



August 24, 2009

ANTHONY J. VEGLIANTE  
EXECUTIVE VICE PRESIDENT AND  
CHIEF HUMAN RESOURCES OFFICER

DOUG A. TULINO  
VICE PRESIDENT, LABOR RELATIONS

SUBJECT: Management Advisory – Suspension of Postmaster Convention Leave  
Benefit (Report Number HM-MA-09-001)

This report presents the results of a review requested by the National League of Postmasters of the United States (the League) and the National Association of Postmasters of the United States (NAPUS) (Project Number 09YG035HM000). Our objectives were to determine if the Postal Service acted within the provisions of Title 39 U.S.C. §1004 (Section 1004) when it suspended the postmaster convention leave benefit, and if the League and NAPUS (postmaster organizations) were given sufficient time to review and make recommendations regarding the proposal and final decision. This review addresses labor costs and benefits. See [Appendix A](#) for additional information about this audit.

### [Conclusion](#)

The Postal Service acted within the provisions of Section 1004 when it suspended the postmaster convention leave benefit. The agency followed the processes outlined by law and its decision was prudent and supported by the agency's serious economic situation. The estimated cost of \$14 million since fiscal year (FY) 2006 for convention leave was also supported.

There is, however, an inherent conflict in some provisions of the law as evidenced by the plain reading of the text and the different interpretations by the Postal Service and the two postmaster organizations. While Congress or litigation could remedy this conflict, the legislative history suggests the Postal Service's interpretation of Section 1004 is reasonable. We also determined the postmaster organizations were given sufficient time to review and make recommendations to the proposal and final decision. We are not making recommendations regarding these issues. See [Appendix B](#) for a detailed analysis of this topic.

## Management's Comments

Management's review of the discussion draft resulted in an agreement to waive a formal briefing and the draft report comment period. Management's formal letter had no additional comments. Management's comments, in their entirety, are included in [Appendix D](#).

We appreciate the cooperation and courtesies provided by your staff. If you have any questions or need additional information, please contact Chris Nicoloff, Director, Human Capital, or me at (703) 248-2100.

E-Signed by Office of Inspector General   
VERIFY authenticity with ApproveIt  
*Andrea Deadwyler*

Andrea L. R. Deadwyler  
Acting Deputy Assistant Inspector General  
for Support Operations

Attachments

cc: Bill Harris

## APPENDIX A: ADDITIONAL INFORMATION

### BACKGROUND

Until May 2009, postmasters were allowed up to 5 working days of paid administrative leave each year<sup>1</sup> to attend state and national postmaster conventions.<sup>2</sup> This was commonly referred to as convention leave and has been a postmaster fringe benefit for at least 80 years.

On May 22, 2009, the Postal Service suspended this benefit for the remainder of FY 2009 (effective May 31, 2009) and all of FY 2010. The agency based its decision on the unprecedented decline in mail volume and projected financial loss of \$6 billion<sup>3</sup> this fiscal year. The Postal Service estimated the convention leave cost alone was more than \$14 million from FY 2006 through May 2009.

To make changes to postmaster pay and benefits the Postal Service must follow the provisions in Section 1004.<sup>4</sup> This law allows the Postal Service to make unilateral changes as long as the postmaster organizations are given the opportunity to participate directly in planning and developing the changes. The League and NAPUS are the recognized management organizations that represent postmasters in personnel issues including pay and benefits. See [Appendix C](#) for the law in its entirety.

### OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine if the Postal Service acted within the provisions of Section 1004 when it suspended the postmaster convention leave benefit and if the postmaster organizations were given sufficient time to review and make recommendations with respect to the change. We examined applicable Postal Service policies, the Postal Reorganization Act (PRA) of 1970, Title 39 U.S.C. § 1004, and related congressional history and court cases. We also reviewed the Postal Service's proposed (March 2007) and final (August 2007) decisions on postmaster pay policies and fringe benefits and related correspondence between the Postal Service and the two postmaster organizations from October 2008 through June 2009. In addition, we interviewed the postmaster organization presidents and the Postal Service Vice President, Labor Relations, who signed the final decision letter suspending the convention leave.

We conducted this review from June through August 2009, in accordance with the President's Council on Integrity and Efficiency, *Quality Standards for Inspections*. We discussed our observations and conclusions with Postal Service officials on July 22, 2009. We included their comments where appropriate.

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<sup>1</sup> The leave year begins in January of one year and ends in January the following year.

<sup>2</sup> *Employee Labor Relations Manual*, Section 519.621, Conventions.

<sup>3</sup> According to Postmaster General Jack E. Potter in his August 6, 2009 testimony, this number is now projected to be at least \$7 billion.

<sup>4</sup> The law also covers pay and benefits for supervisory and other managerial personnel.

**PRIOR AUDIT COVERAGE**

There is no prior audit coverage related to our objectives.

## APPENDIX B: DETAILED ANALYSIS

### Postal Service Adhered to Section 1004 but Conflict Exists

The Postal Service acted within the provisions of Section 1004 when it suspended the postmaster convention leave benefit. The agency followed the processes outlined in the law and its decision was prudent and supported. The agency's estimated costs of more than \$14 million since FY 2006 were also supported. However, an inherent conflict exists between Sections 1004(c) and (e) as evidenced by the plain reading of the text and the different interpretations by the Postal Service and the two postmaster organizations. This conflict centers on when the Postal Service can change postmaster pay and benefits.

Originally, Section 1004 contained two subsections which basically required the Postal Service to provide (among other things) pay and benefits to assure the attraction and retention of qualified and capable postmasters (Subsection (a)) and a program for consultation with recognized management organizations to allow them direct participation in the planning and development of pay and benefit programs (Subsection (b)).<sup>5</sup>

The legislative history behind these subsections makes it clear that Congress intended to give the Postal Service maximum flexibility in determining pay and benefits for supervisory level employees. The management organizations challenged this flexibility in the case of *National Association of Postal Supervisors v. U.S. Postal Service*, when they challenged the Postal Service's ability to reduce the salary differential between supervisors and rank and file employees. The D.C. Circuit Court of Appeals ruled the Postal Service had broad discretion in setting compensation for supervisors and that it must be free from encumbrances to perform management functions. The court specifically cited the legislative history stating that the single most important purpose of the PRA was to bring truly effective management to the Postal Service.

In response to the D.C. Court's ruling, Congress enacted Sections 1004(c) through (h):

- Subsection (c) requires the Postal Service and its management organizations to meet monthly (unless otherwise mutually agreed) to implement the consultation and direct participation procedures of subsection (b).<sup>6</sup>
- Subsection (d) outlines the process the Postal Service must follow to facilitate the organizations' participation. This includes the requirement that any pay and benefit changes be made in writing along with the details of the changes and the reasons. It also requires that organizations be given the opportunity to make recommendations, which the Postal Service must fully and fairly consider.

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<sup>5</sup> The language in these two subsections has changed slightly over the years, but the overall meaning has remained the same.

<sup>6</sup> In December 1976, the Postal Service and the two postmaster organizations agreed to quarterly consultations.

- Subsection (e) indicates the Postal Service must make pay and benefit proposals to the organizations within the 45-day period after it has reached an agreement with its largest employee union — currently the American Postal Workers Union (APWU). It further indicates that postmaster pay and benefit decisions remain in effect during the same period as the APWU agreement (typically 4 years).<sup>7</sup>

Added subsections (c) and (e) are in conflict because they, respectively, provide a mechanism for the parties to consult monthly and indicate consultation can only occur within a 45-day period, every 4 years. This conflict is highlighted by the Postal Service's actions in April and May 2009 (during the 4-year agreement), when it advised the postmaster organizations that, pursuant to Section 1004, it proposed (and then decided) to suspend postmaster convention leave for the remainder of FY 2009 (effective May 31, 2009) and all of FY 2010. Management advised postmaster organizations that they based the decision on the agency's "extraordinary circumstances" including an unprecedented decline in mail volume and a projected loss of \$6 billion this fiscal year. The Postal Service estimated that convention leave costs the agency more than \$4 million a year (\$14 million since FY 2006). Management also advised the postmaster organizations that, in lieu of convention leave, postmasters could use annual leave to attend conventions.

The postmaster organizations responded in April and May 2009, stating that Subsections 1004(e) and (f) precluded the Postal Service from making changes to benefits because the August 2007 pay and benefit package with the Postal Service was in effect through FY 2010. The organizations acknowledged, however, the difficult economic situation affecting the agency and offered a compromise — in exchange for no changes to the FY 2009 leave benefit the organizations would not challenge the leave suspension for FY 2010. They also proposed the Postal Service include the leave benefit in the pay and benefit consultations beginning in FY 2011.

The presidents based their recommendations on the significant financial hardship to the postmaster organizations because reduced attendance at conventions would result in significant unrecoverable costs for conference space, hotel rooms, etc. On May 22, 2009, the Postal Service advised the organizations that after giving their recommendations full and fair consideration they were being declined for the same reasons outlined in their earlier correspondence.

The Vice President, Labor Relations, told us that only 10 to 15 percent of the agency's postmasters used convention leave. He said that to his knowledge no significant changes to postmaster pay or benefits outside of the 4-year agreement have ever occurred. He added, however, that the Postal Service has never been in the serious financial condition it is in today and paying postmasters to attend conventions would not be prudent.

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<sup>7</sup> Subsection (f) provides the process to be followed if the organizations believe the Postal Service is not following the law; subsection (g) provides for an overall review of the procedures' effectiveness; and subsection (h) affords postmasters the same rights as supervisors.

The organization's presidents agreed with the Vice President's estimate of the percentage of postmasters that attend conventions and provided a number of reasons so few attend ranging from not being able to find a postmaster replacement to the prohibitive cost of travel and hotels. They also agreed that no significant changes to postmaster benefits have been made outside the 4-year agreement. They said, however, that the convention leave costs the Postal Service claimed were not significant compared to the agency's total daily losses and were inflated. The presidents were not able to provide us their organizations' financial losses due to the decline in postmaster attendance because the convention year is still in progress.

While Congress can remedy the Postal Service and postmaster organization's interpretations by clarifying the law or through litigation, the legislative history suggests the Postal Service's interpretation is reasonable. Specifically, the emphasis Congress put on granting management wide latitude to operate the Postal Service like a business, makes it unlikely that Congress intended to limit the Postal Service's ability to make changes to pay and benefits to just 45 days every 4 years. We therefore believe the Postal Service can make changes outside the 45-day time period and it followed the processes outlined in Subsections 1004(c) and (d) (which provide a structured framework). We also believe the Postal Service's decision to suspend convention leave was prudent and fully supported by the agency's serious economic situation. In addition, the annual costs for convention leave are significant and supported.

### **Time to Respond Was Sufficient**

The postmaster organizations received sufficient time to review and make recommendations with respect to the suspension of the convention leave benefit. Subsection 1004(d) requires the Postal Service to give organizations 60 days to review and make recommendations "unless extraordinary circumstances require earlier action." In this case, postmaster organizations were given a month (April 14 to May 15) to respond and were advised that the agency's "unprecedented financial difficulties and unforeseeable economic decline" was the reason for not providing the full 60 days.

We also noted the Postal Service's March 2007 proposal for changes in pay and benefits for FYs 2007 through 2010 and a meeting between the Postal Service and the postmaster organizations in October 2008 included discussions regarding the suspension of the convention leave benefit. In that regard, the suspension was not a total surprise when formally proposed in May 2009.

**APPENDIX C: 39 USCS §1004**

## §1004. Supervisory and other managerial organizations

(a) It shall be the policy of the Postal Service to provide compensation, working conditions, and career opportunities that will assure the attraction and retention of qualified and capable supervisory and other managerial personnel; to provide adequate and reasonable differentials in rates of pay between employees in the clerk and carrier grades in the line work force and supervisory and other managerial personnel; to establish and maintain continuously a program for all such personnel that reflects the essential importance of a well-trained and well-motivated force to improve the effectiveness of postal operations; and to promote the leadership status of such personnel with respect to rank-and-file employees, recognizing that the role of such personnel in primary level management is particularly vital to the process of converting general postal policies into successful postal operations.

(b) The Postal Service shall provide a program for consultation with recognized organizations of supervisory and other managerial personnel who are not subject to collective-bargaining agreements under chapter 12 of this *title* [39 USCS §§ 1201 et seq.]. Upon presentation of evidence satisfactory to the Postal Service that a supervisory organization represents a majority of supervisors, that an organization (other than an organization representing supervisors) represents at least 20 percent of postmasters, or that a managerial organization (other than an organization representing supervisors or postmasters) represents a substantial percentage of managerial employees, such organization or organizations shall be entitled to participate directly in the planning and development of pay policies and schedules, fringe benefit programs, and other programs relating to supervisory and other managerial employees.

(c)(1) The Postal Service and the supervisors' organization shall, unless otherwise mutually agreed to, meet at least once each month to implement the consultation and direct participation procedures of subsection (b) of this section.

(2) (A) At least 7 days before each meeting, each party shall--

(i) provide notice of agenda items, and

(ii) describe in detail the proposals such party will make with respect to each such item.

(B) Grievances of individual employees shall not be matters which may be included as

agenda items under this paragraph.

(d) (1) In order to facilitate consultation and direct participation by the supervisors' organization in the planning and development of programs under subsection (b) of this section which affect members of the supervisors' organization, the Postal Service shall--

(A) provide in writing a description of any proposed program and the reasons for it;

(B) give the organization at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the program; and

(C) give any recommendation from the organization full and fair consideration in deciding whether or how to proceed with the program.

(2) If the Postal Service decides to implement a program described in paragraph (1) of this subsection, the Postal Service shall before such implementation--

(A) give the supervisors' organization details of its decision to implement the program, together with the information upon which the decision is based;

(B) give the organization an opportunity to make recommendations with respect to the program; and

(C) give such recommendations full and fair consideration, including the providing of reasons to the organization if any of such recommendations are rejected.

(3) If a program described in paragraph (1) of this subsection is implemented, the Postal Service shall--

(A) develop a method for the supervisors' organization to participate in further planning and development of the program, and

(B) give the organization adequate access to information to make that participation productive.

(4) The Postal Service and the supervisors' organization may, by agreement, adopt procedures different from those provided by this subsection.

(e) (1) The Postal Service shall, within 45 days of each date on which an agreement is reached on a collective bargaining agreement between the Postal Service and the bargaining representative recognized under section 1203 of this title which represents the largest number of employees, make a proposal for any changes in pay policies and schedules and fringe benefit programs for members of the supervisors' organization which are to be in effect during the same period as covered by such agreement.

(2) The Postal Service and the supervisors' organization shall strive to resolve any differences concerning the proposal described in paragraph (1) of this subsection under the procedures provided for, or adopted under, subsection (d) of this section.

(3) The Postal Service shall provide its decision concerning changes proposed under paragraph (1) of this subsection to the supervisors' organization within 90 days following the submission of the proposal.

(f) (1) If, notwithstanding the mutual efforts required by subsection (e) of this section, the supervisors' organization believes that the decision of the Postal Service is not in accordance with the provisions of this title, the organization may, within 10 days following its receipt of such decision, request the Federal Mediation and Conciliation Service to convene a factfinding panel (hereinafter referred to as the "panel") concerning such matter.

(2) Within 15 days after receiving a request under paragraph (1) of this subsection, the Federal Mediation and Conciliation Service shall provide a list of 7 individuals recognized as experts in supervisory and managerial pay policies. Each party shall

designate one individual from the list to serve on the panel. If, within 10 days after the list is provided, either of the parties has not designated an individual from the list, the Director of the Federal Mediation and Conciliation Service shall make the designation. The first two individuals designated from the list shall meet within 5 days and shall designate a third individual from the list. The third individual shall chair the panel. If the two individuals designated from the list are unable to designate a third individual within 5 days after their first meeting, the Director shall designate the third individual.

(3) (A) The panel shall recommend standards for pay policies and schedules and fringe benefit programs affecting the members of the supervisors' organization for the period covered by the collective bargaining agreement specified in subsection (e)(1) of this section. The standards shall be consistent with the policies of this title, including sections 1003(a) and 1004(a) of this title.

(B) The panel shall, consistent with such standards, make appropriate recommendations concerning the differences between the parties on such policies, schedules, and programs.

(4) The panel shall make its recommendation no more than 30 days after its appointment, unless the Postal Service and the supervisors' organization agree to a longer period. The panel shall hear from the Postal Service and the supervisors' organization in such a manner as it shall direct. The cost of the panel shall be borne equally by the Postal Service and the supervisors' organization.

(5) Not more than 15 days after the panel has made its recommendation, the Postal Service shall provide the supervisors' organization its final decision on the matters covered by factfinding under this subsection. The Postal Service shall give full and fair consideration to the panel's recommendation and shall explain in writing any differences between its final decision and the panel's recommendation.

(g) Not earlier than 3 years after the date of the enactment of this subsection [enacted Aug. 8, 1980], and from time to time thereafter, the Postal Service or the supervisors' organization may request, by written notice to the Federal Mediation and Conciliation Service and to the other party, the creation of a panel to review the effectiveness of the procedures and the other provisions of this section and the provisions of section 1003 of this title. The panel shall be designated in accordance with the procedure established in subsection (f)(2) of this section. The panel shall make recommendations to the Congress for changes in this title as it finds appropriate.

(h) (1) In order to ensure that postmasters and postmasters' organizations are afforded the same rights under this section as are afforded to supervisors and the supervisors' organization, subsections (c) through (g) shall be applied with respect to postmasters and postmasters' organizations--

(A) by substituting "postmasters' organization" for "supervisors' organization" each place it appears; and

(B) if 2 or more postmasters' organizations exist, by treating such organizations as if they constituted a single organization, in accordance with such arrangements as such organizations shall mutually agree to.

(2) If 2 or more postmasters' organizations exist, such organizations shall, in the case of any fact finding panel convened at the request of such organizations (in accordance

with paragraph (1)(B)), be jointly and severally liable for the cost of such panel, apart from the portion to be borne by the Postal Service (as determined under subsection (f)(4)).

(i) For purposes of this section--

(1) "supervisors' organization" means the organization recognized by the Postal Service under subsection (b) of this section as representing a majority of supervisors;

(2) "members of the supervisors' organization" means employees of the Postal Service who are recognized under an agreement between the Postal Service and the supervisors' organization as represented by such organization;

(3) "postmaster" means an individual who is the manager in charge of the operations of a post office, with or without the assistance of subordinate managers or supervisors;

(4) "postmasters' organization" means an organization recognized by the Postal Service under subsection (b) as representing at least 20 percent of postmasters; and

(5) "members of the postmasters' organization" shall be considered to mean employees of the Postal Service who are recognized under an agreement--

(A) between the Postal Service and the postmasters' organization as represented by the organization; or

(B) in the circumstance described in subsection (h)(1)(B), between the Postal Service and the postmasters' organizations (acting in concert) as represented by either or any of the postmasters' organizations involved.

## APPENDIX D: MANAGEMENT'S COMMENTS

DOUG A. TULINO  
VICE PRESIDENT, LABOR RELATIONS



August 5, 2009

CHRISTINA NICOLOFF

SUBJECT: Discussion Draft Management Advisory—Suspension of Postmaster  
Convention Leave Benefit (Project Number 09YG035HM000)

This is to inform you that the Postal Service has no further comment on the above-referenced discussion draft management advisory.

Doug A. Tulino