining units because they also
18 negotiated a large increase in the number of
19 non-career employees that the Postal Service
20 could use. And when you took the sum total of
21 the value of that contract, the higher wage
22 increases that were offset by the large increase

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1 in the non-career workforce produced a total
2 labor cost increase of less than ECI minus one
3 percent, more than ECI minus one percent. It
4 turned out to be about ECI minus 2 percent.

5 So the wage increases were -- the extra
6 wage increases that the NALC negotiated in that
7 round of bargaining were paid for, so to speak,
8 by a large increase in the number of non-career
9 workers.

10 Q Let's go to Slide 51 for a moment.
11 Let's talk about the non-career workforce.

12 The APWU, for example, has a -- has a
13 relatively strict -- the post office does not
14 have as much -- let me phrase it this way: The
15 post office does not have the same right to
16 subcontract work, APWU work, as it does for
17 police officers; is that correct?

18 A The subcontracting language for all of
19 the bargaining units differs in circumstance, so
20 --

21 Q But --

22 A No, they're not identical.

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1 Q -- it's quite broad for the Postal
2 Police; is that right?

3 A It is quite broad for the Postal Police
4 relative to the other bargaining units.

5 Q Okay. And, in fact, the post office
6 had already contracted out quite lot of the
7 Postal Police Officer work beginning in the late
8 '90s; is that right?

9 A Beginning in the late '90s, yes.

10 Q So a lot of the -- for example, the
11 fixed post work, about which there's been such
12 testimony, used to be done by Postal Police
13 Officers, and now it's largely done by unarmed
14 ABM security guards, correct?

15 A Right. And as we've shown, that change
16 took place between 2003 and 2007, largely took
17 place between that period of time.

18 Q Okay. I don't think that's quite
19 accurate, but in any event, it's -- that's not an
20 important point.

21 So, in essence, the post office has
22 already obtained the second tier workforce and

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1 did so without -- by -- without having to
2 undercut the PPO pay?

3 A Well, I -- and I think that's the
4 rationale for our -- our proposals in this round
5 of bargaining. We -- we greatly increased the
6 non-career workforce in each of the other four
7 bargaining units. We're asking for nothing in
8 terms of non-career workforce with the PPOA in --
9 in recognition of the fact that we've largely
10 done that with the ABM workforce.

11 Q And, Joe, if I can refer you to Slide
12 55 for a moment. I guess I want to go back to
13 the idea of internal comparability.

14 Is it correct to say that Arbitrator
15 Fishgold effectively adopted the principles of
16 internal comparability in rendering his award for
17 the Mail Handlers in this last round of
18 negotiations?

19 A No, I wouldn't say that. You know, he
20 referred to the -- to the other awards in -- in
21 setting his award, but it did differ in many
22 significant respects from the other awards. And

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1 that's not unusual, I mean, for arbitrators or
2 negotiations within a round of bargaining to look
3 very similar, and the reason for that is -- is
4 simple. The Postal Service develops a bargaining
5 strategy for the upcoming round of negotiations,
6 very general terms, we need to increase the size
7 of the non-career workforce, we need to reduce
8 unit labor costs, overall growth of labor costs
9 of less than ECI minus one, and -- and then
10 bargains with each of the seven unions in -- in
11 that context.

12 We don't approach negotiations with a
13 blank slate with each -- with each bargaining
14 unit. And so I think you see across bargaining
15 cycles that awards in the various contracts are
16 similar, but not identical. You know, you see
17 that in '84. You see that in '94. You saw that
18 in 2006. You certainly see it so far in 2010.
19 So that is not unusual in the least. And it's
20 not internal comparability in terms of strict
21 internal comparability where mail handlers have
22 to be paid the same as APWU Grade 5.

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1 Q I'd take you to -- just a couple
2 questions regarding Arbitrator Fishgold's
3 decision. First of all, Slide 62. You know, I
4 think you've mentioned it before, but it's
5 correct that the 39 U.S.C. 1003(c) argument was
6 not made in this case; is that right?

7 MS. GONSALVES: Third time.

8 BY MR. STEPHENS

9 Q Okay.

10 A To the best of my knowledge, no.

11 Q And on Slide 63, is it correct that
12 Arbitrator Fishgold made his -- made his
13 conclusion regarding the -- made his conclusion
14 based on the economic presentation given in that
15 case? Is that correct?

16 A He did not indicate in his award what
17 he based or what arguments he found persuasive.
18 I don't know.

19 Q What did -- talking about
20 comparability, what comparison did Arbitrator
21 Fishgold use in making his award in 2008?

22 A What -- what --

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1 Q What was the unit to whom he compared
2 Postal Police --

3 A Well, he -- he -- he actually
4 sidestepped the issue, and he did indicate in his
5 award that comparability was unnecessary or -- or
6 a look at internal comparability in this case was
7 unnecessary.

8 Q Well, I'm talking about comparable --
9 to what group did he compare the Postal Police in
10 rendering his decision?

11 A He did not explicitly say what group he
12 was comparing them to. He did indicate that
13 their -- their duties reflected security work
14 and -- and some duties that looked like police
15 officers, as other panels have found in the past.
16 But he did not come down on one side or the other
17 on that issue.

18 Q Bear with me one second, Joe. If I can
19 take you to Slide No. 67.

20 MR. STEPHENS: It would be 105?

21 ARBITRATOR BJORK: 105.

22 MS. MCKINNON: 105.

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1 MR. STEPHENS: I'm going to apologize.
2 This was an exhibit I created, so blame me for
3 the no three-hole punch. That's not anyone else
4 but me. I apologize in advance for that.

5 MS. GONSALVES: Chris, we have a
6 three-hole punch if you want it.

7 BY MR. STEPHENS

8 Q Now, is it correct that until
9 December 27th of 2013, the post office's economic
10 proposal was a 5 percent wage cut?

11 A The lay-down proposal we had in
12 negotiations was for a 5 percent wage cut.

13 Q Is it correct that that -- that that
14 didn't change until December 27th, when it was
15 changed in the prehearing brief? Is that
16 correct?

17 A I -- I do not know. I mean, there was
18 no lay-down proposal other than the 5 percent
19 wage cut.

20 Q When impasse was declared, it was based
21 on a 5 percent wage cut, correct?

22 A The -- the table that was on -- the

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1 proposal that was on the table at the time was
2 for a 5 percent wage cut, yes.

3 Q Okay. Now, I've handed you -- do you
4 recognize this document?

5 A I do.

6 Q And what is this document?

7 A It is Appendix C to the prehearing
8 brief to the Postal Service.

9 Q And can I direct your attention, I
10 guess, to pages 1 and 2? And is it correct that
11 in this revised proposal we got in December of
12 2013, the post office proposed a wage freeze in
13 year one and year two, a 1 percent increase in
14 year three, a 1.5 percent in year four and a
15 1 percent in year five, plus COLAs? Is that
16 correct?

17 A I -- can you -- repeat the question,
18 please, because I --

19 Q I'm asking: What was the post office's
20 economic proposal in December 2013?

21 A To who? To the Postal Police?

22 Q Well, it's to the panel at that point,

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1 because bargaining was over. So --

2 A Right. If the --

3 Q -- what was the proposal --

4 A For this --

5 Q For this case.

6 A -- was -- was -- was a two-year wage
7 freeze followed by moderate wage increases that
8 approximate -- that approximate the pattern
9 established in -- in the other unions.

10 Q Well, let's be specific, I mean, if we
11 could. At the bottom of page 1 --

12 A Right. And that's a description of
13 what the other unions received.

14 Q Right. And so --

15 A Then, if you turn to page 3 under
16 wages, it's a little more explicit there. The
17 Postal Service proposes a wage moratorium for the
18 first two of the contract, followed by three
19 years of that approximate the wage pattern
20 established by the other bargaining unions in
21 this round of collective bargaining.

22 So at no point was the Postal Service

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1 proposing identical wage packages for the other
2 bargaining units. The pattern we're talking
3 about here is the two-year wage freeze followed
4 by modest general wage increases.

5 Q So --

6 A The word "approximate" was there for a
7 reason, approximate.

8 Q Okay. So your testimony is, then, that
9 the -- the postal -- post office does not
10 actually make its economic proposal until your
11 testimony yesterday?

12 A It was more explicit in my testimony
13 yesterday than it had been up to that point, yes.

14 Q Has that ever been done in any other
15 interest arbitration the post office has been
16 involved in, where the economic proposal is not
17 made until the last day of the interest
18 arbitration hearing?

19 MS. GONSALVES: I think we need to go
20 off the record for a minute here and have a
21 discussion between Arlus and me and the panel,
22 because I just think that there's some great

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1 misrepresentations being made here, and I -- I --
2 I think it just needs to be cleared up once and
3 for all.

4 ARBITRATOR OLDHAM: Fine. We can do
5 that.

6 (Brief recess.)

7 ARBITRATOR OLDHAM: All right. Arlus,
8 carry on.

9 MR. STEPHENS: Okay.

10 BY MR. STEPHENS

11 Q Joe, on Slide 67, is it correct to say,
12 then, that the -- management's proposal regarding
13 wages is based on a internal comparability rather
14 than comparing to any particular group in the
15 private sector?

16 A No.

17 Q It's not correct?

18 A No.

19 Q But the numbers are meant to simulate
20 the numbers from the last round of negotiations
21 with the other postal unions?

22 A No. The overall pattern of the

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1 two-year wage freeze followed by three modest
2 general wage increases does comport with the
3 pattern with the other bargaining units, but ECI
4 minus one is -- we've included ECI minus one in
5 our proposal based on our finding of -- of a wage
6 premium that exists between Postal Police
7 Officers and their private sector counterparts,
8 that ECI minus one going forward is still
9 justified.

10 Q Let's go to Slide 68. Is it correct to
11 say that the reduction in employer contributions
12 matches that from the other bargaining units?

13 A In 2015 and 2016, it does, yes, but it
14 does not currently, nor -- nor will it in 2014.

15 Q But it's not based on a comparison to
16 police officer benefits in the private sector?

17 A It's compared to the private sector
18 average contribution, employer contribution
19 towards employee health benefits of 76 percent.
20 That's private sector comparability.

21 One thing to note about health benefits
22 is that they're not specific to -- to

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1 occupations. A health benefit plan for you costs
2 the same roughly as someone in the same
3 demographic regardless of occupation, whether
4 they're a custodian or, you know, a Wall Street
5 trader. The health benefit premium costs are
6 about the same, so -- so it isn't dependent on --
7 on occupation.

8 Q But it's correct that the employers
9 share the premium very significantly, is that
10 correct, across --

11 A Very significantly --

12 Q -- between occupations?

13 A -- I -- I haven't seen any evidence of
14 that.

15 Q So it's correct that some occupations
16 have a greater degree of health care paid for by
17 their employer than other occupations; is that
18 correct?

19 A Based on what? I've never seen -- I
20 have not seen that, no. I've not seen any
21 evidence that would corroborate that.

22 ARBITRATOR OLDHAM: Well, it would

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1 certainly be true that that's -- that variability
2 exists among employers.

3 THE WITNESS: Employers is probably
4 the -- the biggest variation is among employers,
5 but not occupations.

6 ARBITRATOR OLDHAM: Yes.

7 THE WITNESS: So an employer has a
8 health benefits plan that they apply to all of
9 their employees regardless of occupation. I
10 don't think there's a uniform police officer
11 employer contribution that makes any sense for
12 this --

13 BY MR. STEPHENS

14 Q Joe, on Slide 68, they're reducing the
15 starting salary by 7.7 percent; is that right?

16 A That's correct.

17 Q Won't that actually reduce the starting
18 PPO pay below that of many ABM security guards
19 working for the post office?

20 A I -- I've not made that comparison. I
21 don't know.

22 MR. STEPHENS: Perhaps we'll just

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1 introduce that ourselves in a paper exhibit
2 afterwards. I have no further questions.

3 MS. GONSALVES: No redirect.

4 ARBITRATOR OLDHAM: Joe, you've
5 escaped.

6 ARBITRATOR DUFEK: Can I -- can I just
7 follow up, Joe?

8 ARBITRATOR OLDHAM: Whoops. Not quite.

9 ARBITRATOR DUFEK: I just want to go
10 back to Slide 15 and the whole issue of
11 contracting out.

12 THE WITNESS: Slide what? Excuse me.

13 ARBITRATOR DUFEK: It's 15. And I just
14 thought it might be helpful to the panel and,
15 frankly, to the parties in the room to -- for you
16 to kind of walk through for us -- as you said,
17 there were a multiplicity of factors that would
18 enter into a contracting out decision, not just
19 the wage rate, and I wanted to walk through some
20 of those factors and see whether you would agree
21 as an executive at the Postal Service. First and
22 foremost are the legacy cost issues, retiree

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1 health care.

2 Would that be something that the Postal
3 Service would completely avoid through the
4 contracting out process?

5 THE WITNESS: It would, yes.

6 ARBITRATOR DUFEK: And the investment
7 risk associated with the pension plan, would that
8 be something that --

9 THE WITNESS: Yes. The employer right
10 now, under both of our health -- retirement --
11 retirement plans assumes considerable amount of
12 investment risk.

13 ARBITRATOR DUFEK: Could you explain
14 for the parties -- just give them an insight into
15 how changes in the discount rate, for example,
16 for either FERS for or the CSR, changes in which
17 the Postal Service has no control over, impact
18 the Postal Service's legacy costs?

19 THE WITNESS: Well, it has a tremendous
20 impact on a lot of our legacy costs, not only in
21 our pension area, but also on retiree health
22 benefits, workman's comp, anything that we have a

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1 long-term liability for, the discount rate, which
2 are currently very, very low, and, thus, the rate
3 of return that we can expect based on the low
4 market rates now dramatically impacts what our
5 liability is going forward.

6 ARBITRATOR DUFEK: Could you describe
7 for the parties the flexibility that the Postal
8 Service would have in determining, for example,
9 in a place like San Francisco, how they would
10 contract out the work between, let's say,
11 security guard and -- and a police officer
12 function, particularly given the fact that
13 60 percent of the hours are going to be worked at
14 night?

15 THE WITNESS: Well, there certainly
16 would be a cost comparison made, not only of --
17 between Postal Police Officers versus contract
18 security -- and whether that's contract Guard II
19 or Police I or some combination of the two, that
20 would be part of it. But -- but there are other
21 security alternatives. You know, there's
22 technology. There's -- there's -- there are any

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1 number of, you know, access control, you know,
2 options available there, and that would be
3 considered. And I'm not an expert at this,
4 but -- but from speaking with the Inspection
5 Service, technology is -- is an alternative. It
6 is a substitute in some cases for the activities
7 performed by Postal Police Officers. So that
8 would be part of the mix.

9 But you would do a lifetime cost or --
10 or a fully-loaded cost. You would include the
11 legacy costs as well as the wages and benefits.
12 I think it's worth pointing out on this slide
13 that no matter how you cut it, the -- the
14 wages -- when you include the wages -- and these
15 don't include the retiree health benefits -- that
16 the fully-loaded cost salaries plus benefits
17 exceed even that of Police Officer I by -- by a
18 significant amount.

19 ARBITRATOR DUFEK: Could I take you to
20 the Vaughn award, which is, I think, Exhibit 12?
21 Volume 3, Postal Service exhibit book. Could I
22 take you specifically to page 13 of that award?

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1 And give the panel some opportunity here.

2 And could I ask you to look at the
3 bottom of page 13, the paragraph beginning
4 "whether," and could I have you just read into
5 the record that -- from that -- beginning with
6 whether to the end of the paragraph on page 14?

7 THE WITNESS: Sure. Arbitrator Vaughn
8 wrote that whether, in hindsight, the value of
9 the Union's gains in the 1990s negotiations --
10 1990 negotiations were worth the cost is not the
11 test of whether or not the agreement was valid or
12 indeed whether the trade-offs are now used up and
13 should now be reversed. Choices between wages
14 and benefits in long-term versus short-term gains
15 are the right and responsibility of each party in
16 collective bargaining. Interest arbitrators must
17 be reluctant to undo an earlier negotiated
18 agreement on the basis that one party, in
19 hindsight, thinks the other got the better of
20 the -- of the deal. Put another way, a deal is a
21 deal. The Rural Letter Carriers, for example,
22 struck a voluntary agreement with the Postal

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1 Service in 1978 which included a cap on COLA.
2 That agreement has cost those employees
3 approximately \$2,000 each year since, yet the
4 Rural Letter Carriers have not been able to
5 correct the results of that bargaining through
6 subsequent arbitration, including the 1985 Volz
7 award. In light of the manner in which the
8 internal wage differences at issue in this
9 proceeding have been created, the appropriate way
10 to correct previously bargained for results is
11 through mutual agreement and not through the
12 interest -- the arbitration process. I decline,
13 therefore, to make the Union's requested equity
14 adjustments to restore wage parity with the APWU
15 bargaining unit.

16 ARBITRATOR DUFEK: Does that paragraph,
17 in essence, capture the point that you were
18 trying to make with your slide?

19 THE WITNESS: It does. And I quoted a
20 small part of that and -- and probably not
21 enough. Yes, that is, in essence, the point that
22 was being made.

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1 ARBITRATOR DUFEK: That's all I have.

2 ARBITRATOR BJORK: I just have one.

3 ARBITRATOR OLDHAM: Yes.

4 ARBITRATOR BJORK: Actually, I have 20
5 questions.

6 THE WITNESS: Yes.

7 ARBITRATOR BJORK: No, just one.

8 Earlier, when you were talking about the
9 carriers -- and I didn't hold it, but -- I think
10 you said they received -- regarding priorities,
11 they received a bonus at the top, and for that,
12 they gave up the tier at the bottom.

13 THE WITNESS: In this contract?

14 ARBITRATOR BJORK: Yes.

15 THE WITNESS: When I was discussing
16 this contract? No, I don't think that's quite
17 right. In -- in the APWU agreement that preceded
18 it, we negotiated -- the parties negotiated a
19 lower entry step and a lower top step. So future
20 career employees not only start out at a lower
21 salary, but also max out at a lower salary than
22 current career employees. That particular part

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1 was unacceptable to the NALC. We could not reach
2 agreement and -- and they would not agree to
3 future career employees being paid less at the
4 top step than current career employees.

5 So in the -- in the -- in this -- in
6 the arbitration award, that top step remained the
7 same. It wasn't a bonus. It remained the same
8 in the new top salary schedule as -- as the
9 current employees make, but in -- in -- in
10 exchange for that, if you will, they reduced the
11 entry step. 13 percent for the APWU is over
12 20 percent for the NALC. So their entry
13 employees -- their employees starting out as city
14 letter carriers will make far less than they
15 currently do. In addition to that, those new
16 career employees had their -- their COLA formula
17 modified.

18 Now, the Postal Service has tried to
19 eliminate COLA for its bargaining units forever.
20 It's an important bargaining goal. It's one of
21 those things that it can probably only be
22 accomplished through negotiated agreement,

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1 because interest arbitrators -- arbitrators are
2 loathe to make that kind of big change. So --
3 and we've been unable to -- to negotiate away
4 COLA for those bargaining units, although it's
5 been a very important priority for the Postal
6 Service. But in this contract for the very first
7 time, we were able to make a significant
8 modification for the COLA formula for new career
9 employees that will pay them up to 35 percent
10 less in COLA payments than current career
11 employees make.

12 ARBITRATOR BJORK: And I guess the
13 point I'm trying to make is that there's a
14 certain pile of money, so to speak, that's going
15 to be distributed among the bargaining unit. The
16 other units were in a better position to allocate
17 that money than we ever would be based on the
18 fact that we're not hiring people at the
19 beginning step, by in large.

20 THE WITNESS: I think you could say the
21 same thing for APWU. I don't -- I don't remember
22 the last time the Postal Service hired an APWU

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1 clerk. We went years without hiring a single
2 APWU clerk. We just don't hire them. We don't
3 hire mail handlers anymore, career mail handlers,
4 and -- and for obvious reasons. The first
5 negotiations I was involved with in 1998 with the
6 APWU, they had over 350,000 career employees.
7 Today, they have fewer than 160,000. So their
8 ranks have diminished greatly. So it's the same
9 situation in the APWU. I don't think it's unique
10 to the Postal Police Officers. But the other
11 bargaining units were not hiring anybody.

12 ARBITRATOR BJORK: But those PSEs would
13 become career at some point when the need
14 existed?

15 THE WITNESS: At some point in time,
16 the current career workforce for the APWU will
17 retire to the point where the Postal Service will
18 have to replace them.

19 ARBITRATOR BJORK: And based on the
20 discussions about the age of the PPO workforce
21 and the nearing retirement by -- by a large
22 percentage, would it not make sense to be able to

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1 hire at that beginning step in terms of the cost
2 savings, which would free up that pile of money
3 throughout the -- the occupation?

4 THE WITNESS: You know, I'm not really
5 sure how to answer that question. Yes, if we had
6 a lower starting salary for PPOs and -- and we
7 changed our current policy of recruiting PPOs
8 from within the organization and started hiring
9 PPOs at a -- at a lower starting salary than we
10 currently do, then, theoretically, there would be
11 some cost savings associated with that.

12 It's -- it's virtually impossible to --
13 you know, and that's -- that's very speculative.
14 We don't currently hire from the outside. It's
15 not known how we're going to be replacing PPOs
16 over time and where they'll be coming from, so...

17 ARBITRATOR BJORK: Okay. Thank you.

18 ARBITRATOR DUFEK: Joe, I just have
19 one -- one final follow-up, because I think it's
20 important for the panel and for the parties to
21 understand this history, too.

22 We've had some reference to the

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1 Goldberg award, and in particular, I think the
2 sentence in which Arbitrator Goldberg wrote that
3 if the current legislative system for financing
4 the Postal Service is no longer functioning well
5 due to technological changes and the means by
6 which Americans communicate, it is for Congress
7 to provide an alternative financing system, not
8 for this panel to require Postal Service
9 employees to subsidize the long-term structural
10 deficit of the Postal Service by working at wages
11 and benefits less than those earned by employees
12 doing comparable work in the private sector.

13 Are you aware that in the aftermath of
14 this award, the President of the United States at
15 the time, George W. Bush, commissioned the Postal
16 Reform Committee?

17 THE WITNESS: He did, yes.

18 ARBITRATOR DUFEK: And was there
19 hearings and testimony before that committee in
20 2003?

21 THE WITNESS: There were. The
22 President's commission met, and there was a

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1 report published in 2003.

2 ARBITRATOR DUFEK: And part of this
3 issue was discussed in the context of that
4 report?

5 THE WITNESS: Yes. And that -- that
6 was --

7 ARBITRATOR DUFEK: And that report then
8 went to Congress and that led in part to the
9 Postal Accountability Enhancement Act, in which
10 Congress specifically address addressed this
11 issue. And I would like your perspective on how
12 Congress addressed this issue.

13 THE WITNESS: Well, the Postal Service
14 was -- part of the argument back then that the
15 Postal Service had was that its current
16 ratemaking structure was unresponsive to market
17 needs. It took too long. You filed a rate case.
18 It took you nine, ten months to get a decision,
19 and it needed more flexibility in that regard.
20 So there were a lot of components. And that's
21 one of the main ones that they addressed, and
22 they did that through the implement -- imposition

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1 of a price gap.

2 And as I testified to yesterday, I
3 don't know if it was unintended consequences or
4 just a failure to -- to follow this through to
5 its logical conclusion, but that -- that price
6 cap has caused considerable problems for the
7 Postal Service, particularly in an -- in an era
8 where volume declined precipitously, especially
9 for first-class mail. Our labor cost could not
10 adjust as rapidly as our volume and revenue were
11 disappearing, and price gap prevented us from --
12 from getting the revenue needed to cover that --
13 that cost base.

14 The Postal Service has worked furiously
15 to -- to reduce its labor costs and to change its
16 labor cost structure and to reduce its workforce,
17 but we're always behind the curve. And because
18 of the price cap, we -- we've -- as has been
19 noted by many, we've lost billions and billions
20 of dollars since the implementation of the PAEA.

21 ARBITRATOR DUFEK: At any time during
22 the legislative deliberations leading up to the

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1 PAEA, or indeed, over the last three years in the
2 legislative deliberations leading up to the
3 proposal, which just recently, I understand from
4 Jim, got through committee, has there been any
5 suggestion from any member of Congress that the
6 Postal Service will receive tax subsidies or
7 appropriations?

8 THE WITNESS: No, not that I'm aware
9 of, and -- and I don't think the Postal Service
10 would support that.

11 ARBITRATOR DUFEK: So the message from
12 Congress is get our costs in line with the
13 revenue?

14 THE WITNESS: That -- that was
15 explicitly the message that Congress sent with
16 the passage of the PAEA, that this -- now they're
17 giving the Postal Service the flexibility that
18 they've asked for and it's up to them to -- to
19 bring their costs in line with -- with their
20 product market.

21 ARBITRATOR OLDHAM: Anything else, Jim?

22 ARBITRATOR BJORK: No.

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1 ARBITRATOR OLDHAM: All right. Thank
2 you very much, Joe.

3 (Witness excused.)

4 ARBITRATOR OLDHAM: Teresa, I believe
5 you have a short witness?

6 MS. GONSALVES: Yes. Our final witness
7 is just a short witness to address the panel's
8 questions regarding the methodology of the
9 putting together of the 5305 chart that we saw.
10 I don't know the exhibit number, but I think Kate
11 will know.

12 MS. SULLIVAN: It's D-8.

13 ARBITRATOR OLDHAM: D-8.

14 MS. GONSALVES: And just about how that
15 was put together. He -- the person testifying is
16 Michael Billingsley, and he was responsible for
17 assembling the information.

18 ARBITRATOR OLDHAM: Is this Volume 2?

19 MS. GONSALVES: What volume is this?

20 MS. SULLIVAN: It's Volume 1, I
21 believe, D-8, or actually --

22 MS. GONSALVES: No, it's Volume 2.

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1 MS. SULLIVAN: It's Volume 2. My
2 apologies. D-8.

3 MS. GONSALVES: Michael, do you have it
4 up there?

5 MR. BILLINGSLEY: I don't see it.

6 ARBITRATOR DUFEK: Here, you can have
7 mine. I've seen it.

8 MS. GONSALVES: Do you have the one
9 that's written on?

10 ARBITRATOR DUFEK: There's no writing
11 on mine.

12 MS. SULLIVAN: And just to be clear,
13 Michael's testifying about how he put this data
14 together. He's not testifying as to the
15 substance behind it. That was Keith Milke.

16 ARBITRATOR OLDHAM: Fine.
17 Mr. Billingsley, you're still under oath. I
18 trust you will understand that.

19 THE WITNESS: Yes, sir.

20

21

22

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1 WHEREUPON,

2 MICHAEL BILLINGSLEY

3 was called for continued examination, and having
4 been previously duly sworn was examined and
5 testified further as follows:

6 DIRECT EXAMINATION BY COUNSEL FOR THE
7 POSTAL SERVICE

8 BY MS. SULLIVAN

9 Q Michael, did you prepare this chart for
10 interest arbitration?

11 A I did.

12 Q Can you just walk through -- the panel
13 through how you prepared the chart?

14 A Sure. I started with asking members of
15 our management contract administration group, who
16 work with the PPOA, to solicit 5305 forms for the
17 month of August. When those forms were mailed to
18 that group, they were given to me. I enlisted
19 the help of some data entry personnel, who
20 inputted the data from those forms into an Excel
21 sheet, for which I compiled the numbers, the
22 summary numbers that you see here for 2013.

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1 Q And is this chart a true and accurate
2 reflection of the 5305 data that was provided to
3 you by the Inspection Service?

4 A It is.

5 MS. SULLIVAN: Those are all the
6 questions I have.

7 MR. STEPHENS: Okay. I -- I have
8 cross.

9 CROSS-EXAMINATION BY COUNSEL FOR THE
10 UNION
11 BY MR. STEPHENS

12 Q You have numbers for 2013. What --
13 what about the numbers for all the other years?

14 A They were supplied previously using the
15 same methodology that I used to compile the 2013
16 numbers. Unfortunately, the personnel who
17 completed those studies are no longer with this
18 group.

19 Q They were previously supplied in what
20 context?

21 A In summary fashion. I have sheets that
22 essentially look the same as the data that I put

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1 together for 2013 for the different work hour
2 classifications here.

3 Q But you never -- you never saw those
4 sheets; is that correct?

5 A I never saw those sheets, the physical
6 forms.

7 Q And the 5305 sheets are shredded after
8 six months; is that correct?

9 A I am not aware of that. I'm -- but I
10 have no reason to --

11 Q They're actually -- directing you to
12 where it says it in the IS-701 --

13 A I trust that that's true.

14 Q Now, in the 2008 case, the post office
15 didn't use the -- any 5305 analysis; isn't that
16 correct?

17 A I was not here. I don't recall.

18 Q Let me ask you some questions about the
19 form. In the binder, it should be the next tab,
20 Tab 9.

21 A Okay.

22 Q And did you receive -- what exactly did

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1 you go through? Did you receive copies of this
2 form filled out?

3 A Yes.

4 Q Okay. And from whom did you receive
5 them? From which divisions?

6 A All of the divisions that employed
7 PPOs.

8 Q Okay. And so you received -- now,
9 there will be -- these are created for every
10 tour; is that right?

11 A That's correct.

12 Q So for every day, every tour --

13 A Every day, every tour --

14 Q -- every --

15 A -- signed off by a PPO supervisor
16 nationwide for every division that employed a
17 PPO.

18 Q Okay. And this was done in -- okay.
19 Now, August is when the PPOs are
20 typically on vacation; is that correct?

21 A I did not do that analysis.

22 Q And if PPOs are on vacation, they're

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1 often pulled from mobile patrols because of
2 reduced manpower; is that correct?

3 A I have no knowledge of that.

4 Q And these are completed at the end
5 of -- at the end of the shift before the
6 supervisor's able to leave for the day; is that
7 correct?

8 A My understanding is that a supervisor
9 signs off on this form. I don't know the timing
10 of when that happens. I assume it's after the
11 shift occurs.

12 Q And are you aware that these forms are
13 actually filled out differently in different
14 divisions?

15 A I do not have any direct knowledge of
16 that. It wouldn't surprise me if -- if one
17 person -- human differences. I have no reason to
18 believe that they're substantively different
19 across divisions.

20 Q Are you aware, in some divisions, ABM
21 guards are included in the numbers?

22 A I am not.

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1 Q Are you aware that that's how it's done
2 here, for example, here in the headquarters
3 building?

4 A I am not.

5 MS. SULLIVAN: I'm going to object.
6 Mike -- Michael doesn't have any knowledge beyond
7 the -- the data -- I mean, he can testify to
8 that, but he doesn't have knowledge beyond the
9 5305 data that he was provided as far as the
10 procedures of the Inspection Service, and that's
11 not part of his --

12 THE WITNESS: And maybe it would help
13 if I -- if I described to you exactly what
14 happened. You see these -- these boxes here for
15 fixed post, mobile posts, foot patrol, convoy
16 duty, administrative and other. In a filled-out
17 form, there's hours in these boxes. All I asked
18 the data entry personnel to do was take the
19 numbers, input them into electronic form so I
20 could compile the dita. I have no knowledge
21 beyond what the numbers are that are listed here,
22 signed off on by a PPO supervisor.

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1 MR. STEPHENS: Okay. So my
2 understanding was that a witness was going to be
3 prepared in order to explain the chart and be
4 able to answer questions about the meaning of the
5 numbers, not just --

6 MS. SULLIVAN: I believe --

7 MR. STEPHENS: -- mechanical.

8 MS. SULLIVAN: -- that's what Keith
9 Milke's testimony was.

10 MR. STEPHENS: He testified he couldn't
11 testify -- he didn't know anything about the
12 chart.

13 MS. SULLIVAN: He couldn't testify as
14 to how the chart was compiled, but he could
15 testify about what PPO duties are and what fixed
16 post means, what mobile posts means, foot
17 patrols, convoy duty, and I believe he testified
18 to that.

19 MR. STEPHENS: Well, I didn't get a
20 chance to question -- cross-examine him fully
21 about this, because he pretty quickly
22 acknowledged he knew nothing about it. Isn't

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1 that your recollection?

2 MS. SULLIVAN: I believe his testimony
3 was that he didn't know how the chart was
4 compiled, so we put on Michael to explain how he
5 developed the chart.

6 MR. STEPHENS: But we have a need to
7 ask about the questions and about the 5305 form
8 which was used. I mean, I think -- is it fair to
9 say that the -- in order to understand the chart,
10 one must first understand what the Form 5305
11 gathers?

12 MS. SULLIVAN: Yes. If I remember
13 correctly, I believe Keith Milke testified what
14 the 5305 form was and who fills it out and what
15 it's used for.

16 MR. STEPHENS: But if it includes ABM
17 security guards in the number, that doesn't
18 actually reflect anything about what PPOs are
19 doing, does it?

20 MS. SULLIVAN: You had the opportunity
21 to ask that question of Keith Milke, and it
22 wasn't asked.

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1 MR. STEPHENS: Actually, I didn't have
2 that opportunity because he said he didn't know
3 anything about it. I mean, the problem is, this
4 chart is meaningless, and I'd like to -- if
5 it's -- if the panel wants -- finds the chart to
6 be of any relevance, I'd like the opportunity to
7 actually cross-examine a witness who can -- to
8 say something about the 5305 form.

9 THE WITNESS: I just had one question
10 just so --

11 MR. STEPHENS: Yeah.

12 THE WITNESS: -- I'm clear. Is -- are
13 you saying that in 2013, it's not relevant as
14 compared to 2007, as compared to whenever --

15 MR. STEPHENS: I don't know anything
16 about any of these numbers. I've never seen any
17 of these numbers before.

18 THE WITNESS: So the whole chart is
19 irrelevant? I'm just trying to understand.

20 MR. STEPHENS: I'll just --

21 THE WITNESS: The methodology --

22 MR. STEPHENS: I'll save my own

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1 personal testimony -- I don't -- in order to
2 understand what the chart represents, I have to
3 understand what the data means, and if it's
4 including ABM security guards on fixed posts, I
5 don't see how -- what relevance it has to this
6 proceeding. That's my own personal opinion.

7 MS. GONSALVES: All right. Well, it
8 was our understanding that the questions were
9 addressing: Did you put this chart together?
10 No, I didn't. That sort of thing. You don't
11 know how the chart was put together? No. Did
12 you review the forms? No, I didn't.

13 And we offered -- we volunteered to
14 bring the person to -- to testify. It was
15 Michael Billingsley who put together the chart
16 and was responsible for that.

17 ARBITRATOR OLDHAM: Yes. And let me
18 say a few -- a few things. The point is: What
19 are we to make of this chart? It's now in
20 evidence. And something has come out right now
21 that didn't come out before, that is, a
22 suggestion that fixed post security guards are

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1 included in the numbers here. If that's so, that
2 infects the value of this chart.

3 MS. GONSALVES: So the -- the Postal
4 Service is willing to bring on another witness
5 if -- if the panel would like to address that
6 question specifically.

7 ARBITRATOR OLDHAM: These are always
8 cost benefit --

9 MS. GONSALVES: Yeah.

10 ARBITRATOR OLDHAM: -- assessments.

11 MS. GONSALVES: I just don't know the
12 answer to that question.

13 ARBITRATOR OLDHAM: Yes. There were
14 some uncertainty before the security guard issue
15 was put into the mix with regard to the fact that
16 there would be differentiations according to the
17 tour, because time of day makes a difference,
18 whether you've got fixed posts or not, because
19 you've got fewer fixed posts in the nighttime
20 hours. That's obvious points. And I don't think
21 we can sort that out, even though we can
22 recognize that there is some variability there.

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1 Yet, the numbers would be meaningful to us if we
2 could be assured that they're -- that they're not
3 partially security guard hours. How many we
4 couldn't possibly know. That possibility is not
5 available to us, I think.

6 THE WITNESS: At this moment, right.

7 ARBITRATOR OLDHAM: Yes. So my -- my
8 answer is, if you have a witness that can assure
9 us that this is all PPOs in the chart, that would
10 be useful.

11 MS. GONSALVES: Okay. We will look
12 into that. And I do believe that Michael is able
13 to do a further breakdown. I'm not sure how
14 useful that would be to the panel, but --

15 ARBITRATOR OLDHAM: In terms of tours?

16 MS. GONSALVES: Right. But I don't --
17 I don't know how helpful that would be.

18 ARBITRATOR OLDHAM: I think it's
19 probably not worth doing, because the numbers are
20 the PPO numbers.

21 MS. GONSALVES: Right. Okay. So I
22 will -- I will look into that, and I will let you

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1 know, the panel and, of course, Arlus, whether we
2 have somebody who would be available to testify
3 on that.

4 ARBITRATOR OLDHAM: Fine. I think
5 that's it, isn't it --

6 MR. STEPHENS: Yes, sir.

7 ARBITRATOR OLDHAM: -- for
8 Mr. Billingsley?

9 MR. STEPHENS: Yeah. No further
10 questions.

11 (Witness excused.)

12 ARBITRATOR DUFEK: Can I have my book
13 back, please?

14 ARBITRATOR OLDHAM: No, the book, the
15 book.

16 MR. STEPHENS: I thought you said
17 Michael.

18 ARBITRATOR DUFEK: Thank you.

19 ARBITRATOR OLDHAM: All right. Where
20 do we stand? If I'm -- if I understand it, that
21 is the end of the testimony or evidence that we
22 have for the day and that we're uncertain whether

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1 there will, at some point, be any rebuttal
2 testimony?

3 MR. STEPHENS: I think that's a fair
4 statement. I think that -- that can be cleared
5 up in pretty short order.

6 ARBITRATOR OLDHAM: All right.

7 MR. STEPHENS: There -- there are a
8 couple of documents -- we're worried the panel
9 didn't have enough in their binders. Perhaps we
10 can mail them with Teresa's consent rather than
11 have everyone have to shuffle them out tonight.

12 ARBITRATOR OLDHAM: Well, I'm not
13 carrying this pile of things tonight anyway, so
14 we'll have to work that out. All right.

15 It's possible -- and I'm just saying
16 this for the large audience in the room -- it's
17 possible that we have arrived at the end of this
18 hearing. But one thing is certain, that we've --
19 we've arrived at the end of testimonial evidence
20 for today. So we're going to break now for --
21 for the rest of you, for the viewers, we're done
22 for the day. This -- the lawyers and the three

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1 of us are going to reconvene and talk a bit after
2 a lunch break, and -- and we'll see where we are
3 at the end of that. Will that work?

4 MS. GONSALVES: Yes.

5 ARBITRATOR OLDHAM: Okay. Thank you.

6 (Whereupon, the proceedings were
7 adjourned at 12:05 p.m.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, ERICK M. THACKER, the officer before whom
3 the foregoing arbitration was taken, do hereby
4 certify that the testimony appearing in the
5 foregoing arbitration was taken by me in
6 stenotype and thereafter reduced to typewriting
7 by me; that said transcription is a true record
8 of the proceedings; that I am neither counsel
9 for, related to, nor employed by any of the
10 parties to the action in which this was taken;
11 and, further, that I am not a relative or
12 employee of any counsel or attorney employed by
13 the parties hereto, nor financially or otherwise
14 interested in the outcome of this action.

15

16

ERICK M. THACKER
Notary Public in and for the
District of Columbia

17

18

19

20 My commission expires:
June 14, 2014

21

22

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