

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Inquiry Concerning Scope of Public
Service or Activity Cost Reporting

Docket No. PI2014-1

COMMENTS OF THE NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

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The National Association of Letter Carriers, AFL-CIO, (NALC) hereby submits the following comments in response to the Commission's invitation of public comments published in the Federal Register on August 28, 2014. 79 Fed. Reg. 51379.

NALC's comments are directed solely at the Postal Service's Analysis of Additional Postal Service Activities That Could Qualify For Reporting Under 39 U.S.C. §3651(b)(1)(C) (hereafter "USPS Analysis"). NALC opposes the Postal Service's suggestion that the Commission's Annual Report to the President and Congress (Annual Report) should be expanded to cover a wide range of statutory mandates dealing with the terms and conditions of postal workers' employment. As discussed below, neither the text of the statute, nor the 2005 House Committee Report, remotely suggests that Congress intended the Commission to play any role in addressing often contentious issues relating to employee and retiree health benefits, federal retirement benefits; binding arbitration of labor issues; Merits Systems Protection Board and Equal Employment Opportunity Commission appeals; or federal workers' compensation programs.

I. NALC

Founded in 1889 and headquartered in Washington, D.C., the NALC is a labor union with approximately 275,000 members who are actively employed

as letter carriers by the U.S. Postal Service or retired from such employment. As the sole bargaining agent of city letter carriers employed by the Postal Service, the NALC negotiates a nationwide collective bargaining agreement with postal management as well as administers the agreement. The current 2011-2016 National Agreement, which was the result of a binding interest arbitration procedure, will remain in effect through May 20, 2016. In addition, the union represents both its active and retired members in the Congress and the Executive Branch in legislative and administrative matters affecting the interests of both its membership as well as that of the Postal Service.

As employees of the Postal Service, letter carriers represented by NALC are covered by the federal employee health benefits, retirement, and workers compensation programs. 39 U.S.C. §1005. Collective bargaining disputes between NALC and the Postal Service are resolved through binding arbitration. 39 U.S.C. §1207. Preference eligible letter carriers have appeal rights to the Merit Systems Protection Board, 39 U.S.C. §1005, and all letter carriers have the right to pursue complaints to the Equal Employment Opportunity Commission. 42 U.S.C. §2000e-16.

II. Comments

The USPS Analysis calls upon the Commission to engage in a variety of hypothetical cost comparisons. Among its suggestions are:

- A comparison of the costs of participation in the Federal Employees Health Benefits Program to the hypothetical costs that the Postal Service would incur if it were “a private employer with the flexibility to design its own employee and retiree health benefits plans” (USPS Analysis, p. 4).
- A comparison of the costs to the Postal Service of “participat[ion] in federal defined-benefit pension programs” to the cost of “the sort of pension benefits that private sector employers have the flexibility to provide” (*id.*, p. 8).
- A comparison of the cost impact of “binding arbitration procedures” to the “hypothetical outcomes [of collective bargaining disputes] if the Postal Service and its employees had instead been subject to alternative dispute resolution methods, including the ability to resort to strikes and lockouts” (*id.*, p. 10).
- A comparison of the costs of complying with the provisions of equal employment opportunity (EEO) laws applicable to “federal entities including the Postal Service” to the cost of compliance with EEO procedures applicable to private employers (*id.*, p. 11).
- A comparison of the cost of participation in the federal workers’ compensation program to the costs that “state workers compensation programs would impose on a comparable non-federal employer” (*id.*, p. 12).

Quite obviously, any of the foregoing comparisons would require the Commission to engage in highly speculative analysis based on broad assumptions for which there is no hard evidence. Perhaps more significantly, the Postal Service’s proposal would have the Commission weigh in on issues which have been the subject of ongoing controversy and debate.

For example, the Postal Service issued a white paper in 2011 proposing that Congress give it the authority to pull its employees and retirees out of the Federal Employees Health Benefit Program, arguing that it could provide the same quality of benefits at a lower cost. Health care experts inside and outside of the Office of Personnel Management contested the Postal Service's claims and evidence presented by NALC in the Das Interest Arbitration proceeding concerning the 2011-2016 labor contract between NALC and USPS showed conclusively that the cost of FEHBP premiums for the USPS were much lower than the insurance premiums paid by large companies in the private sector.

Another 2011 USPS white paper asked Congress to give the Postal Service the authority to create a low-cost defined contribution pension plan for new employees, excluding new postal employees from the hybrid (defined contribution/defined benefit) pension plan that supplements Social Security benefits – the Federal Employees' Retirement System (FERS) – which covers all other federal employees. The proposal was met with overwhelming opposition and controversy – as it sought to strip the authority to make public policy decisions away from Congress while undermining federal government-wide human resource policies.

The idea that the PRC should attempt to weigh the hypothetical costs of an unknowable number of possible strikes and lockouts to the alleged cost of

“interest arbitration” is fanciful. Even if the Postal Service could plausibly argue that these are universal service costs -- which it can’t -- asking to the Commission to wade into these controversial matters makes little sense. In essence, the Postal Service’s proposal invites the Commission to enter into the debate over the “comparability” of the wages and benefits paid by the Postal Service to those paid by private sector employers. The Commission is well aware that the Service and the postal unions have spent decades litigating these issues before interest arbitration panels. The Postal Service offers no sound reason why the Commission should create yet another venue for litigating these endless controversies.

The only justification for the proposed expansion of the Commission’s Annual Report that is articulated in the USPS Analysis is that the language of the statute compels it. But, the Postal Service’s interpretation of the statute is clearly wrong.

39 U.S.C. 3651(b), in its entirety, reads as follows:

(b) Additional information.—

(1) In general.--In addition to the information required under subsection (a), each report under this section shall also include, with respect to the period covered by such report, an estimate of the costs incurred by the Postal Service *in providing--*

(A) *postal services to areas of the Nation* where, in the judgment of the Postal Regulatory Commission, the Postal Service either would not *provide services* at all or would not *provide such services* in accordance with the

requirements of this title if the Postal Service were not required *to provide prompt, reliable, and efficient services* to patrons in all areas and all communities, including as required under the first sentence of section 101(b);

(B) free or reduced rates *for postal services* as required by this title; and

(C) *other public services or activities* which, in the judgment of the Postal Regulatory Commission, would not otherwise have been *provided by the Postal Service* but for the requirements of law.

(Emphasis supplied.)

There is no ambiguity here. This section directs the Commission to prepare an annual report which focuses exclusively on the cost of certain *services* that are *provided* by the Postal Service to the *public*. Thus, subparagraph (A) requires the Commission to report on the cost of providing services to certain areas of the country; subparagraph (B) focuses on the costs associated with free postal services and services provided at a reduced rate; and subparagraph (C) instructs the Commission to estimate the cost of “other public services or activities” which would not otherwise be “provided” by the Postal Service, but for legal requirements.

The key term utilized repeatedly in Section 3651(b) is “provided” which clearly conveys that the statute is addressed to the cost of particular postal services provided to the public. The various “activities” enumerated in the USPS

Analysis (participation in federal health benefits, retirement and workers compensation programs; compliance with interest arbitration awards; MSPB and EEO appeals) are not services “provided” by the Postal Service to the public. Rather, they are themselves cost -- i.e., they are elements of the cost structure borne by the Postal Service in order to maintain its basic operations.

The Postal Service’s entire argument is based on one word which appears in subparagraph (C): “activities.” The Service reads subparagraph (C) as authorizing the Commission to report on the cost of any and all activities engaged in by the Postal Service, rather than “public services and activities . . . provided by the Postal Service.” The Postal Service’s reading takes the word “activities” completely out of context.

The sparse legislative history provides no support for the Postal Service’s expansive interpretation of Section 3651(b). The House Committee Report explained that the purpose of this section was to require the Commission to prepare an estimate of certain public service costs:

Section 3651 requires that the Postal Regulatory Commission provide an annual report to the President and the Congress concerning its operations, including an assessment of whether its regulations for Market Dominant and Competitive products are meeting legislative policy. As part of this report, the Commission is directed to prepare an estimate of public service costs borne by the Postal Service including universal service costs, revenue-forgone costs, and other costs (e.g., law enforcement activities). The Postal Service must give the

Commission such information as the Commission deems necessary to prepare the reports.

H.R. REP. 109-66(I), 50. There is simply no indication that Congress intended that the Commission would address the cost of complying with statutory mandates governing employment issues.¹

III. Conclusion

The Commission should reject the Postal Service's proposal to expand the Annual Report to issues relating to employee and retiree health benefits, federal retirement benefits; binding arbitration of labor issues; Merits Systems Protection Board and Equal Employment Opportunity Commission appeals; or federal workers' compensation programs.

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Respectfully submitted

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1. Indeed, when it enacted the Postal Accountability and Enhancement Act in 2006, Congress rejected an earlier proposal by a Presidential Commission that a Postal Regulatory Board be established which "should be authorized to determine comparable total compensation for all Postal Service employees." Report of the President's Commission on the United States Postal Service, Appendix C, p. 177 (2003).