Attachment A

February 21, 2023 Decision

by Arbitrator Barry Simon
NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration

Between

UNITED STATES POSTAL SERVICE    Case No:    Q14K-4Q-C 20388760

and

POSTAL POLICE OFFICERS ASSOCIATION

BEFORE:    Barry E. Simon, Arbitrator

APPEARANCES:

For the U. S. Postal Service:    Lucy C. Trout, Esq.
                                 Shaun Bokhari, Esq.

For the PPOA:    Arlus J. Stephens, Esq.
                 Murphy Anderson PLLC
                 Washington, DC

Place of Hearing:    USPS Headquarters, Washington, DC
                     Videoconference

Dates of Hearing:    June 9 and 10, July 27, 2022

Date of Award:    February 21, 2023

Relevant Contract Provisions:    Articles 5, 6, 14, and 19 of the National Agreement

Contract Year:    2017-2022

Type of Grievance:    Contract Interpretation

Award Summary:

The grievance is sustained. The Bowers Memo is to be rescinded and the utilization of Postal Police Officers is to be governed by the provisions of Handbooks IS-701 and IS-702.

Barry E. Simon
Background: The facts giving rise to the grievance herein are undisputed. On August 25, 2020, David Bowers, Deputy Chief Inspector of the U.S. Postal Inspection Service, issued a Management Communication ("the Bowers Memo") with the subject heading "Postal Police Utilization." It read as follows:

- Per 18 U.S.C. § 3061 (c)(1)-(2). Postal Police Officers (PPOs) may exercise certain law enforcement authority (i.e., enforce certain Federal laws and regulations, carry firearms, and make arrests for specified offenses) on real property owned, occupied, or otherwise controlled by the Postal Service; or in the immediate areas outside postal owned real properly (sidewalks and walkways) to the extent necessary to protect the property and people on postal owned real property. PPOs may not exercise this law enforcement authority in contexts unrelated to Postal Services premises.

- **Effective immediately any off property utilization of PPOs requires prior approval of the DCI over the Division with concurrence of the DCI over the Security Group.** [emphasis in original]

- DCI approval is not required for PPOs to travel off premises in order to get to a duty assignment or incident at another Postal Service location. However, during this travel they are not to be placed into situations in which it would be reasonably likely that they would be compelled to exercise law enforcement activity (e.g., carrier protection patrols, community policing patrols, and fishing patrols).

By letter dated September 8, 2020, Frank Albergo, President of the Postal Police Officers Association ("the Union” or “PPOA”), filed this grievance at Step 4 of the grievance procedure, arguing as follows:

The Employer violated Articles 5, 6, 14, and 19 of the National Agreement when it issued the August 25, 2020 revision to the policing powers of the Postal Police Officers as found in 18 U.S.C. §3061(c). Such powers are further codified in USPS Handbook IS-701, Security Force Operations (See USPS “Policy Update” dated May 22, 2007).

The parties met in an attempt to resolve the grievance, but were unable to do so. Consequently, Union President Albergo, by letter dated November 10, 2021, appealed the grievance to national arbitration. The grievance was submitted to National Arbitrator Barry E. Simon, selected
jointly by the parties. In-person hearings were conducted on June 9 and 10, 2022, and via video-conference on July 27, 2022. The hearings were recorded and transcribed by a Registered Professional Reporter. Written post-hearing briefs were filed with the Arbitrator and received on November 21, 2022, at which time he declared the record to be closed. The parties agreed to extend the Arbitrator’s time limit for the issuance of the Award to February 21, 2023.

**Issues Presented:** The Union defines the issue before the Arbitrator as follows:

Did the Postal Service violate the Collective Bargaining Agreement when, in August 2020 and thereafter, it acted contrary to the published and long-established official policy on PPOs’ jurisdictional authority, as set forth in the IS-701? If so, what shall be the remedy?

The Postal Service submits the issues before the Arbitrator as follows:

1. Whether the PPOA’s Article 15 and 19 claims are procedurally arbitrable; and
2. If the claims are timely, whether the Postal Service violated Articles 5, 6, 14, and 19 of the Collective Bargaining Agreement, when the Inspection Service issued a communication to its managers reinforcing earlier guidance that PPO jurisdiction is limited to postal real property?

Inasmuch as the parties are not in agreement as to a Statement of Issue, the Arbitrator understands it is within his authority to define the issues before him, based upon the terms used in the grievance and the arguments presented by the parties. The Arbitrator subscribes to the advice offered by Arbitrator John Kagel regarding the formulation of the issue.

It is better if the statement of the issue does not seem to assume the truth of one party’s position, such as “Was X’s discharge for hitting Y a violation of the agreement?” when the underlying factual issue is whether such an assault occurred.¹

In the case at bar, with respect to the merits of the grievance, both parties have proffered Statements of Issue that contain factual assumptions that are central to their respective positions.

It is the Arbitrator’s preference that the substantive issue be framed in a neutral context. Accordingly, he defines the issues before him thusly, derived from the Step 4 grievance:

1. Is the grievance procedurally arbitrable?
2. If so, did the Postal Service violate the National Agreement when, on August 25, 2020, David Bowers, Deputy Chief Inspector of the U.S. Postal Inspection Service, issued a Management Communication with the subject heading “Postal Police Utilization”? If so, what is the appropriate remedy?

Position of the Union: The Union asks the Arbitrator to reject the Service’s arbitrability argument, noting that the Service bears the burden of proof on this issue. It first notes that the Service, in federal court, contended that the grievance was arbitrable, presumably in a effort to avoid the Court’s consideration of the Union’s contract arguments. It says the Service emphasized that the Arbitrator would decide the merits of the Union’s claim, writing, “As an initial matter, it is clear that the relevant contractual dispute – whether the Postal Service violated the terms of the collective bargaining agreement – is arbitrable.” It says the Service later stated, “To be clear, Defendants do not dispute the arbitrability of PPOA’s grievance.” Because the Service prevailed in that endeavor, the Union submits it is now estopped from taking a contrary position here.

Secondly, the Union denies the Agreement sets a time limit for protesting Postal Service actions that are contrary to official postal policy. Specifically, it says there is no time limit in the Agreement for the Union to file a national-level grievance, and says it is unaware of any arbitration decision that sets such a time limit. The Union denies the 60-day time limit set forth in Section 19.02 of the Agreement is applicable because the grievance herein is not a challenge to a proposed change to a handbook, but even if it were applicable, the Union asserts it had never received a “hard copy” of proposed language which might trigger the time limit.

Further, it argues a continuing violation exists when the Service acts contrary to postal publications. In this regard, the Union cites Arbitrator Carlton Snow’s January 6, 1998 Award in APWU and USPS, Case No. WIC-5G-C 11272, holding that each day of a new smoking policy would constitute a new contractual infraction.
Alternatively, the Union contends it filed a timely grievance after it learned of the Bowers Memo. It denies there has been a practice by the Service that PPOs did not have law enforcement authority away from postal real estate. Rather, it insists the Service deployed PPOs on law enforcement patrols until the Bowers Memo, and that decisions to do so were authorized at the highest levels of the Inspection Service.

With respect to the merits of the grievance, the Union first explains that Article 19 of the Agreement effectively makes those parts of the Service’s handbooks and manuals directly relating to wages, hours, or working conditions a part of the Agreement. It argues that management’s failure to abide by any applicable Handbook provisions is an actionable grievance under Articles 5 and 19.

The Union submits that the IS-701 Handbook, and its policy authorizing PPOs’ law enforcement authority away from postal real estate directly relates to the wages, hours, and working conditions of PPOs. It points to Labor Relations Representative Janet Peterson’s testimony that she could not think of anything in Handbooks IS-701 and IS-702 that did not directly relate to PPOs’ working conditions, and that the Service could change without going through the Article 19 process.

The Union explains that the authorization for PPOs to be able to exercise law enforcement jurisdiction away from postal real estate is of profound importance to them. It says PPOs are thus protected by being cloaked with the protection of qualified immunity, and it grants them the ability to be assigned on a wide array of law enforcement patrols, such as the protection of letter carriers and combating mail theft. Without this authority, the Union says PPOs have only citizen’s arrest powers, for which they have not been trained. Without being able to perform this work, the Union suggests the Service intends to reduce PPOs to security guards, and eliminate the bargaining unit as it had discussed in the parties’ 2020 interest arbitration.

The Union asserts the Service has acted contrary to the policy statements set forth in Handbooks IS-701 and IS-702. When the Inspection Service determined in 2006 and 2007 that PPOs should have law enforcement jurisdiction away from postal real estate in designated circumstances, the Union said formal updates to the Handbooks were made to reflect that policy decision. Because it purports to strip PPOs of their law enforcement authority when they are deployed away from postal real property, the Union maintains the Bowers Memo is contrary to the updated IS-701
and IS-702, which state PPOs do have such authority. It says the Bowers Memo has the effect of limiting what PPOs may do and where they may be deployed.

The Union explains the procedure for amending the IS-701 in the event the Service wishes to act contrary to its provisions. Those procedures, which begin with a 60-day notice to the Union, with a hard copy of the proposed changes, have not been commenced, says the Union. Consequently, it says the dispute in this case is that the Service has not complied with Handbook language that is incorporated by operation of Section 19.01 of the Agreement. The dispute is not, says the Union, whether the Service made changes to the Handbooks that may or may not be allowed by Section 19.02.

As a remedy, the Union asks that the Service be directed to rescind the Bowers Memo, and recognize and abide by the policy statements enshrined in the IS-701 and the IS-702. Thus, it says the Service may not assert the PPOs lack law enforcement authority when off postal property, but recognize that they have such authority. The Union clarifies that it is not seeking an order by the Arbitrator that would require the Service to deploy PPOs for any tasks off of postal property. It says it recognizes that utilization of employees is a management prerogative. Rather, it submits that the Service may not use a false premise to justify its decisions and wrongly assert, contrary to the IS-701 and IS-702, that PPOs lack law enforcement authority to protect letter carriers from violent crimes and to patrol against mail theft on city streets.

The Union asks the Arbitrator to reject the Service’s argument that U.S. District Judge Christopher R. Cooper, in *PPOA v. USPS*, Case No. 20-cv-2566 (CRC), ratified the Service’s decision to change its policy on the scope of PPOs’ law enforcement jurisdiction and the meaning of “property.” It asserts Judge Cooper held that the statute allows PPOs to exercise law enforcement jurisdiction off the property if the Postal Service allows it. Rather, the Union acknowledges that the Court rejected the its argument that PPOs must have law enforcement jurisdiction away from postal real estate. In sum, it says the Court’s decision left the scope of PPO law enforcement jurisdiction to Postal Service Policy.

The Union also asks the Arbitrator to reject any argument that the policy statements regarding PPO jurisdiction in the 2007 update to the IS-701 were a mistake, and that the change in the 2006
Postal Accountability and Enhancement Act ("PAEA") limited the scope of PPOs' law enforcement jurisdiction. It notes that the Service's position is based solely upon David Reardon's legal opinion, and that the Service had published in the Federal Register its position that the PAEA amendments had not changed the PPOs' law enforcement authority. 72 Fed. Reg. 11288 (March 13, 2007). In any case, the Union argues the appropriate way to correct the IS-701 would be through the procedures of Article 19.02 of the Agreement.

The Union asks that its grievance be sustained and that the Arbitrator hold that the Service's new contention that PPOs lack law enforcement authority away from postal real estate is contrary to the updated IS-701 and IS-702. It therefore requests the Arbitrator to direct the Postal Service to cease and desist all conduct flowing from the new interpretation and remedy past conduct, including but not limited to withdrawing the Bowers Memo and disavowing any change to PPOs' permissible law enforcement authority as set forth in the IS-701 and IS-702.

**Position of the Service:** The Service first argues the grievance is untimely as a matter of law, and must be dismissed on that basis without regard to its merits. According to the Service, the memorandum at issue did nothing more than memorialize the same position it articulated to the Union at the November 6, 2019 National Labor Management Meeting, and numerous times before. It says notes from that meeting were emailed to Union representatives by Labor Relations Representative Janet Peterson on January 16, 2020. The Union responded, says the Service, on January 19, 2020, claiming the interpretation should have undergone an Article 19 notification, but did not file a grievance at that time. The Service cites National Arbitrator Carlton Snow’s holding in *USPS and APWU, Case No. H7C-NA-C 10* (1989), stating:

> Procedures in Articles 19 are clear and unambiguous. Time limits set forth by the provision have not been waived by past practice or the concept of impossibility. The contractual intent of the parties with respect to procedures in Article 19 is clear from the language used by the parties and is binding on both of them, unless there is evidence in an individual case of an express agreement to the contrary.

In this case, the Service denies there has been any agreement, express or implicit, to abrogate the grievance procedures. Rather, it submits the only evidence is that the directives memorialized
in the Bowers Memo had been articulated to the Union long before any grievance was filed. It argues the grievance should have been filed within fourteen days of notice or the alleged violations of Articles 5, 6 and 14. This is the case also for grievances filed at Step 4, says the Service, citing *USPS and APWU, Case No. AB-NAT-2541* (Gamser, 1975). The Service thus asks that the grievance be dismissed.

Alternatively, the Service denies there has been a change to a handbook or manual, and the issuance of the Bowers Memo, therefore, does not constitute a violation of Article 19. The Service explains that Article 19 establishes procedures to be followed when particular changes are implemented. To prevail in this case, the Service contends the Union must demonstrate there had been a change to a “handbook, manual or published regulations . . . that directly relates to wages, hours or working conditions.” According to the Service, the Bowers Memo reinforced an existing policy that is supported by relevant manuals, handbooks, and publications. It says the Memo was an exercise of Management’s right under Article 3 “to direct PPOs of the Employer in the performance of official duties.”

The Service characterizes the Bowers Memo as restating and reinforcing a long-held and frequently articulated interpretation of 18 U.S.C § 3061(c), which it asserts confines the jurisdictional authority of PPOs to postal property, with a few, narrowly tailored exceptions. It avers the testimony shows a long history of confining the duties of PPOs to postal property, and explains that the incidents raised at the hearing were either within the limited exceptions to PPO jurisdiction or were done inconsistently and without the uniform blessing of management.

The Service refers to Section 112.12 of Postal Service Handbook IS-701 dealing with Security Force Operations. It says this document restricts the policing powers of the Security Force to Postal Service controlled property, except for hot pursuit and in situations requiring mobile patrol or escort protection. According to the Service, PPOs still conduct mobile patrols in limited circumstances, such as escorting registered mail between facilities and providing remittance run security in limited cities. Because the Bowers Memo did not alter or discontinue this work, the Service denies there has been a change in working conditions.
The Service acknowledges there have been instances of PPO work being performed off-property, but argues they prove the need for the Bowers Memo to ensure that all management personnel are aware of, and abiding by, the existing official position of the Service.

The Service maintains it has the right, through Article 3 of the Agreement, to direct PPOs to confine their policing powers to real property. It says the absence of a contractually binding restriction on its authority leaves Management free to determine the confines of the jurisdictional authority of PPOs, and to direct them in the performance of their duties.

The Service says it sees the Union’s grievance as a challenge to its authority to limit the scope of PPO authority to real property. It says this issue has already been resolved in the Service’s favor in District Court. *Postal Police Officers Association v. USPS, et al.*, Case No. 20-cv-2566 (CRC). In that case, the Service explains, the Union sought to have the Bowers Memo rescinded. It says the District Court granted the Service’s Motion to Dismiss, stating:

The Union claims USPS acted in excess of its statutory authority by adopting an unduly narrow view of PPOs’ law-enforcement jurisdiction. After careful consideration, the Court concludes that this claim must be dismissed under Rule 12(b)(6) because USPS’s action follows from a reasonable interpretation of the governing statute, if not the only reasonable interpretation.

* * *

It is far from clear the § 3061(c) should be interpreted to leave USPS with so little discretion. A plausible alternative reading is that § 3061(c)(2) grants PPOs law-enforcement powers with respect to “such property” as USPS has actually assigned them to protect, not as to every piece of property to which USPS lawfully could assign PPOs. Indeed, that is the most commonsense reading of the statute, if not the most literal one.

The Service asks that the Union’s attempt to again challenge its statutory interpretation be rejected based upon the principles of collateral estoppel.

Denying it had violated Article 5 of the Agreement, the Service insists the Union cannot prove a uniform, consistent past practice establishing otherwise. Arguing that a binding past practice must have (1) clarity and consistency, (2) longevity and repetition, and (3) knowledge and mutual acceptability, the Service asserts the Union has not met the burden of proving these elements. It
points to the Union exhaustingly battling this issue as evidence of a lack of knowledge and mutual acceptability.

The Service next denies Articles 6 or 14 of the Agreement were violated. Restriction of the law enforcement jurisdiction of PPOs, says the Service, does not infringe upon the rights of any PPOs to perform their duties. It further denies there is any evidence that any PPO has received disciplinary action as a result of the issuance of the management instruction. Additionally, it says there has been no showing that the safety or health of PPOs was endangered by the issuance of the Bowers Memo. Instead, the Service suggests the safety of PPOs is enhanced by not placing them in situations for which they are not properly trained or equipped. It cites the testimony of Deputy Chief Postal Inspector Peter Rendina that PPO training does not cover how to conduct police activities off of postal property.

The Service concludes by suggesting the Union’s motivation in this proceeding is to expand the scope of PPO duties in an effort to obtain increased wages, commensurate with those duties. It says the inability of the Union to gain such increases in contract bargaining and interest arbitration does not give it the right to seek those determinations through rights arbitration, couched as Article 19 disputes.

For these reasons, the Service asks that the grievance be denied in full.

**Discussion:**

*Arbitrability* There has been an on-going dispute between the Postal Service and the Postal Police Officers Association as to the scope of Postal Police Officers’ law enforcement authority. Pursuant to the Postal Reorganization Act, the Postal Service and the Fraternal Order of Police, National Labor Council, U.S.P.S. No. 2, a predecessor union to the PPOA, appeared before a Factfinding Panel in 1994 in an effort to resolve their interest dispute upon the expiration of their collective bargaining agreement on April 15, 1994. The Panel identified one of the principal issues as “The status of PPO’s - are they security guards, police officers, or some hybrid of the two?” A second, and related, issue concerned compensation and which occupational group should be used for comparability purposes. The Panel made the following findings:
PPO duties are circumscribed by statute. [40 U.S.C. §318; 39 U.S.C. §1201(2), 1202(4)] They include special police powers to intervene in crimes involving Postal Service property and/or personnel. The Factfinding Panel recommends that the Union look to Congress for any desired change in PPO retirement status or for any expansion it may desire in its limited law enforcement status as set forth by statute.

* * *

The Factfinding Panel further finds that the Union failed to establish that the duties of PPO’s fall within the BLS definition of “Police Officer, Uniformed I.” On the other hand, the Postal Service failed to establish that duties of PPO’s fall within the BLS definition of “Guard II.” This lack of proof further underscores the fact that the PPO classification is neither “fish nor foul [sic].” It is a hybrid composed of some guard duties and some police officer duties. Moreover, it appears from the record that a small number of PPO’s perform significant law enforcement duties at some locations, while the majority do not.

Interest arbitrations in 2008, involving the FOP, and in 2014 and 2020, involving the PPOA, continued the dispute as to whether PPOs were more similar to police officers or guards. In these cases, the Service presented testimony regarding the limited authority of PPOs.

In addition to contract bargaining, the Service says it had made the Union aware of its position with respect to PPO law enforcement authority on several occasions. It notes that Inspector Attorney David Reardon issued a memorandum on February 15, 2016, to Inspection Service supervisors in Houston, in response to an inquiry from one of the supervisors. That memorandum, headed “Postal Police Law Enforcement Authority,” read, in pertinent part, as follows:

POSTAL POLICE AUTHORITY

Federal Law

The law enforcement authority for Postal Police Officers is found in Title 18, United States Code, Section 3061 (c). This statute is permissive, meaning that the Postal Service may, but it not obligated, to use the authorities granted by the statute. Section C is in four parts, the first two, which are read together, authorize the Postal Service to employ Postal Police Officers for the protection of USPS property and persons on that property and the second section lists what law enforcement authority Postal Police Officers have. While on real property owned, occupied or controlled by the Postal Service, Postal Police Officers have the authority to enforce Federal laws and regulations, carry firearms and make arrests for violations of Federal law.
Once a Postal Police Officer is away from the real estate owned, occupied or controlled by the Postal Service the officer’s law enforcement authority ends unless the officer is engaged in fresh and continued pursuit of an offender for a violation which took place on USPS property.

The Postal Police Officers do not have any federal law enforcement authority to stop, detain or arrest a person for a violation if that offense did not take place on property owned or controlled by the Postal Service.

* * *

CONCLUSION

Postal Police Officers when not on the real estate owned, occupied or controlled by the Postal Service do not have law enforcement powers and should not be sent into situations where there may be an expectation that Postal Police Officers would take law enforcement action. In these situations Postal Police Officers are, in effect, security officers and any action taken would be judged on that status.

This situation is no different than what is routinely seen by protective or security details for elected officials or sports teams, and in many other uniformed federal law enforcement agencies to include the Veterans Administration Police, National Park Service law enforcement Rangers.

In October 2017, the Service issued a position description for Postal Police Officers. That position description, which is still current, reads, in pertinent part, as follows:

FUNCTIONAL PURPOSE:

In connection with property owned, occupied, or controlled by the Postal Service, enforces Federal laws and regulations for the protection of persons and property, consistent with statutory and regulatory authority, ensures safety and security of personnel, customers, property, and mail.

DUTIES AND RESPONSIBILITIES:

* * *

3. Performs patrol duty, as assigned, on foot or by motor vehicle within jurisdictional authority in connection with property owned or occupied by the Postal Service.
5. Controls access to property owned or occupied by the Postal Service including direction of vehicle traffic; enforces the regulations for conduct on Postal Service property, and where authorized, writes citations for violations of these regulations; ensures compliance with security and safety policies and procedures.

10. Utilizes accepted law enforcement tactics to respond to active shooter incidents on property owned or occupied by the Postal Service.

The parties participated in a National Labor-Management Meeting on December 12, 2017, where the jurisdiction of PPOs was discussed. The minutes of that meeting reflect the following discussion:

The determination of Postal Police jurisdiction is an ongoing legal research issue for the Postal Service. No final determination has yet been made. The Union will be provided the Postal Service’s position on jurisdiction once a determination has been made. While, PPOA interprets the statutory authority of PPOs broadly, the Postal Service has to review the matter from a legal perspective (statutory intent and case law). The Postal Service’s obligation is to apply the statute in a legally defensible manner that serves the Postal Service’s interests but also protects both the agency and the individual officer.

The “Job Description Committee” is not taking part in the legal analysis and is not a decision maker with respect to the agency’s position on jurisdiction. The committee’s job will be to spread a consistent message on the use of PPOs – including jurisdictional guidelines (once those are determined by the agency).

This history is relevant to the Service’s contention that the issue herein has existed for some time, and that the Bowers Memo presents no new issues that could not have been grieved any time earlier. While the record reflects a history of the parties discussing (or debating) the jurisdictional authority of PPOs over the years, or the issuance of a legal opinion, the minutes of the National Labor Management Meeting suggest the Service had not elevated its position on this matter to the level of a new policy. The Bowers Memo, on the other hand, is a directive from top management as to the utilization and authority of PPOs.
There is an accepted practice in labor arbitration that grievances are presumed to be arbitrable, and the burden of proving otherwise is upon the party challenging arbitrability. In the case at bar, the Service had conceded substantive arbitrability of the grievance in its Reply in Support of Defendants’ Motion to Dismiss Plaintiff’s Complaint in PPOA v. USPS, supra, wherein it stated, “To be clear, Defendants do not dispute the arbitrability of PPOA’s grievance.” at 8. Given that the Court would not be the appropriate forum to raise an issue of procedural arbitrability, it is the Arbitrator’s conclusion that the Service’s concession was limited to the question of substantive arbitrability. That concession, therefore, is not fully determinative of the arbitrability question.

With respect to procedural arbitrability, i.e., the timeliness of the grievance, it is the Arbitrator’s conclusion that the Union has made a colorable argument that the issuance of the Bowers Memo represents a new action in conflict with the IS-701 and IS-702 Handbooks. That is sufficient to establish a grievable incident, although whether a violation of the Agreement occurred as a result of the Memo goes to the merits of the grievance. The grievance, therefore, was timely and, consequently, arbitrable.

Merits

Central to the Union’s grievance are provisions of Handbooks IS-701 and IS-702. The relationship between Handbooks and the Agreement is addressed in Section 19.01 of the Agreement, reading as follows:

Section 19.01. Intent.

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

The procedures for making changes to a Handbook are set out in Section 19.02 of the Agreement, and include notice to the Union of the proposed changes. It is undisputed that the Service did not serve notice upon the Union of any intent to change the provisions of Handbooks IS-701 and IS-702. The question before the Arbitrator, therefore, comes down to whether the Bowers
Memo constituted a change in either of the Handbooks. If it did, then it must be found that the Service violated the Agreement by failing to comply with Section 19.02. In addition, Article 5 would come into play inasmuch as it prohibits the Service from unilaterally taking any actions that affect wages, hours and other terms and conditions of employment and violate the terms of the Agreement.

It is generally recognized across the various crafts in the Postal Service that Article 19 has the effect of incorporating Handbooks and Manuals into the respective collective bargaining agreements. This was precisely what National Arbitrator Howard G. Gamser held in *USPS and APWU, Case No. A8-NA-0375* (June 1, 1981).

The relevant provisions of Handbook IS-701, Security Force Operations, relied upon by the Union are found in Section 112.12, reading as follows:

**Powers**

PPOs exercise the powers of special police on Postal Service-controlled property. Arrests made under this special police authority must be immediately reported to the SPP. The SPP will notify the MPP and duty inspector.

The powers granted to PPOs are as follows:

a. To enforce Postal Service rules and regulations pertaining to conduct on Postal Service-controlled property.

b. To enforce all laws enacted for the protection of persons and property (e.g., assaults, thefts, vandalism, and carriage of firearms occurring on Postal Service-controlled property).

c. To prevent breaches of the peace occurring on Postal Service-controlled property.

d. To control unlawful assemblies occurring on Postal Service-controlled properties.

e. To issue citations, in accordance with the Magistrate’s Program (where applicable), for misdemeanor offenses committed on Postal Service-controlled property.
f. To apprehend individuals for violations of law committed on Postal Service-controlled property.

**Limitations:** The jurisdiction and policing powers of the Security Force do not extend to the service of civil process. *The policing powers of the Security Force are restricted to Postal Service-controlled property, except for “hot pursuit” and in situations requiring mobile patrol or escort protection.* “Hot pursuit” means a chase on foot; Security Force personnel are not authorized to perform high-speed pursuit (i.e., in excess of posted speed limits) in a vehicle. In some states, members of the Security Force may be able to exercise state law enforcement authority. The extent that this state authority may be exercised in the performance of official duties will be determined by written division policy. Otherwise, PPOs have only the authority of citizens. [emphasis added]

Handbook IS-702, Postal Police Officer’s Guide, contains the following provisions regarding the authority of PPOs. Sections 1-4.3 and 1-4.4 read as follows:

**Title 40, United States Code, Section 318**

This federal statute grants to PPOs the powers of special policemen as follows:

a. To enforce Postal Service rules and regulations on Postal Service controlled property.

b. To enforce all laws (including local ordinances) enacted for the protection of persons and property, e.g., assaults, thefts, and vandalism, occurring on Postal Service controlled property.

c. To prevent breaches of the peace occurring on Postal Service controlled property.

d. To control unlawful assemblies occurring on Postal Service controlled property.

**Powers Not Granted**

The jurisdiction and policing powers of the security force do not extend to the service of civil process. The policing powers of the security force are restricted to Postal Service controlled property. *(Exceptions: “hot pursuit” and “citizen’s arrests.” See section 2-3.4 of this manual).* The term “hot pursuit” refers only to a chase on foot. PPOs and postal police supervisory or management personnel are not authorized to perform high-speed pursuit (i.e., in excess of posted speed limits) in a vehicle.
Nearly all references in both Handbooks to the jurisdiction and authority of PPOs are to being “on Postal Service controlled property.” The preposition “on” implies the scope of PPO jurisdiction and authority is limited to real property owned or controlled by the Postal Service, which is consistent with the position taken by the Service for some time. It is also consistent with the position taken in the Bowers Memo.

There is, however, one distinguishing aspect in the “Limitations” paragraph in Handbook IS-701, where it states, “The policing powers of the Security Force are restricted to Postal Service-controlled property, except for “hot pursuit” and in situations requiring mobile patrol or escort protection.” The reference to “situations requiring mobile patrol or escort protection” implies such work is part of the normal duties and responsibilities of PPOs, even though that might be true in only a limited number of locations. Under the Bowers Memo, such work may be performed only with the “prior approval of the DCI over the Division with concurrence of the DCI over the Security Group.” This requirement for prior approvals suggests such work is anything but routine. In this regard, the Bowers Memo is in conflict with the IS-701.

In reference to the language in IS-701, the Service has stated:

The Employer acknowledges that citation in the 2006 edition of the IS-701 quoted by the union is not a correct description of PPO authority. The Employer is working to address this and will ensure that corrections are made to show that the law enforcement authority of Postal Police Officers is, by statute, restricted to the real property of the Postal Service. 

Nevertheless, this provision has remained unchanged in IS-701, and the Service must follow the procedures set forth in Section 19.02 of the Agreement to make any change. It may not do so by

2During the hearing there were several references to PPOs escorting letter carriers making deliveries of high value parcels in the “Jewelers Row District” in Chicago. The Arbitrator is well-aware of this two-block stretch of buildings on Wabash Avenue, particularly the Mallers Building, that is the home to numerous retail and wholesale jewelers, many of whom specialize in the cutting and setting of diamonds. Merchandise may be sent or received by these businesses through the US Mail.

3July 15, 2021 letter from Labor Relations Specialist Janet Peterson to PPOA President Frank Albergo. Un. Ex. 4.
management fiat, whether it is called a "policy," a "management communication," a "management instruction," or anything else that purports to vary the jurisdiction and law enforcement authority of PPOs from that contained in the Handbook.

Because this portion of the IS-701 deals with where and how PPOs perform their duties, the Arbitrator finds this to be a matter addressing their working conditions. Section 19.01 of the Agreement requires such provisions to "be continued in effect." The Service may make changes "that are fair, reasonable, and equitable," but any proposed changes directly relating to working conditions must be handled in accordance with the procedures specified in Section 19.02.

The issuance of the Bowers Memo, without following the procedures of Section 19.02, was in violation of Section 19.01, and, in turn, Article 5 prohibiting unilateral action. The Bowers Memo must be rescinded and the Service must be guided by the terms of Section 112.12 of Handbook IS-701.

In reaching this conclusion, the Arbitrator makes no judgment as to the statutory law enforcement authority of Postal Police Officers, as that is beyond the jurisdiction conferred upon him under the Agreement. Additionally, he makes no judgment as to whether any changes to the Handbooks IS-701 or IS-702, if made in the same manner as the Bowers Memo, would be considered to be "fair, reasonable, and equitable." Finally, the Arbitrator recognizes, as does the Union, that there is a distinction between the jurisdictional and law enforcement authority of PPOs and how management chooses to deploy them in the field. Nothing in this Award should be construed as a directive that the Service must deploy PPOs away from Postal Service-controlled real property.
Award: The grievance is sustained. The Bowers Memo is to be rescinded and the utilization of Postal Police Officers is to be governed by the provisions of Handbooks IS-701 and IS-702.

Barry E. Simon, Arbitrator

Dated: February 21, 2023
Arlington Heights, Illinois