

AMERICAN ARBITRATION ASSOCIATION
VOLUNTARY LABOR ARBITRATION TRIBUNAL
IMPARTIAL ARBITRATOR KENNETH A. PEREA

In the Matter of Arbitration)	
)	
Between)	
)	
UNITED PARCEL SERVICE, INC.)	IMPARTIAL ARBITRATOR’S
)	
And)	FINDINGS
)	
TEAMSTERS LOCAL UNION)	AND
NO. 396)	
)	AWARD
)	
Re: Supervisors Performing)	AAA Case No. 01-21-0017-8039
Bargaining Unit Work)	Grievance No. N-21-13
)	

The above-entitled matter is conducted pursuant to the provisions of the National Master United Parcel Service Agreement (“NMA”) effective August 1, 2018 through July 31, 2023, between United Parcel Service, Inc. (“UPS”) and International Brotherhood of Teamsters (“IBT”). The parties agree the matters at issue are properly submitted for final and binding adjudication before Impartial Arbitrator Kenneth A. Perea.

I. THE HEARING

This dispute was heard on August 19, 2022, at Doubletree by Hilton-Los Angeles Downtown, 120 South Los Angeles Street, Los Angeles, CA, and on October 14, 2022, by agreement of the parties via Zoom. Throughout the course of the hearing, both parties were afforded full opportunity to present sworn testimony, cross-examine witnesses and introduce documentary evidence. The matter was submitted upon the electronic exchange of post-hearing briefs between counsel for the parties on November 21, 2022.

II. THE APPEARANCES

International Brotherhood of Teamsters Local Union No. 396 (“Local No. 396”) was represented at the hearing by Jason Wojciechowski, attorney at law, Bush Gottlieb, 801 North Brand Boulevard, Suite 950, Glendale, CA 91203-1260. The appearance on behalf of UPS was made by Tony C. Coleman (with Trent A. Taylor on the brief), attorneys at law, Dinsmore & Shohl, LLP, 101 S. Fifth Street, Suite 2500, Louisville, KY 40202.

III. THE MATTERS AT ISSUE

The issues presented for adjudication in the instant proceedings may be stated in the following terms:

1. Did UPS violate NMA Article 3, Section 7 by having supervisors perform package care driver work from April 1 through September 30, 2020?
2. If so, what shall be the remedy?

IV. THE FINDINGS OF FACT

A. Background

UPS, a worldwide delivery service, operates multiple facilities throughout Southern California employing thousands of package car drivers (“PCDs”). PCDs working in the Los Angeles Basin are represented by the Local No. 396, a party to the NMA, its Western Region Supplemental Agreement, and its Southwest Package and Southwest Sort Riders, effective August 1, 2018, through July 31, 2023.

The COVID-19 Pandemic (“Pandemic”) arrived on American shores in early March of 2020. Like many business entities, UPS anticipated the Pandemic would result in a significant decrease in operations resulting in layoffs and buildings closures. While some reduction in business-to-business (“B2B”) deliveries was experienced, there was also an unexpected increase in UPS’ business-to-consumer (“B2C”) package delivery business. The net result was a

substantial increase in the overall volume of package deliveries (“volume”) beginning in early 2020.

Due to the foregoing surge in business, UPS “rolled” significant volume. Several UPS facilities within the Local No. 396’s Los Angeles Basin jurisdiction “rolled” thousands of packages each week due to their sudden and unexpected need for additional PCDs. UPS facilities thus experienced significant increases in the number of deliveries in 2020 compared to 2019, creating substantially more work for Local No. 396-represented PCDs particularly in the initial months of the Pandemic as a nation-wide lockdown was mandated.

In addition to an unexpected increase in volume and resulting need for additional PCDs, during the Pandemic, UPS experienced higher than normal rates of absenteeism among PCDs, largely due to their calling in absent because of illness or other personal issues related to the Pandemic. Within the Local No. 396’s jurisdiction there were more than 12,000 additional PCD absences between March and September 2020 compared to the same period in 2019. Also, a significant number of PCDs began calling in ill and availing themselves of UPS’ newly-created COVID emergency paid leave for Pandemic-related reasons. One hundred ninety-six Local No. 396-represented PCDs used their 10 days of paid COVID leave representing approximately 15,680 lost manhours.

In sum, just as volume and the number of delivery stops increased due to the Pandemic, greater numbers of PCDs were absent from work due to the same reason.

B. UPS’ Response to Volume Surge and Increased Absenteeism

(1) Agreement to Use Part-Time POV Drivers

As the Pandemic began in early 2020, UPS took immediate steps to deal with increased volume. UPS thus implemented numerous changes to deliver volume by using part-time and full-time bargaining-unit PCDs. Early in the Pandemic, UPS reached agreement with a majority

of IBT's local unions within the Western Region permitting its use of part-time PCDs who volunteered to deliver packages using their personally-owned vehicles ("POV Drivers").

Several IBT local unions, including Local No. 396, however, were unable to reach agreement with UPS on use of POV Drivers. In response to UPS' initial offer, Local No. 396 counterproposed to use POV Drivers only on weekends only at a lower hourly rate while simultaneously increasing the pay rate of its less senior full-time PCDs. Because agreement on the use of POV Drivers had been reached with several other IBT local unions in the Western Region, UPS declined to accept the Local No. 396's foregoing counterproposal due to potential creation of tensions between itself and other IBT local unions which had already entered into understandings regarding use of POV Drivers.

(2) Use of Previously Disqualified PCDs

UPS also entered into agreement with Local No. 396 regarding use of previously disqualified PCDs. Pursuant to that understanding, UPS was permitted to utilize previously disqualified PCDs who did not pose safety risks, to make deliveries during the Pandemic. The foregoing agreement, however, unlike the understanding with several IBT local unions regarding use of POV Drivers, was not as successful as initially hoped in reducing service failures due to the relatively small number of PCDs generated.

(3) Miscellaneous Changes

UPS also made the following miscellaneous changes due to the Pandemic:

- All PCDs with DOT qualifications were required to work six days a week to the maximize available DOT hours.
- PCDs were permitted to work during their scheduled vacations at time-and-a-half pay.
- PCDs were transferred between UPS facilities to work where the greatest need for their services existed. While UPS began transferring PCDs between facilities in 2020 to reduce the quantity of "rolled" volume, the practice ceased when IBT local unions began objecting to PCDs being required to cross IBT local union jurisdictional lines.

- UPS received approval from IBT to schedule PCDs to work 70 hours per week at a minimum of ten facilities within Local No. 396's jurisdiction in 2020. IBT's approval, however, was conditioned on UPS' agreement that PCDs could not be required to work more than 60 hours per week and hours between 60 and 70 per week had to be worked on a voluntary basis.

C. Supervisors Performed Bargaining Unit Work to Train Part-time PCDs as Full-time PCDs Pursuant to UPS' FORCE Program

In 2020, UPS promoted 685 part-time PCDs to full-time within Local No. 396's jurisdiction. In order to do so, however, UPS was required to first train a number of part-time Supervisors who could then, in turn, train part-time PCDs to work full time.

Prior to 2020 and the Pandemic's arrival, UPS had hired 17 retired Supervisors to assist in training part-time PCDs to become full time and established numerous testing facilities in order to do so. UPS initially planned to train the foregoing 17 retired Supervisors to become on-road PCD trainers. UPS intended to use the retired Supervisors to replace an existing cadre of full-time PCD trainers. The acronym "FORCE" ("Flex On-Road Center Enhancement") was devised by UPS to describe the above-described on-road PCD training program.

Once the Pandemic began in March 2020, however, UPS repurposed its FORCE program and a greater number of retired Supervisors were hired and trained to become trainers of part-time PCDs to promote to full-time PCDs as quickly as possible.

Under UPS' repurposed FORCE program, the number of part-time Supervisors in Local No. 396's jurisdiction hired and placed into PCD positions to perform bargaining unit work in order to become familiar with PCD duties and train part-time PCDs to become full-time was increased to 94. Local No. 396's grievance at issue in these proceedings alleges UPS' use of retired part-time Supervisors to perform bargaining unit work as described above does not fall within NMA's Article 3, Section 7 exception "to train employees" and thus violated NMA Article 3, Section 7 which otherwise prohibits Supervisors from performing bargaining unit work.

As a result of its training efforts, in 2020 UPS successfully added 685 new full-time PCDs as compared to 226 such positions added to Local No. 396's jurisdiction in 2019.

D. UPS' Use of "Go/Ready Teams"

Despite the foregoing efforts, UPS continued to roll volume each week during the Pandemic's first months which was unusual for UPS except during the normal holidays' peak period. UPS accordingly decided it would use "Go/Ready" teams, composed of non-bargaining unit Supervisors and Managers to assist in performing PCD bargaining unit work at UPS facilities inundated with volume.

UPS accordingly assigned a "Go/Ready" team to its Compton facility to perform bargaining unit work for one week. UPS also assigned "Go/Ready" teams to perform PCD bargaining unit work in its San Fernando and Lancaster facilities for a number of days during the relevant time period from April 1 through September 30, 2020.

E. The Grievance at Issue

Full-time PCD Jose Barreiro ("PCD Barreiro") initiated the subject grievance on July 8, 2020. PCD Barreiro, who has worked as a UPS PCD for nearly 16 years, personally witnessed a Supervisor named Kevin Hotman ("Supervisor Hotman"), driving a UPS delivery truck. PCD Barreiro testified he witnessed other Supervisors performing similar work, but could not identify the other Supervisors by name.

PCD Barreiro's grievance alleges the delivery of packages by Supervisor Hotman and other Supervisors violated NMA Article 3, Section 7.

In August 2020, Local No. 396's/UPS' Panel heard PCD Barreiro's grievance and its disposition was deadlocked. In January 2021, PCD Barreiro's grievance was heard by the Western Region Panel. At the Western Region Panel, UPS took the position that use of Supervisors during the Pandemic as part of its FORCE program was in compliance with the six-to-one ratio set forth in NMA Article 22, Section 4. (a). Additionally, there were discussions

regarding whether UPS was permitted to utilize Supervisors as PCDs pursuant to the Supervisors performing bargaining unit work exceptions provided in NMA Article 3, Section 7. Once again, however, disposition of PCD Barreiro's grievance remained deadlocked.

In August 2021, PCD Barreiro's grievance was presented to the National Grievance Committee. In briefs presented to the National Grievance Committee, Local No. 396 again argued UPS was in violation of NMA Article 3, Section 7 when Supervisors were used to deliver packages during the six-month period from April 1, 2020, through September 30, 2020. Conversely, UPS maintained it was permitted to do so pursuant to NMA Article 3, Section 7 and Article 22, Section 4. A deadlocked decision was again rendered.

Pursuant to NMA Article 8, Section 4, PCD Barreiro's grievance was referred to Impartial Arbitrator Kenneth A. Perea for final and binding adjudication.

V. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 3. RECOGNITION, UNION SHOP AND CHECKOFF

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Section 7. Supervisors Working

(a) The Employer agrees that the function of supervisors is the supervision of Employees and not the performance of the work of the employees they supervise. Accordingly, the Employer agrees that supervisors or other employees of the Employer who are not members of the bargaining unit shall not perform any bargaining unit work, except to train employees or demonstrate safety, or as otherwise provided in the applicable Supplement, Rider or addendum. However, in the case of Acts of God, supervisors shall comply with the procedures in subsections (b) and (c) and may only perform bargaining unit work until bargaining unit employees are available. The Employer shall make every reasonable effort to maintain a sufficient workforce to staff its operations with bargaining unit employees . . .

(b) When additional employees are necessary to complete the Employer's operations on any shift or within any classification, the supervisor shall exhaust all established local practices to first use bargaining unit employees including where applicable, double shifting, early call-in, and overtime.

...

(d) If it is determined at any step of the grievance and/or arbitration procedure that this Section, or a “supervisor working” provision in a Supplement, Rider or Addendum, has been violated, the aggrieved employee will be paid as follows: (i) if the actual hours worked by the supervisor amounts to two (2) hours or less, the aggrieved employee will be paid for the actual hours worked by the supervisor at the rate of double time the employee’s rate of pay at the time of the incident; or (ii) if the supervisor works more than two (2) hours, the aggrieved employee shall be paid four (4) hours at straight time or actual hours worked at double time the employee’s rate of pay at the time of the incident, whichever is greater. If no aggrieved employee can be identified, the payment will be made to the grievant. Such remedy shall be in addition to any other remedies sought by the Union in the appropriate grievance procedure.

If a Supplement, Rider or Addendum does not have a provision requiring notice to the steward when a supervisor works the following shall be incorporated: “In the event a supervisor does perform bargaining unit work, the Employer shall notify the appropriate shop steward as soon as possible.”

In the event that any individual supervisor is found to be in violation of the first paragraph of this Subsection three (3) times in any nine (9) month rolling period, the grievance shall be paid at triple time the employee’s rate of pay for the hours specified in the first paragraph of this subsection.

ARTICLE 22. FULL-TIME COMBINATION AND PART-TIME
EMPLOYEES

...

Section 4.

Section 4. (a)

Part-time employees shall be given the opportunity to fill full-time jobs before hiring from the outside on a six for-one basis (six (6) part-time to every one (1) outside hire).

...

SOUTHWEST PACKAGE RIDER

SECTION 1 – RECOGNITION

...

Probationary Period – Full-Time

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The work of supervisors will not include assignments of work that is performed by Union members except for the purpose of training and demonstration. Supervisors will not perform Union members work until after all reasonable efforts have been exhausted to have the work covered.

VI. THE PARTIES' CONTENTIONS

A. Local No. 396's Contentions

Protecting and preserving the bargaining unit work of its members is among the most important services a union can provide, particularly when an employer seeks to have Supervisors perform what is indisputably bargaining unit work. Here, in response to a surge in business occasioned by the onset of the COVID-19 Pandemic in early 2020, UPS used Supervisors to perform core bargaining unit work of driving package cars and delivering packages to customers within Local No. 396's jurisdiction. UPS says it needed to train a group of Supervisors who would, in turn, train PCDs to handle the increased business. Not only does the parties' NMA contain a specific way for UPS to hire Supervisors into the bargaining unit on a six-to-one ratio, but UPS has for decades routinely used that method to allow Supervisors to get experience driving and performing other bargaining unit work on their way up the supervisory ladder. That method is simple: For every six part-time PCDs UPS promotes to full-time PCD, it can then hire one employee into the bargaining unit from anywhere, including its own supervisory ranks or even "off the street." UPS abused that process in this case by claiming, without contractual or factual basis, that it had saved up and "banked" its six-to-one supervisory hires beginning back to January 2019, and thereafter began "spending" those "banked" hires in

April 2020 as the Pandemic set in. But bargaining history shows the language in question does not support this approach, and the facts themselves cast doubt on whether UPS even properly “credited” all those hires into an “account” in any event.

UPS also used a team of supervisors called “Go Teams” or “Ready Teams” to attack rolled volume problems in specific locations, in this case, delivery of built-up excess packages. UPS, however, failed to show that it first availed itself of “all reasonable efforts” under NMA Article 3, Section 7 to use bargaining unit PCDs to perform the work, as the NMA requires. In particular, Local No. 396 offered UPS an escape hatch from its difficulties due to the Pandemic: the right to use POV Drivers to deliver bargaining unit work. But UPS did not like Local No. 396’s proposed financial terms to more fairly increase the hourly rate for less senior full-time PCDs and reduce the much higher proposed rate for POV Drivers, so it flatly rejected Local No. 396’s reasonable and equitable offer and now incredibly, accuses Local No. 396 of “extortion.” In reality, however, UPS resented Local No. 396 for simply doing its job of bargaining on behalf of its hard-working members. Without any agreement in place to use POV Drivers, UPS nevertheless proceeded to deliver packages however it wished, including, as relevant here, using Supervisors to perform PCD bargaining unit work in violation of the NMA.

UPS should not be rewarded for its high-handed and immature approach to labor relations. To be clear, however, Local No. 396 does not rely merely on UPS’ bad faith throughout the Pandemic. Rather, its position is grounded in an appropriate reading of specific NMA language, which UPS has distorted in order to achieve what it wanted: management of the Pandemic package surge on its own terms, to the exclusion of Local No. 396 and its dedicated members. NMA’s strong language at Article 3, Section 7 banning Supervisors from performing bargaining unit work until “all reasonable efforts” have first been exhausted means that UPS is not contractually permitted to proceed as it did in this case.

The grievance must accordingly be granted and NMA's specified financial remedies should be awarded to the bargaining unit members.

B. UPS' Contentions

NMA Article 3, Section 7 generally prohibits UPS from using Supervisors to perform bargaining unit work. However, there are certain, clear exceptions to that rule. Specifically, Supervisors are permitted to perform bargaining unit work when: (1) the purpose of performing the work is "to train employees or demonstrate safety"; (2) it is otherwise provided in the applicable Supplement and Rider; or (3) when there is an "Act of God" and all other bargaining unit employees and resources have been exhausted. The express incorporation of the terms of the "applicable Supplement, Rider or Addendum" further serves to incorporate the provisions of the Southwest Package Rider ("Rider"). Section 1 of the Rider provides: "Supervisors will not perform Union members work until all reasonable efforts have been exhausted to have the work covered." This standard is applicable to UPS' use of Supervisors in 2020 due to the Pandemic through its incorporation into the provisions of NMA Article 3, Section 7.

Additionally, NMA Article 22, Section 4. (a) allows UPS to place (or hire) Supervisors in PCD positions so long as certain standards are met. Specifically, UPS can place one Supervisor in a PCD position for every six part-time employees that are awarded a full-time PCD position. Notably, the NMA does not contain any specific time limit with regards to when an available PCD position can be filled by UPS with a Supervisor.

The language in each of these NMA Articles is clear and unambiguous. UPS has the right to utilize Supervisors to drive and/or perform bargaining unit work when any of the above is true. Here, the evidence shows that UPS utilized Supervisors to perform bargaining unit work due to an "Act of God" and after having made "all reasonable efforts" to use bargaining unit employees. Additionally, the evidence shows that UPS was permitted to place Supervisors in PCD positions because it followed the six-to-one ratio by awarding a significant number of part-

time PCDs full-time PCD positions as compared to the number of Supervisors it placed in the same position. Therefore, because NMA Article 3, Section 7 and Article 22, Section 4. (a) are clear and unambiguous and because UPS complied with each of them, Local No. 396's grievance should be denied. Further, even if Local No. 396 were, for sake of argument, correct in its NMA Article 22, Section 4. (a) argument, NMA Article 3, Section 7 would still allow the use of these part-time Supervisors to perform package car driving work for the limited period of time necessary to become qualified to train new full-time PCD bargaining unit members.

VII. DISCUSSION AND CONCLUSIONS

The above-entitled matter concerns Local No. 396's grievance, on behalf of long-time PCD Barreiro and similarly-situated bargaining unit members, challenging UPS' use of supervisors to perform PCD bargaining unit work in alleged violation of NMA Article 3, Section 7. UPS responsively raises a number of defenses pursuant to NMA Article 3, Section 7 and Article 22, Section 4. (a). Each of Local No. 396's allegations and UPS' defenses thereto are now reviewed and adjudicated as follows.

A. Local No. 396's Grievance No. N-21-13

It is undisputed that due to the Pandemic beginning in March 2020 the volume of UPS' B2C business unexpectedly surged while absenteeism among the ranks of PCDs due to COVID-19 simultaneously increased. Faced with a mounting volume of "rolled" deliveries in Local No. 396's jurisdiction and elsewhere, in response UPS implemented multiple changes, two of which are challenged as follows pursuant to Local No. 396's subject grievance: (1) First, at several UPS facilities UPS dispatched "Go/Ready Teams," composed of Supervisors and Managers, which worked as PCDs to reduce the facilities' "rolled" volumes; (2) Second, retired Supervisors were employed to assist with UPS' repurposed FORCE program to train part-time PCDs to become full time. To do so, however, part-time Supervisors in the FORCE program initially worked PCD assignments performing bargaining unit work to familiarize themselves with the tasks at hand.

(1) Local No. 396's Prima Facie Case

It is first noted NMA Article 3, Section 7 provides in pertinent part:

Section 7. Supervisors Working

[UPS] . . . agrees that the function of supervisors is the supervision of Employees and not the performance of the work of the employees they supervise. Accordingly, [UPS] . . . agrees that supervisors or other employees of [UPS] . . . who are not members of the bargaining unit shall not perform any bargaining unit work, except to train employees or demonstrate safety, or as otherwise provided in the applicable Supplement, Rider or Addendum. . . . (Emphasis added.)

Regarding both disputed actions by UPS involving use of (1) “Go/Ready Teams” and (2) Supervisors performing PCD work as part of the FORCE program, it is undisputed that during the grievance’s period April 1, 2020 through September 30, 2020, Supervisors engaged in performing PCD bargaining unit work. It is therefore concluded Local No. 396 has established *prima facie* violations of NMA Article 3, Section 7 in the foregoing regards.

It is necessary to now consider whether UPS has established by a preponderance of the evidence its asserted defenses in response to Grievance No. N-21-13 pursuant to NMA Article 3, Section 7 and Article 22, Section 4. (a), contractually justifying its use of Supervisors to perform bargaining unit work.

(2) UPS' Affirmative Defenses to Local No. 396's Prima Facie Case

(a.) Use of “Go/Ready Teams” to Perform Bargaining Unit Work at Facilities in Local No. 396's Jurisdiction

In response to Local No. 396’s grievance contesting its use of “Go/Ready Teams,” UPS asserts that at times when the quantity of “rolled” volume at facilities became excessive and bargaining unit members at those facilities were unable to achieve timely delivery of volume, it briefly dispatched “Go/Ready Teams” to perform PCD duties at the facilities. According to UPS, its actions regarding “Go/Ready Teams” were contractually compliant since they were the result of the Pandemic, an “Act of God,” and were thus justified pursuant to NMA Article 3, Section 7.

It is observed NMA Article 3, Section 7's "Acts of God" exception to its general prohibition against use of Supervisors to perform bargaining unit work requires the following prerequisites be met:

. . . However, in the case of *Acts of God*, supervisors *shall* comply with the procedures in subsections (b) and (c) and may only perform bargaining unit work until bargaining unit employees are available . . . (Emphasis added.)

. . .

(b) When additional employees are necessary to complete [UPS'] . . . operations on any shift or within any classification, the supervisor *shall exhaust all established local practices to first use bargaining unit employees* including where applicable, double shifting, early call-in, and overtime. (Emphasis added.)

Initially, it is noted Local No. 396 first challenges UPS' assertion the Pandemic constituted an "Act of God," urging instead the phrase be limited to the unique and specific circumstances arising in this case. It is, however, recognized in accordance with well-established arbitral precedent that when parties incorporate into their collective bargaining agreements commonly understood phrases, such as "Acts of God" in this instance, the parties intend, unless otherwise indicated, the phrase to have its usual and ordinary meaning.

It is further noted Black's Law Dictionary (10th ed., 2014), defines "Act of God" as "[a]n overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado." It is concluded the Pandemic, induced by the unpreventable, previously unknown, airborne and highly contagious Coronavirus-19 organism, resulting in a rapid, worldwide and catastrophic loss of human life, falls well within the foregoing definition as commonly understood in the history of infectious disease.

Moreover, if the phrase "Acts of God" was interpreted as varying depending upon the length of time the event at issue persists, as argued by Local No. 396, the parties could be left hamstrung in their efforts to adjust to the circumstances at issue until a period of time elapsed before each potential "Act of God" was assessed based upon its own unique set of circumstances.

It is therefore concluded to be much more likely the parties intended each circumstance of a potential “Act of God” be assessed based upon a commonly understood definition so that a timely response to that condition can be considered and acted upon. Based upon the commonly understood definition of the phrase in dispute, the Impartial Arbitrator concludes the Pandemic is an “Act of God.”

While UPS has furthermore identified a number of steps taken to use bargaining unit employees following the Pandemic’s arrival beginning in March 2020, including its (1) attempt to use POV Drivers, (2) use of any eligible PCDs with DOT credentials, (3) requiring PCDs to work at least six days a week to maximize their available DOT hours, (4) allowing PCDs to work during their scheduled vacations at time-and-a-half, (5) attempting to transfer PCDs between facilities where need was greatest, (6) obtaining IBT approval to work PCDs 70 hours a week at a minimum of ten facilities, and (7) promoting 685 part-time PCDs to full-time status through its FORCE program, the record does not indicate which, if any, of the foregoing actions were implemented at the subject UPS’ Compton, San Fernando and Lancaster facilities where “Go/Ready Teams” were indisputably deployed to perform PCD bargaining unit work. Indeed, the record fails to indicate whether any of the specifically referenced means articulated in NMA Article 3, Section 7, such as “double shift, early call-in, and overtime” or “[any other] established local practice to first use bargaining unit employees” were utilized before “Go/Ready Teams” were dispatched to the before-mentioned UPS facilities where Supervisors were observed performing bargaining unit work.

It must therefore be concluded UPS has not carried its burden establishing, pursuant to Southwest Package Rider Section 1 – Recognition provisions, that UPS did not use supervisors to perform Local No. 396 work “until after *all reasonable efforts* . . . [were] exhausted to have the work covered [by Local No. 396 members].” (Emphasis added.)

(b.) UPS' FORCE Program Using Supervisors to Perform Bargaining Unit Work

It is undisputed that through its repurposed FORCE program, UPS promoted 685 part-time PCDs to full-time in Local No. 396's jurisdiction to assist in alleviating "rolled" volume and provide timely deliveries to its customers. In order to do so on a timely basis, however, it is equally undisputed that to familiarize part-time Supervisors with PCD duties and become effective trainers, part-time Supervisors performed PCD bargaining unit duties. UPS thus argues NMA Article 3, Section 7 provides as one of its exceptions to the general prohibition against Supervisors performing bargaining unit work, that

. . . [UPS] agrees that supervisors or other employees of . . . [UPS] who are not members of the bargaining unit shall not perform any bargaining unit work, *except to train employees* or demonstrate safety, or as otherwise provided in the applicable Supplement, Rider or Addendum. (Emphasis added.)

UPS reasons that since it was necessary for Supervisors to become familiar with PCD duties in order to train part-time PCDs to become full-time, Supervisors for a short period of time initially performed PCD bargaining unit work.

Secondly, according to UPS, in accordance with NMA Article 22, Section 4. (a), for each Supervisor hired to perform PCD duties, UPS added six part-time PCDs to Local No. 396's bargaining unit as full-time PCDs.

In response, Local No. 396 argues that while NMA Article 3, Section 7 permits Supervisors to perform bargaining unit work "to train employees," in this instance where Supervisors performed bargaining unit work in preparation for actually training part-time PCDs, they were not doing that work "to train employees."

Local No. 396 also argues NMA Article 22, Section 4. (a) does not permit UPS to "bank" a quantity of part-time PCDs it has earlier promoted over a period of several months in order to later "spend" those positions on a six-to-one ratio by hiring a concomitant number of Supervisors as full-time PCDs.

First, under the circumstances presented, use of the FORCE program to promote 685 part-time PCDs within Local No. 396's jurisdiction was a bona fide method to add members to the represented bargaining unit. While Local No. 396 argues that part-time Supervisors performing bargaining unit work in order to *prepare* them to train part-time PCDs to become full time is not the same as doing bargaining unit work "to train employees," the purpose of using Supervisors to perform bargaining unit work in both instances was still essentially the same: "to train employees," rather than displace bargaining unit members from becoming full-time PCDs as amply demonstrated by the net result of adding 685 full-time PCDs to the bargaining unit under Local No. 396's jurisdiction.

Second, it is concluded UPS complied with the requirements of NMA Article 22, Section 4. (a) by promoting six part-time PCDs for each part-time Supervisor promoted to full-time PCD. While Local No. 396 seeks to cast doubt upon UPS' method of calculating the proportionate number of part-time PCDs hired in this manner due to the possible inclusion of former Supervisors in the total pool of part-time PCDs promoted to full-time PCD positions, there is no reliable evidence in the record from which to conclude the accuracy of Local No. 396's suggested possible error in UPS' calculations. It must accordingly be concluded that six part-time PCDs were hired for each Supervisor hired as a full-time PCD in compliance with NMA Article 22, Section 4. (a).

Finally, careful examination of NMA Article 22, Section 4. (a) leads to the conclusion that, with one exception discussed below, nothing contained therein addresses the timing between when UPS may hire one supervisor as a full-time PCD for every six part-time PCDs hired as full-time PCDs. While in this case UPS undisputedly reached back several months to determine the accumulated total number of part-time PCDs which had been hired when calculating the number of Supervisors which could be hired as full-time PCDs, nothing in the express language of NMA Article 22, Section 4. (a) prohibited UPS from doing so. It is noted

that during earlier transcribed negotiations concerning the terms of NMA Article 22, Section 4. (a), IBT presciently raised questions concerning its temporal requirements at issue herein. The parties, however, simply disagreed concerning the issue as UPS' negotiator opined that nothing in the NMA prevented it from doing as it did in this instance. It should be noted, however, that the terms of NMA Article 22, Section 4. (a) may not be used to prematurely promote Supervisors to full-time PCD positions since by its terms in order to calculate the actual number of Supervisors eligible to promote to full-time PCD positions, the number of part-time PCDs who earlier promoted to full-time PCD positions must first be determined. It therefore follows that six part-time PCDs must first be promoted to full-time PCD positions before UPS may promote a Supervisor to a full-time PCD position.

Based on the foregoing, it cannot be concluded UPS violated NMA Article 3, Section 7 or Article 22, Section 4. (a) under the circumstances found above.

AWARD

1. UPS did violate NMA Article 3, Section 7 by having "Ready/Go Teams," comprised of Supervisors and Managers, perform bargaining unit work at UPS' facilities in Compton, San Fernando and Lancaster during the period April 1 through September 30, 2020.
2. UPS did not violate NMA Article 3, Section 7 by having Supervisors perform PCD bargaining unit work as part of its repurposed FORCE program to train part-time PCDs to become full-time PCDs during the period April 1 through September 30, 2020.
3. For the violation found in Paragraph No. 1 above, the matter is hereby remanded to the parties to confer and agree upon a mutually satisfactory remedy.

4. The Impartial Arbitrator hereby retains jurisdiction to adjudicate the remedy for the violation found in Paragraph No. 1 above. The Impartial Arbitrator's retained jurisdiction may be exercised upon receipt of written request from either party.

Dated: December 21, 2022
Del Mar, California

Kenneth A. Perea

**KENNETH A. PEREA
IMPARTIAL ARBITRATOR**