

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS  
UNION, AFL-CIO

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Grievant: Class Action

Issue: Zero Tolerance Policy

Installation: West Nyack Post Office

USPS Case No: 4B-21C-4B-C 22252613

APWU Case No: SNY22-73

BEFORE:

Joseph A. Harris, Arbitrator

APPEARANCES:

For the U.S. Postal Service:

Alex Alvarez

For the Union:

Peter Coradi

Place of Hearing:

1000 Westchester Ave. White Plains, NY 10610

Date of Hearing:

February 23, 2023

Date of Award:

March 23, 2023

Relevant Contract Provisions:

Articles 14, 15, 17, 19, and 31; ELM 665.24; Zero  
Tolerance Policy

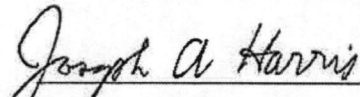
Contract Year:

2021 – 2024

**Award Summary:**

The grievance is upheld. PM Poole violated ELM 665.24 and the Zero Tolerance Policy on March 01 and 02. The USPS violated Article 14 and the Zero Tolerance Policy when it failed to place Poole on EP, failed to initiate an investigation in a timely manner, and failed to provide the Union with requested information regarding the investigation/discipline. Management will provide the Union with documentation of the 7-day proposed suspension claimed to be issued by POOM Welch. Additionally, I order the administrative actions outlined at the conclusion of this decision.

I retain jurisdiction over this matter *sine die*.



Joseph A. Harris, PhD  
Arbitrator

MAR 27 2023

## ISSUES

- 1) **Did Postmaster Michael Poole, while on duty as a management official, violate the code of ethical conduct outlined in Chapter 6 of the ELM and the Zero Tolerance Policy?**
- 2) **Did the USPS violate Article 14, ELM 660, and the Zero Tolerance Policy when it failed to take appropriate action regarding the conduct of Postmaster Poole? If so, what shall be the remedy?**

### EMPLOYEE AND LABOR RELATIONS MANUAL (Sept. 2022)

#### 651 Disciplinary and Emergency Procedures

##### **651.4 Emergency Placement in Off-Duty Status**

An employee may be placed in an off-duty nonpay status immediately, but remains on the rolls when he or she:

- a. Exhibits characteristics of impairment due to alcohol, drugs, or other intoxicant;
- b. Fails to observe safety rules;
- c. Fails to obey a direct order;
- d. Provides reason to be deemed potentially injurious to self or others; or
- e. Disrupts day-to-day postal operations in any way.

#### 665 Postal Service Standards of Conduct

##### **665.24 Violent and/or Threatening Behavior**

The Postal Service is committed to the principle that all employees have a basic right to a safe and humane working environment. In order to ensure this right, it is the unequivocal policy of the Postal Service that there must be no tolerance of violence or threats of violence by anyone at any level of the Postal Service. Similarly, there must be no tolerance of harassment, intimidation, threats, or bullying by anyone at any level. Violation of this policy may result in disciplinary action, including removal from the Postal Service.

## BACKGROUND

The following information is gleaned from emails and statements provided by individuals who witnessed or were involved with the events, as well as interviews provided as part of the Initial Management Inquiry Process ("IMIP") from March 17 through May 13, 2022. (All dates in this opinion are in 2022 unless otherwise noted.) (Union Exhibit 10, or "U-10") The USPS ("Management") has not disputed these events.

On March 01, local APWU ("Union") President Kurt Robinson called the West Nyack Post Office regarding a step 1 grievance (which has since been settled). Supervisor Customer Service

("SCS") Ivy Lewis informed President Robinson that Postmaster ("PM") Michael Poole was unavailable and that she would have him call back.

When PM Poole returned President Robinson's call on the same day, PM Poole expressed frustration over the fact that the Union had not included him on an email relating to a grievance and that he had not received an employee's PS 2574 ("Resignation/Transfer from the Postal Service"). According to a March 02 email sent by President Robinson at 11:15AM to PM Poole and a long list of USPS officials, PM Poole started their conversation by asking, "Do I disrespect the Union?" in an "unwarranted aggressive tone." President Robinson alleges that PM Poole accused him of forging the PS 2574, stating, "If I wanted to go deep, I would get signature analysis because I know you signed the form." (J-2 Union Ex. A-B; U-10 p. 38)

Clerk Craft Director Terry Finnerty confirms President Robinson's account of the March 01 phone call in an email dated March 29 (Director Finnerty explained that his response was delayed as he was recovering from surgery). Referring to the March 01 phone call, which Finnerty heard on speakerphone, Director Finnerty states,

It was during PM Poole's 3:20pm telephone call in his official capacity as the Postmaster of the West Nyack post office that PM Poole who in a very loud angered and agitated tone of voice kept saying that he was disrespected because he was not included in an e-mail exchange while he was out on annual leave as per the acting POOM Sean Chia advised the Union. He and [President Robinson] went back and forth on the phone with [Robinson] having to defend himself against a loud, angered, and agitated Postmaster Poole who continued to hurl one nasty unsubstantiated comment after another against [Robinson]. It appeared as if PM Poole was so angered that he was rambling on and carrying on about nonsense issues, including the recent resignation of a FTR clerk that had been effective as of February 1, 2022 that PM Poole insisted that the employee could not resign until PM completed the resignation paperwork. [President Robinson] reminded PM Poole that they had previously spoken back in early January about the FTR clerk possibly resigning, so the submission of the resignation should not have been a surprise. [President Robinson] explained that the Union had received a call from the FTR clerk stating that he had in fact resigned with an effective date of 2/1/22, and that he mailed the resignation paperwork into PM Poole sometime after January 16<sup>th</sup>, 2022. PM Poole started ranting louder and louder and FALSELY ACCUSED LOCAL PRESIDENT KURT ROBINSON OF COMMITTING A CRIME AND FORGING THE RESIGNATION DOCUMENT [sic] submitted by the clerk. PM Poole was totally out of control at this point, and indicated the postal service would be hiring a forgery specialist, and that [President Robinson] would see what happens when a crime has been committed (or words to that effect). It was hard to understand PM Poole as he loudly and uncontrollably shouted into the telephone. (U-10 p. 40-41)

When interviewed on April 11 as part of the IMIP, PM Poole acknowledged speaking with President Robinson and Director Finnerty on March 01. He claimed that he did not say that President Robinson forged the PS 2574, "but he has [the employee's] signature on file and said that it was not his signature on the 2574." (U-10 p. 15)

PM Poole stated, in an email he sent to President Robinson on March 01 at 4:12PM,

As per my conversation with you, you are to request a step 1 that's favorable for both parties. You will not bully my supervisor into anything. I will be handling the cases as you already know. All I need from you is a date and time for the reversion 10 days to input and regular grievance 14 days from notification. Now you can let me know what dates are available to do any case. Remember you DO NOT RUN WEST NYACK OR PALISADES RETAIL. [sic] That is my job. Now if you and the union wishes to continue to be disrespectful and/or undermine my authority then we will have problems with further negotiations... So we are clear on everything related to my two units for 10994, it is to go directly through me and I will appoint or schedule what's needed. If this is unobtainable please let me know. (U-10 p. 44)

The following day, at approximately 11:48AM on March 02, PM Poole again called the Union and spoke with Director Finnerty on speakerphone, while President Robinson and APWU Executive Vice-President ("VP") Kevin Smith were in the room listening to the phone call. According to an IMIP interview and an email to Post Office Operations Manager ("POOM") Dan Welch, dated March 02, Director Finnerty alleges,

Postmaster Poole called the local Union office this morning at approximately 11:48am looking for President Kurt Robinson. After identifying myself PM Poole spoke to me (in a loud & nasty, accusatory tone), and asked why he was not included in e-mails sent last week, in regard to a FTR who had resigned from the West Nyack post office effective 2/1/2022. PM Poole was loud and condescending and stated that "HE" [sic] felt disrespected.

I answered that I was not disrespecting PM Poole (since he was out for the week, as per the POOM), and I just wanted to make sure that the PS 2574 that the employee had mailed to local management in West Nyack at the end of January with an effective date of 2/1/2022 (that was not acted on at the local level by local management in West Nyack for some reason) would now be sent to someone in Westchester...

PM Poole seemed not to hear anything I was saying, and he remained angered, and then asked to speak to Kurt Robinson. After completing his conversation with [Robinson], PM Poole then asked to speak with me again.

***It was during this 2<sup>nd</sup> telephone conversation that PM Poole challenged me to come to his office and disrespect him in person, and that I would see what would happen to me. I asked PM Poole if he was threatening me with harm/violence, and he stated again to come here and find out for myself what happens to people who disrespect him. I then stated once again that I was not and had not disrespected PM Poole by not including***

*him in emails sent the previous week. I also informed PM Poole that the acting POOM (Sean Chia) had told us that week that PM Poole was not even in the office that week and was out on leave, so that is another reason why PM Poole was not included in those e-mails. PM Poole once again made the verbal threat against me to come visit him in his office, or that he would come to my office and I'd figure out what happens.* [bold and italics in original] (J-2 Union Ex. 2A-D; U-10 p. 34-35)

Director Finnerty testified that he never received a response to the above email.

VP Smith told an IMIP interviewer on May 13 that he heard PM Poole tell Director Finnerty to come to his office to see what happens when PM Poole is disrespected. VP Smith heard PM Poole say, "Or I will come down to the Union office and show you what happens." VP Smith stated that he has dealt with PM Poole's "confrontational" manner in the past, although he had never heard him directly threaten anyone as he did in this case. (U-10 p. 17)

When interviewed for the IMIP on March 22, PM Poole stated that he could not recall speaking with the Union on March 02 and claimed that he does not "deal" with Director Finnerty, "He only deals with Kurt Robinson." (U-10 p. 13) At a subsequent interview on April 11, PM Poole appeared to acknowledge the March 02 phone call: "When asked if he threatened [Director Finnerty], [PM Poole] said he spoke on the disrespect but did not threaten [Finnerty]. Kept saying that he does not deal with [Finnerty], he deals with [President Robinson]." (U-10 p. 15)

The Union promptly notified Management of these events. In addition to POOM Welch, Director Finnerty sent his March 02 email to District Manager Marcellina Del Pizzo, Distribution Computer Coordinator Thomas Dimargo, and Labor Relations Manager LaTrayer Sumter-Moreau. President Robinson CC'd acting POOM Sean Chia, District Manager Del Pizzo, and POOM Welch on his March 02 email to PM Poole.

On March 10, President Robinson sent an email to various Management and Union representatives to ask what actions the USPS had taken in response to PM Poole's behavior on March 01 and 02. President Robinson notes that PM Poole had not called or emailed either Director Finnerty or himself to apologize for his actions. Robinson also states that neither he nor Director Finnerty had been interviewed about the incidents. (U-5 p. 5)

POOM Welch testified that he began Management's investigation into the events on March 16. On or around March 14, Management removed PM Poole from the West Nyack Post Office while Management investigated the allegations. POOM Welch instructed Officer in Charge ("OIC") Dan Ostrowe to report to the West Nyack Post Office to cover for PM Poole.

Upon arriving in West Nyack, OIC Ostrowe arranged to meet with the Union on March 16 for a step 1 grievance. On March 17, SCS Lewis returned from sick leave and told OIC Ostrowe that he should not be meeting or speaking with the Union as they are always "trying to pull stuff when [PM Poole] is out." (J-2 p. 16) According to a written statement, undated and provided to the IMIP, OIC Ostrowe received a call from PM Poole within five minutes of his conversation with SCS Lewis, in which PM Poole stated that Ostrowe should not speak with the Union. OIC Ostrowe's statement continues, referring to a postal route of approximately 30 minutes that was affected by construction:

Around 3:15PM on March 17, Ms. Lewis entered the postmaster's office with her phone and said, "It's [PM Poole], he wants to speak to you." Due to an apparent deal he had made with a customer on the section of the route affected by the construction, he was irate that the piece had been given to [an employee]. He proceeded to speak to me in a condescending, hostile tone that has no place in the postal service or any work environment, repeatedly stating "I make the decisions regarding the West Nyack Post Office. If you have a question, you ask me." When I asked why no one brought this up to me at the time the piece was given out he responded, "[SCS Lewis] and I have a deal. I tell her what to do and she doesn't ask any questions." While this was going on, Ms. Lewis sat in the room with the look of someone who had been a victim of this abuse far too many times.

Mr. Poole behaves as if he is a dictator lording over the town of West Nyack, and anyone who questions him shall be punished, either by unnecessary and punitive corrective action, or simply by berating them until they have no choice but to bend to his whims. In the two days I have worked with Ms. Lewis, a supervisor of several years, she has told me she:

- Is not allowed to speak to the union
- Has her schedule changed regularly to suit Mr. Poole's whims
- Does not have supervisor access in RSS and cannot add or edit employees

She appears to be kept out of the loop on all decisions related to the running of the office, only receiving information once it gets filtered through Mr. Poole. Additionally, during the week I have been here covering the office I have witnessed the following:

- Carriers gaslit into believing that they should be working off the clock
- Excess equipment purchased for processing of peak parcels which was supposed to be returned to Monsey daily being stashed and used as carrier conveyances
- Any attempt to rid the office of said equipment being met with statements of "you shouldn't do that, [PM Poole]'s gonna get mad" by the employees
- A carrier afraid of the repercussions of asking for his NS day off
- Multiple employees afraid to ask or answer questions for fear of Mr. Poole's retaliation should he return to the office

Through all of this, Mr. Poole has insisted he is returning to the office on Saturday 3/19, which puts me in a difficult position as the Officer in Charge. No employee should be made to fear coming to their place of work, yet that is exactly the situation I now find myself in

with Mr. Poole. With a work environment that is this hostile, it is hardly a surprise that this office has had attendance problems since he took over. (J-2 p. 16-17)

In another written statement provided to the IMIP on March 21, OIC Ostrowe states that he found the postmaster's office locked on the morning of March 19. SCS Lewis reportedly told him that the door needs to be locked because a clerk (whom, OIC Ostrowe notes, was AWOL for the entire period he worked at the West Nyack Post Office) had taken things from the postmaster's office in the past. SCS Lewis indicated that she would leave a key in her drawer for his use. On March 21, however, SCS Lewis reportedly told OIC Ostrowe that PM Poole had instructed her to not allow him into the postmaster's office for any reason. OIC Ostrowe concludes, "It is unfortunate that Mr. Poole chooses to continue to behave in such an unprofessional manner and is still able to manipulate his employees and create a hostile work environment even while on assignment, hindering my ability to run the West Nyack Post Office in his absence." (J-2 p. 15)

In March 21 and 26 emails to Labor Relations Specialist ("LRS") Jill Miniard and LRS Michael Faber, National Business Agent Peter Coradi alleges that Management had not provided the Union with any updates on its ongoing investigation into PM Poole's actions on March 01 and 02. Mr. Coradi asserts that the investigation does not appear to be given priority or urgency, and he notes that President Robinson and Director Finnerty still had not been interviewed regarding the incidents. He asks why Management did not immediately place PM Poole on Emergency Placement ("EP") nonpaid status. (U-5 p. 4; U-7)

The Union Coordinator for the Northeast Region, Tiffany Foster, also emailed LRS Miniard and LRS Faber on March 22 to emphasize that PM Poole is a "serial abuser" who needs to be investigated. (U-5 p. 3) Coordinator Foster followed up on April 27 and May 3 to request updates on Management's investigation. In a May 06 email to Atlantic Area Vice President Salvatore Vacca, Coordinator Foster reiterates her concerns regarding Management's refusal to provide updates on the investigation. She further asserts that Management sent "the wrong message" to its employees when it reassigned PM Poole to another post office, which does nothing but "shift the problem elsewhere and sends a message to the employees that a safe work environment for management is the only thing that matters." (U-6 p. 2) On May 10, LRS Faber responded that he would check the status of the investigation and provide updates as soon as he received the investigation report. (U-5 p. 1)

The case file does not clearly establish when Management provided the Union with the findings of its investigation, although the IMIP concluded on May 13. On August 09, President Robinson emailed POOM Welch a Request for Information (“RFI”) regarding, “Any/all Administrative action/Letters in Lieu of Discipline or Discipline taken against Postmaster Poole as a result of the Investigation Report.” (U-12) As of the hearing date, Management has not provided any documentation of disciplinary action(s) taken against PM Poole, although POOM Welch testified that he issued PM Poole a 7-day proposed suspension to be kept on file for a period of one year. Mr. Welch testified that, after reviewing the findings of the IMIP, he concluded that, “The alleged threat was not so significant as to require Emergency Placement... [PM Poole’s] behavior was rude but I didn’t think it was a threat. It’s a ‘he-said, she-said’ thing.”

#### Grievance Procedure

The Union filed the instant grievance and on April 06, it appealed to Step 2 alleging that PM Poole violated the Zero Tolerance Policy and ELM 665. The Union requested that PM Poole be placed on Emergency Placement and that the USPS take appropriate disciplinary action to ensure that his actions are not repeated by PM Poole or any USPS representative. The Parties mutually agreed on May 04 to extend the time limits for Step 2 until May 20.

On May 20, President Robinson met with LRS Wellington Espinal for Step 2. On June 01, LRS Espinal issued Management’s Step 2 Denial, in which he expressed his understanding that he does not have the authority to endorse the Union’s proposed remedy because doing so would create a due process violation. (Joint Exhibit 2, or “J-2,” p. 11) LRS Espinal also referenced several arbitration awards in which the authors held that arbitrators are not empowered to discipline an employee who is not a member of the bargaining unit covered by the CBA.

On June 09, President Robinson submitted the Union’s Additions and Corrections. President Robinson alleged that LRS Espinal at the Step 2 meeting did not reference any of the arbitration awards cited in his Decision. President Robinson asserted that these awards should be stricken from the record. He then asserted that the Union was not asking for the Step 2 designee to take disciplinary action against PM Poole, but for the USPS to take appropriate action to address PM Poole’s behavior on March 01 and 02. Referencing the Union’s Step 2 appeal and the Step 2 meeting, President Robinson argued that the USPS imposed disparate treatment when it failed to take any meaningful action to address unfounded allegations and violent threats made by PM Poole, whereas the USPS has terminated craft employees for similar behavior. (J-2 p. 7-9)



On the same day, the Union appealed to arbitration. Arbitrator Joseph Harris held a hearing on the matter on February 23, 2023. The Parties were afforded full opportunity to present oral and written evidence, to engage in oral argument and otherwise support their positions. The evidence of the Parties and their positions and arguments presented at arbitration have been fully considered in this opinion and award.

Additional Relevant Statements Provided to the IMIP

Kurt Robinson:

In addition to his account of the March 01 and 02 events, President Robinson stated that PM Poole frequently “talks down” to clerks and uses intimidation tactics, which causes attendance issues in the post office. He stated that the postmaster’s behavior directly contributed to Clerk Mina Samaan’s resignation. During an interaction Robinson witnessed with Clerk Judy Ann Toussaint, PM Poole stated that if he has to repeat himself, then “respect is out the window,” which caused Clerk Toussaint to cry. President Robinson stated that PM Poole refuses to settle any grievances.

Terry Finnerty:

Director Finnerty indicated that the events of March 01 and 02 were not isolated events. He believes these incidents reflect, “The typical behavior of verbal abuse, agitation, intimidation, retaliation, and loud condescending language and is a definite pattern of the way and manner in which PM Poole has conducted himself since he became PM of West Nyack.” Director Finnerty stated that he and former president Kevin Smith had to step away from dealing with PM Poole because of his “intolerable, abusive, verbally assaulting, and hostile behavior problems towards the Union and his employees in West Nyack.” He stated that clerks have transferred out, resigned, or retired just to get away from PM Poole. Director Finnerty stated that, in 42 years with the USPS, he had never experienced “the type of toxic and abusive behavior that PM Mike Poole has demonstrated and continues to demonstrate in whatever workplace he is in.”

Michael Poole:

In his March 22 interview, PM Poole stated that President Robinson “tries to back door and goes to SCS [Lewis],” rather than deal with him. The report continues,

Mr. Poole explains that the clerks are all horrible, the carriers are great, but the clerks are horrible. He states Ivy [Lewis] and himself do the bulk of the work. Also he states that

[POOM] Dan Welch asked him for a statement, and he told him verbally what happened. He states that the union can say what they want and I'm the one being punished.

Mr. Poole states, "I don't have to threaten anybody, that's not my job. I say what's on my mind respectfully. In life and in business a bully is a bully."

In his April 11 interview, PM Poole stated that he instructed SCS Lewis to prevent OIC Ostrowe from entering the postmaster's office because he "did not want personal stuff to be looked at. Dan was let in on day 2 and rambled through the office. [Poole] considers it to be an invasion of privacy. Said he had money and personal stuff in the office that he was not able to get."

Kevin Smith:

Executive VP Smith stated that PM Poole is confrontational in his dealings with everyone. VP Smith believes he should not act as if he is always right and in control of the situation. He believes PM Poole does not trust his supervisors to handle step 1 grievances.

Ivy Lewis:

SCS Lewis stated that, after a "rocky start" at the West Nyack Post Office, she and PM Poole have "grown to be on the same page." Regarding the incident on March 01, SCS Lewis stated that President Robinson initially "demanded" a step 1 meeting on March 01. When SCS Lewis stated that PM Poole handles step 1 grievances, President Robinson replied, "OK whatever I'll call Mike then." She stated that PM Poole then called President Robinson and instructed him not to "bully my supervisor." She denied that PM Poole spoke with Director Finnerty on March 01.

Louis Fevrier:

T7 LSSA Fevrier expressed difficulty getting employees to listen to him. He stated his belief that PM Poole tells the employees to do "other things." When he tries to enforce regulations, employees say, "Mike says."

Joe Sherman:

SSDA Sherman stated that West Nyack clerks frequently are instructed to do carrier work. When he faxed over a related complaint to the Union, PM Poole approached Mr. Sherman to say,

I saw your letter and now you don't get Higher Level pay. Joe states he has been getting Higher Level pay for 23 years. Now someone is calling the companies that have carrier pickups and being instructed to drop them off at the Palisade store. And the clerks are still being instructed to scan the pickups in. Now the Higher-Level cards seem to have disappeared.

Mr. Sherman stated that PM Poole is vindictive and that he pins employees against one another. He stated that employees have not previously reported PM Poole's behavior because they do not know how to report anything and never bothered with the Union. When asked how he would like to see the situation resolved, Mr. Sherman stated, "Louis [Fevrier] does the job, hand it over."

Shanell Paschall:

SSDA Paschall stated that PM Poole yells at carriers and "often" goes back and forth with Clerk Judy Ann Toussaint. She stated that Clerk Toussaint is unproductive, which creates stress for PM Poole.

Dan Ostrowe:

POOM Ostrowe stated that PM Poole rules the West Nyack Post Office with an "iron fist." He had difficulties with SCS Lewis because of PM Poole's influence.

Katrena Daley:

SSDA Daley stated that PM Poole speaks disrespectfully to employees and talks to people like they are children. She described an incident in which PM Poole tried to force her to sign off on service talks, which she refused to do. Consequently, PM Poole started "doing little things for retribution," such as denying leave requests and refusing to pay overtime for overtime work. She said she waited over ten months to get overtime that was owed to her. SSDA Daley also inquired about Higher Level pay, after which PM Poole stopped given Higher Level pay altogether. When asked about how she would like to see the situation resolved, SSDA Daley stated that she would like to have a new postmaster.

Judy Ann Toussaint:

Clerk Toussaint stated that PM Poole gives her a hard time when she requests time off to see a specialist. She stated that PM Poole gives her a hard time when she returns to work. She has witnessed PM Poole give directives "like they are orders." She said, "It's not what he says but how he says it that is the problem."

Clerk Toussaint spoke of a carrier who resigned because PM Poole kept questioning her bathroom usage. She stated that PM Poole is not understanding about female hygiene needs, and that he can be "unbearable."

## POSITIONS OF THE PARTIES

### Union

The Union contends it has demonstrated that PM Poole violated the Zero Tolerance Policy and ELM 665.24 when he accused President Robinson of forging a document on March 01 and physically threatened Director Finnerty on March 02. It argues that the IMIP uncovered multiple statements describing PM Poole's history of harassment and intimidation, including OIC Ostrowe's statements describing how PM Poole continued to control operations at the West Nyack Post Office while he was on assignment during the investigation. It further argues that PM Poole's actions on March 01 and 02 are similar to those described in a 2017 award I wrote regarding PM Poole's harassment of an employee at the Lincolnton Post Office. (B10C-4B-C 15121183, February 09, 2017)

The Union asserts that the USPS violated Article 14 when it failed to act swiftly in response to the unfounded allegations and threats made by PM Poole. It argues that the USPS failed to initiate an investigation into the incidents until March 16, despite the fact that President Robinson and Director Finnerty immediately notified Management of the incidents. The Union sent several follow-up emails (detailed above) before Management initiated the investigation, with no responses provided from Management.

The Union contends that Management implemented disparate treatment when it effectively acted to protect PM Poole in spite of his unacceptable behavior. Given the same behavior by a craft employee, the Union asserts that Management would have immediately placed the employee on Emergency Placement and issued swift discipline up to and including removal from the Service. In the instant case, Management continues to decline to provide any documentation of the 7-day proposed suspension that POOM Welch claims to have issued to PM Poole, even though the Union submitted a RFI on August 09 relating to any disciplinary action taken as a result of the IMIP. The Union asks me to draw an adverse inference from Management's ongoing refusal to provide such documentation.

The Union argues that Management's response to PM Poole's allegations, threats, and harassment is woefully inadequate. It states that the USPS is effectively condoning PM Poole's behavior by neglecting to enforce the Zero Tolerance Policy as it applies to management.

Regarding remedy, the Union argues that National Arbitrator Carlton Snow found that arbitrators have the authority to order the Service to remove a supervisor from his or her

administrative duties in response to a grievance involving a violation of the Zero Tolerance Policy. (Q90N-4F-C 94024977/94024038, July 05, 1996) It submitted several regional awards—notably, by Arbitrator Tom Maier (G06N-4G-C 12319863, August 07, 2015); Arbitrator Glenda August (G16N-4G-C 20139761, April 21, 2021); and Arbitrator Bernice Fields (I94N-4I-C 99136168, November 01, 2000)—to support its position that an arbitrator may instruct the USPS to discipline non-bargaining unit employees for violations of the Zero Tolerance Policy. Accordingly, it asks the arbitrator to fashion a remedy consistent with its request at Step 2:

We request that Postmaster Poole be immediately placed on Emergency Placement in an off-duty pay status and the Postal Service take further appropriate action in disciplining PM Poole for his recent actions against APWU representatives. And ensure that those actions are not repeated by PM Poole or any other Postal management. The Postal Service apply and enforce the Zero Tolerance Policy and ELM 660 to ALL [sic] employees as it's written.

### **Management**

Management asserts that it conducted a thorough and objective investigation into PM Poole's behavior on March 01 and 02. It removed him from the West Nyack Post Office during the investigation. POOM Welch reviewed the findings of the IMIP and concluded that PM Poole acted unprofessionally, for which POOM Welch imposed a 7-day proposed suspension. Management believes that the Union is unhappy with the length of the Service's investigation and with the level of discipline imposed on PM Poole. However, Management maintains that it properly applied the Zero Tolerance Policy and all relevant contract provisions. It denies any violation of Article 14, the Zero Tolerance Policy, or ELM 665. It cites a regional award by Arbitrator Donald Barrett (C16N-4C-C 20062589, August 24, 2020) to support its position that the Union must meet a high level of proof to establish a violation of the Zero Tolerance Policy.

Management argues that it is inappropriate to apply the Emergency Placement procedure to the instant case because the allegations involved Union officials (President Robinson and Director Finnerty), rather than employees at the West Nyack Post Office. It cites an October 29, 2009, memo by Doug Tulino to support its position that the EP procedure is not applicable in the instant case.

Management contends that the arbitrator has no authority to impose discipline on a postmaster. It cites a regional award by Arbitrator Bruce Fraser (B94N-4B-C 98103840, October 20, 1999) to support its position that Arbitrator Snow's 1996 award (cited previously) does not

grant arbitrators the authority to impose discipline on postmasters or supervisors. It asks that the arbitrator deny the instant grievance.

### ARBITRATOR'S DISCUSSION

It is unnecessary to go over the details of PM Poole's behavior on March 01 and 02, as it is described above without rebuttal by Management. It suffices to say that PM Poole, in a hostile and demeaning tone, made unsubstantiated allegations of forgery against local Union President Robinson on March 01, and he physically threatened Director Finnerty on March 02 while on speakerphone with President Robinson and Executive VP Smith listening. Notably, Director Finnerty immediately asked PM Poole if he was issuing a threat when he stated that Finnerty should, "Come to [my] office and disrespect [me] in person and see what would happen to you." Rather than attempt to deescalate the situation, PM Poole doubled down and stated something to the effect of, "Come here and find out for yourself what happens to people who disrespect me. Or I'll come down to your office and you'll figure out what happens." These are the findings of the Initial Management Inquiry Process. Management provided no rebuttal to the Union's allegations or any meaningful defense of PM Poole's actions at any step of the grievance procedure. (Management's Step 2 representative primarily expressed his position that he did not have the authority to endorse the Union's requested remedy and/or to discipline PM Poole for his actions.)

PM Poole's actions are a clear violation of the Zero Tolerance Policy and ELM 665.24. These provisions provide that there must be no tolerance of violence or threats of violence by anyone, at any level, in the Postal Service. Similarly, there must be no tolerance of harassment, intimidation, threats, or bullying by anyone at any level. Employees should not be made to feel harassed, unsafe, or disrespected as a condition of their employment at the USPS. Such behavior is unnecessary, and it is ultimately harmful to postal operations and employee morale. Such behavior can also become dangerous, which was the original, unfortunate impetus for the Joint Statement on Violence and Behavior in the Workplace. Notably, there is no evidence that PM Poole has ever expressed regret or apologized for his actions.

Management cites an award by Arbitrator Barrett (cited above) to support its position that PM Poole's behavior does not substantiate or "rise to the very high level needed to find a violation" of the Zero Tolerance Policy. Yet, in that case, two supervisors testified in favor of the alleged harasser, claiming that they had not personally witnessed any incidents in which the manager

yelled at, intimidated, or harassed any employee. The manager in that case offered testimony to dispute the Union's claims against her, which further distinguishes that case from the instant case. And, most importantly, Arbitrator Barrett's case did not involve a direct threat of physical violence, as does the instant case.

As stated previously, Management in the instant case offered no defense of PM Poole's actions. Former-acting POOM Sean Chia testified simply that he was not aware of any prior harassment claims against PM Poole. (This statement essentially comprises the full extent of Mr. Chia's testimony.) Management's only other witness, POOM Welch, testified that he reviewed the IMIP report and issued a 7-day proposed suspension for PM Poole's "unprofessional" conduct. If POOM Welch issued a 7-day proposed suspension, as claimed, this necessarily implies that Management concluded that PM Poole violated postal policies.

POOM Welch further stated that he did not place PM Poole on Emergency Placement because the allegations against him were made by Union officials rather than by West Nyack craft employees. This statement is problematic for several reasons. It displays an implicit anti-union bias in that Mr. Welch dismissed any risk of continuing to allow PM Poole to remain on duty because, presumably, Poole would not have direct contact with Director Finnerty and/or President Robinson (as opposed to a craft employee who would be under Poole's direct supervision). This position ignores the fact that PM Poole immediately doubled down on his threat when he told Mr. Finnerty that he would "come to the Union office" and show Finnerty what happens to people who disrespect him. It also ignores PM Poole's established position that he, and he alone, will interact with the Union regarding postal operations and grievances. Poole's control over postal operations is well established by his March 01 email to the Union—sent after his accusation against President Robinson—stating, "I will be handling the cases as you already know... it is to go directly through me and I will appoint or schedule what's needed" (cited above). It is also established by statements by SCS Lewis, OIC Ostrowe, and various Union officers who indicated that PM Poole admonishes anyone who attempts to "go around" his authority. In other words, Mr. Welch's statement essentially condones a scenario in which Union operations are obstructed while PM Poole continues to abuse his position as postmaster. Management eventually redressed this shortcoming when it removed PM Poole from the West Nyack Post Office during the IMIP (on or around March 14), although OIC Ostrowe made it clear that Poole continued to manipulate operations at the

facility while on assignment. Management's immediate response to the allegations clearly violates the "Cooperation" clause of Article 14, Section 2.

POOM Welch's statement also displays a lack of concern not just for Union officers, but for the health and safety of all employees of the West Nyack Post Office. Article 14 and the Zero Tolerance Policy clearly obligate Management to work with the Union to provide a harmonious work environment free from threats and harassment. A threat against any employee, including Union officers, must not be tolerated in any form. The Union correctly asserts that, given a scenario in which a craft employee threatened a management official, the Service likely would have immediately placed the employee on EP—I have written many awards addressing such situations. As such, PM Poole received disparate (favored) treatment when Management refused to take any urgent administrative action in response to his violation of the Zero Tolerance Policy.

The IMIP gathered statements from multiple employees at the West Nyack Post Office who expressed fear and frustration over PM Poole's frequent practice of intimidating, harassing, and retaliatory behavior. These include, but are not limited to:

- Unrebutted allegations that PM Poole's behavior directly contributed to at least two employees' resignations from the Service (Mina Samaan, who was the employee involved in the step 1 grievance that initiated the instant events; and an unnamed female employee who, according to Clerk Toussaint, resigned as a result of PM Poole's incessant and "unbearable" questioning about her bathroom usage);
- Unrebutted allegations by T7 LSSA Fevrier and OIC Ostrowe that PM Poole effectively obstructed their efforts to enforce postal policies and manage postal operations because of the environment of fear and retaliation fostered by PM Poole; and
- Unrebutted allegations by SSSA Daley and SSSA Sherman that PM Poole has engaged in retaliatory tactics against employees such as unduly denying leave requests and refusing to pay overtime or Higher-Level pay.

Notably, such behavior is remarkably similar to that which I examined in a 2017 award (cited above) involving PM Poole's mistreatment of a postal employee at the Lincolnton Post Office while he was a T7 clerk. In that case, I found overwhelming evidence that PM Poole harassed, insulted, and intimidated an employee while the USPS—for reasons I could not discern—effectively protected him from disciplinary or administrative actions. It is alarming that the Service has allowed (and, in fact, rewarded, as he has since been promoted to postmaster) PM Poole's unacceptable behavior to continue for over five years, to the point where he physically threatened a member of the Union. It should also be noted that, in a 2021 regional award (cited



above), Arbitrator August (citing Arbitrator Jeffrey Jacobs, E16M-4E-C 18143936), established that evidentiary consideration of past issues may be used to determine the appropriate remedy once a violation of the Zero Tolerance Policy has been established.

The Service, for unexplained reasons, has continued to shield PM Poole from the consequences of his actions. It is not clear that current Management previously was aware of complaints against PM Poole, such as those included in the IMIP report or my 2017 award. However, both President Robinson and Director Finnerty immediately provided high-level management officials with first-hand accounts of the incidents on March 01 and 02. The Union repeatedly followed up with these officials—through emails on March 10, 21, 22, and 26, April 27, May 3 and 6, and August 09—to ascertain what investigatory and/or disciplinary action had been taken to address PM Poole’s behavior. POOM Welch testified that Management began its investigation into the incidents on March 16—two weeks after the incidents. Management did not offer any justification for its delay in initiating an investigation. Moreover, Management continues to decline to provide the Union with documentation of the 7-day proposed suspension that POOM Welch claims to have issued in response to the instant charges. Aside from Mr. Welch’s testimony, there is no evidence that Management ever implemented any disciplinary action against PM Poole. These facts amount to a violation of Management’s obligation to work with the Union to ensure a safe working environment, as described in Article 14.

Additionally, POOM Welch testified that—while he believes PM Poole acted “rudely”—the situation is a “he said, she said thing,” in spite of the fact that PM Poole’s threat against Director Finnerty was directly witnessed by President Robinson and VP Smith. In my 2017 Lincolnton award, I identified a similar reluctance on behalf of Management to admit PM Poole’s culpability at any point in the grievance procedure. As in this case, management in 2017 called the evidence against PM Poole “he said, she said.” I repeat what I said in 2017: this sends a terrible message to all employees. These facts amount to a glaring failure by Management to uphold and enforce the Zero Tolerance Policy as it applies to all employees, including management.

Based on the above reasoning, I find that PM Poole, while on duty as a management official, violated ELM 665.24 and the Zero Tolerance Policy when he accused President Robinson of forging a postal document and when he physically threatened Director Finnerty. This represents the culmination of a pattern of abusive, harassing, and demeaning behavior by PM Poole which extends back at least to 2017. Management violated Article 14 when it failed to place Poole on EP,

to initiate an investigation into the events on March 01 and 02 in a timely fashion, and when it refused to provide the Union with relevant information regarding the status of its investigation and disciplinary action against PM Poole.

### Remedy

Management argues that it properly applied relevant provisions and implemented appropriate discipline against PM Poole. It further argues that I do not have the authority to impose or modify discipline on a postmaster. The Union submitted Arbitrator Snow's 1996 national award (cited above) to support its position that, as expressed by Arbitrator Snow,

Arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties.

In response, Management submitted a regional award by Arbitrator Fraser (cited above) in which he opined that Arbitrator Snow's decision does not grant arbitrators the authority to discipline supervisors or other non-bargaining employees. Arbitrator Fraser appears to have reached this conclusion because Arbitrator Snow did not include any such statement in the final "Award" section of his decision. Fraser also implied that such a ruling would necessarily require a rewriting of Article 3, which grants Management the exclusive right to take disciplinary actions against postal employees. Instead, Arbitrator Fraser interpreted Snow's opinion to mean that the Union has the right to grieve a perceived violation of the Joint Statement on Violence and Behavior.

I find that the awards cited by the Union—particularly the decision by Arbitrator Maier, cited above—provide stronger arguments in favor of the understanding that Snow approved of arbitrators having the authority to instruct the USPS to apply administrative measures—but not disciplinary measures—to non-bargaining employees. Directly addressing Arbitrator Fraser's interpretation of Arbitrator Snow's award, Arbitrator Maier reasoned,

I respectfully disagree. In order to give meaning to a word, a sentence or a phrase the document must be read as a whole. Words and phrases cannot be read in isolation. Arbitrator Snow considered the impact his findings would have as viewed in context with Articles 1.2 (Exclusions) and 3 (Management Rights) and found the Joint Statement to be a jointly administered exception to Management's exclusive right to "suspend, demote, discharge, or take other disciplinary action against such employees." (Article 3.B)... [Snow] determined that the "...grievance procedure of the National Agreement may be used to enforce the parties' bargain and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing

a supervisor from his or her administrative duties.” (Snow p. 22) Taken in context with his obiter dicta, the plain meaning of words is preferred when construing language. It says what it says.

Arbitrator August and Arbitrator Fields came to similar conclusions along similar lines of analysis. I would add to this analysis that, implicitly, the contract establishes important distinctions between disciplinary and administrative actions, such as Emergency Placement. EP is generally not considered discipline, even though it is included in Article 16 (Disciplinary Procedures) and provides for placing an employee in an off-duty, nonpaid status. It is an immediate administrative action taken in response to extreme circumstances, such as violence or intoxication, to defuse the situation. This grants Management time to investigate the allegations and evaluate its options to address the issue. I note that disciplinary actions, by contrast, cannot be imposed prior to an investigation and (except in extreme circumstances that are enumerated in the contract) must follow progressive steps.

Regarding Arbitrator Snow’s award, I interpret his phrasing—“including removing a supervisor from his or her administrative duties”—as implying that arbitrators have the authority to instruct the USPS to take administrative actions against supervisory officials who have violated the Zero Tolerance Policy. In such cases, remedies such as anger management training or removal from administrative duties that involve direct supervision of employees are not so much discipline as administrative actions intended to make the USPS a safer, more harmonious work environment for all employees. This aligns with Arbitrator Snow’s understanding of the Joint Statement as a “call to action” for both parties:

The Joint Statement marked a departure from the past and pointed the way to organizational change. This was a document that evidenced an intent to take action rather than a mere statement of opinions and predictions. It was a “manifestation of intention to act” which justified a conclusion that a commitment has been made. After making strong promissory statements, the parties signed the document, signaling more than a gratuitous pledge.

The arbitrators discussed above imposed varying disciplinary and administrative measures. Arbitrator Maier—whose case involved a supervisor who brought a gun into a post office while on duty—instructed the USPS to terminate her employment (disciplinary) and to post his award in all stations and branches for a period of 60 days (administrative). Arbitrator August—whose case involved a postmaster who exhibited a pattern of bullying and intimidating behavior—issued various “cease and desist” orders; removed the postmaster from any position in which he had direct supervision over and/or authority to discipline employees; instructed the USPS to provide direct

supervision of all interactions between the postmaster and postal employees for a period of two years; and ordered a "Climate Survey" to be taken of the facility to determine a set of ground rules for the incoming/temporary postmaster (all administrative measures). Arbitrator Fields—whose case involved a supervisor who publicly demeaned and yelled at an employee who expressed safety concerns about his route—suspended the supervisor for a period of 90 days from any position which includes the core activity of supervising letter carriers; instructed the USPS to obtain a psychological fitness for duty report for the supervisor and provide anger management training; and instructed a manager of the facility to apologize to his employees for "condoning by his silence" the unacceptable behavior of the supervisor (all administrative measures).

Upon consideration of my findings and the arbitral authority, I order that Management provide the Union with documentation of the alleged 7-day proposed suspension imposed by POOM Welch. I order the following administrative actions:

- 1) Management will remove PM Poole from his position as postmaster and permanently prevent him from holding any position which involves supervisory authority over anyone. The USPS will ensure that PM Poole is not able to continue to covertly influence or control operations at the West Nyack Post Office or at any facility, as he did while on assignment during the IMIP (per OIC Ostrowe's written statements, J-2 p. 15-17). This is the second case I have heard involving PM Poole abusing his authority; he does not get a third chance. This shall be completed within 30 days.
- 2) Management will arrange anger management training for PM Poole.
- 3) Management and Union officials will meet with a specialist (such as the Joint Labor-Management Safety Committee, per Article 14 Section 3) to discuss possible administrative measures intended to address harassment and abuses of authority. This will be completed within 90 days.

#### AWARD

The grievance is upheld. PM Poole violated ELM 665.24 and the Zero Tolerance Policy on March 01 and 02. The USPS violated Article 14 and the Zero Tolerance Policy when it failed to place Poole on EP, failed to initiate an investigation in a timely manner, and failed to provide the Union with requested information regarding the investigation/discipline. Management will provide the Union with documentation of the 7-day proposed suspension claimed to be issued by POOM Welch. Additionally, I order the following administrative actions:

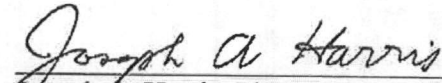
- 1) Management within 30 days will remove PM Poole from his position as postmaster and permanently prevent PM Poole from holding any position which

involves supervisory authority over anyone. The USPS will ensure that he is not able to covertly influence or control operations at any facility in contradiction of this order.

- 2) Management will provide anger management training for PM Poole.
- 3) Within 90 days, Management and Union officials will meet with a specialist to discuss possible administrative measures to address harassment and abuses of authority in the Postal Service.

I retain jurisdiction over this matter *sine die*.

March 23, 2023

  
Joseph A. Harris, Ph.D.  
Arbitrator