



Postal Service: Collective Bargaining

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Summary

This report describes the scope of the collective bargaining authority that Congress has granted to the Postal Service and authority of Congress to modify employee-management relations by altering that scope or the terms of collective bargaining agreements. It also summarizes some provisions—H.R. 2309, the Postal Reform Act of 2011, and S. 1789, the 21st Century Postal Service Act of 2012, both of the 112th Congress—that relate to collective bargaining.

This report will be updated to reflect changes in relevant developments.

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Scope of Collective Bargaining

Article I, Section 8, clause 7 of the Constitution grants Congress power to establish post offices and post roads. Pursuant to this power, Congress enacted the Postal Reorganization Act of 1970,¹ which created the United States Postal Service as an independent establishment in the executive branch of the U.S. government.² It enacted this statute to permit the Postal Service to operate more like a business than a government entity. Before the 1970 act became law, the Cabinet-level Department of the Post Office operated postal services.

While Congress applied to the Postal Service some statutes, including those relating to veterans' preference and retirement, that apply to federal entities and prohibited postal employees, like other federal employees, from striking, it provided in Section 1209(a) of Title 39 of the United States Code that, "Employee-management relations shall, to the extent not inconsistent with the provisions of this title, be subject to the provisions of subchapter II of chapter 7 of Title 29." This language cites the National Labor Relations Act (NLRA),³ which governs private sector employee-management relations. These relations in most federal departments and agencies are regulated by chapter 71 of Title 5 of the U.S. Code, known as the Federal Labor-Management Relations Statute.

Congress in the 1970 act, codified at Title 39 of the U.S. Code, also granted the U.S. Postal Service broader employee-management authority than exercised by most other federal departments and agencies. A provision of the act, 39 U.S.C. Section 1005(f), identifies subjects of Postal Service collective bargaining: compensation, benefits, and other terms and conditions of employment.⁴

This scope differs from the one that applies to most federal agencies, which is limited to conditions of employment. For those agencies, the phrase "conditions of employment" is defined in 5 U.S.C. Section 7103 expressly to exclude policies, practices, and matters relating to political activities prohibited under subchapter III of chapter 73 of Title 5 (i.e., the Hatch Act); classification of any position; and, significantly, conditions of employment that are specifically provided for in federal statute. This final exclusion precludes collective bargaining over conditions of employment such as Federal Employees Group Life Insurance (FEGLI) and the Federal Employees Health Benefits Program (FEHBP) because they are specifically provided for in 5 U.S.C. chapters 87 and 89, respectively.

Addressing the transition from the Postal Office Department to the businesslike U.S. Postal Service, Congress in 39 U.S.C. Section 1005(f) indicated that compensation, fringe benefits, and other terms and conditions of employment that were in effect immediately prior to the effective

¹ P.L. 91-375, 84 Stat. 719 (1970).

² 39 U.S.C. §201 ("There is established, as an independent establishment in the executive branch of the government of the United States, the United States Postal Service.")

³ The NLRA is codified at 29 U.S.C. §§151 *et seq.*

⁴ A federal appeals court observed that the Postal Reorganization Act retained congressional control over subjects such as retirement, veterans' preference, and workers' compensation, and provided that rights and benefits to be collectively bargained include hiring and promotion, health and life insurance, compensation, and employee discipline. *American Postal Workers Union v. United States Postal Service*, 707 F.2d 548, 556 (D.C. Cir. 1978), *citing* 116 Cong. Rec. 20,230 (1970) (remarks of Representative Morris Udall during consideration of H.R. 17070, 91st Cong., 2d Sess., the bill enacted as the act) and 39 U.S.C. 39 U.S.C. §1005(a)(1)(A), (a)(2), (c) and (d).

date of the section (i.e., July 1, 1971) would continue to apply to officers and employees of the Postal Service in accordance with chapters 10 and 12 of Title 39, which relate to employment and employee-management relations, respectively. The final sentence of Section 1005(f) states the following:

No variation, addition, or substitution with respect to fringe benefits shall result in a program of fringe benefits which on the whole is less favorable to the officers and employees in effect on the effective date of this section, and as to officers and employees for whom there is a collective-bargaining representative, no such variation, addition, or substitution shall be made except by agreement between the collective bargaining representative and the Postal Service.

Congress provided procedures for terminating collective bargaining agreements in Section 1207 of Title 39. This section states that a party wishing to terminate or modify an agreement while it is in effect must serve timely written notice on the other party. If parties cannot agree on a resolution or adopt a procedure for a binding resolution of a dispute, the Director of the Federal Mediation and Conciliation Service must appoint a mediator. This section also grants authority to establish an arbitration board under certain circumstances and provides that a board decision is conclusive and binding on the parties.

Congress's Authority to Modify Scope of Bargaining or Terms of Collective Bargaining Agreements

Collective bargaining agreements are contracts between the Postal Service and unions that prescribe employee-management relations on subjects that Congress has permitted to be collectively bargained. Can Congress through legislation modify the scope of bargaining or terms of collective bargaining agreements? Congress has authority *prospectively* to modify the scope of bargaining or terms of collective bargaining agreements after they expire. In the 1970 act, Congress granted the Postal Service and collective-bargaining representatives authority to bargain collectively over compensation, fringe benefits such as health insurance and life insurance, and other conditions of employment, but it could amend that statute to limit the scope of bargaining subjects in the future. For example, Congress could mandate that rates of employee premiums for health or life insurance no longer will be subjects of collective bargaining.

Enacting a statute to modify the scope of bargaining or terms of agreements *before* they expire, however, may present legal questions to be resolved by a court. For example, a court may have to determine whether such a statute may cause the Postal Service to breach a contract⁵ or exceed constitutional limits under the Takings and/or Due Process Clauses of the Fifth Amendment.⁶

⁵ See *United States v. Winstar*, 518 U.S. 839 (1996), which held the United States liable for damages for breaching a contract with some savings and loan associations. Note the discussion of two constitutional principles, that one Congress may not bind a later Congress and that the United States has a duty to honor its own contracts, as well as the discussion of the unmistakability doctrine and the sovereign acts doctrine as they relate to government contracts at 518 U.S. at 871-899.

⁶ See, e.g., *Lynch v. United States*, 292 U.S. 571 (1934), which struck down a Depression-era statute that impaired obligations to pay purchasers of federally issued war risk insurance as a violation of the Due Process Clause of the Fifth Amendment; and *Perry v. United States*, 294 U.S. 330 (1935), which invalidated a statute because it impaired federal obligations to pay holders of U.S. bonds in contravention of Section 4 of the Fourteenth Amendment, which states that (continued...)

H.R. 2309: The Postal Reform Act of 2011

Direct Effects on Collective Bargaining and Employee-Management Relations

Some sections of Title III “Postal Service Workforce” as reported favorably to the full House by the House Committee on Oversight and Government Reform on October 13, 2011,⁷ would directly modify some provisions of Title 39 of the U.S. Code that relate to Postal Service collective bargaining agreements and employee-management relations. Many of these sections appear to have been based on recommendations of the President’s Commission on the United States Postal Service issued in 2003.⁸ Section 301(a), “Modifications Relating to Pay Comparability,” of H.R. 2309 would amend the first sentence of 39 U.S.C. Section 101(c), which states that, “As an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States.” This subsection would insert “total” before “rates and types of compensation” and insert “entire” before “private sector.”

Section 301(b) would make a corresponding change to the second sentence of 39 U.S.C. §1003(a), which provides that, “It shall be the policy of the Postal Service to maintain compensation and benefits for all officers and employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy.” “Total” would be inserted before “compensation and benefits” each place it appears and “entire” would be inserted before “private sector.” Section 301(c) would provide that for purposes of amendments made by Section 301, any determination of total rates and types of compensation or total compensation and benefits “... shall, at a minimum, take into account pay, health benefits, retirement benefits, life insurance benefits, leave, holidays, and continuity and stability of employment.”

The President’s Commission Report explained that amendments to this effect would clarify that the 1970 act’s commitment to comparability with the private sector should apply to total compensation packages that are available to Postal Service officers and employees and should take into account the value of federal benefits such as cost of living increases in retirement that may not be widely available to private sector workers.⁹

Section 302 of H.R. 2309, “Limitations under FEGLI and FEHBP,” would amend 39 U.S.C. Section 1003 by adding at the end a new subsection (e) to provide that Postal Service employer contributions for government life insurance and health insurance benefit programs shall be the

(...continued)

the validity of the public debt shall not be questioned. In the *Perry* case, the Court said that, “There is a clear distinction between the power of Congress to control or interdict the contracts of private parties when they interfere with the exercise of its constitutional authority and the power of the Congress to alter or repudiate the substance of its own engagements when it has borrowed money under the authority the Constitution confers.” 294 U.S. at 350-351.

⁷ H.Rept. 112-363, Pt. I, 112th Cong., 2d Sess. at 58 (2012). The bill also was referred to the Committee on Rules, which reported the text of the version that was reported to the House by the House Committee on Oversight and Government Reform with some amendments relating to procedural rules on subjects not relevant to this report. See H.Rept. 112-363, Pt. II, 112th Cong., 2d Sess. at 43-44 (2012), for an explanation of these amendments.

⁸ Report of the President’s Commission on the United States Postal Service: Embracing the Future, Making the Tough Choices to Preserve Universal Mail Service (July 31, 2003) (President’s Commission Report), available at <http://govinfo.library.unt.edu/usps/offices/domestic-finance/usps/final-report.html>.

⁹ *Id.* at 119.

same as those for government departments and agencies. This amendment would take effect for each fiscal year after September 30, 2013, the end of FY2013. For employees covered by collective bargaining agreements, however, this change would not take effect for any fiscal year until after these agreements expire, including any portion that remains of a fiscal year if those agreements expire before the end of a fiscal year.

Section 8707(c)(2) of Title 5 of the U.S. Code provides that 66.66% of premium costs shall be withheld for employees who participate in the Federal Employees Group Life Insurance (FEGLI) program. Section 8708(a) states that the government agency contribution is one-half of the share paid by employees. According to the committee report, Postal Service employees currently pay nothing for life insurance premiums compared to over 66% that other federal employees pay.¹⁰ Because employees pay nothing for these premiums, the Postal Service as the employing agency pays 100% of them.

Section 8906(b)(1) of Title 5 provides that the biweekly government contribution rate in the Federal Employees Health Benefits Program (FEHBP) for most federal employees can be adjusted to 72% of the Office of Personnel Management-determined weighted average of subscription charges for individual only and for individual and family health insurance coverage. Under current law, bargaining representatives can and have negotiated higher Postal Service employer contributions for employees that have resulted in lower employee contributions. The committee report observes that postal employees currently pay 21% of health care premiums compared to 28% that other federal employees pay.¹¹ As a consequence of these agreement terms, the Postal Service as the employing agency pays an average of 79% of health insurance premiums for its employees.

Section 303 of H.R. 2309, “Repeal of Provision Relating to Overall Value of Fringe Benefits,” would repeal the last sentence of 39 U.S. Section 1005(f), which constrains the ability of the Postal Service to modify fringe benefits. As noted above, this subsection states that compensation, benefits, and other terms and conditions of employment that were in effect before the effective date of the Postal Reorganization Act of 1970, July 1, 1971, shall continue to apply to Postal Service officers and employees unless changed by the Postal Service in accordance with chapters 10 and 12 of Title 39 of the U.S. Code. The final sentence of Section 1005(f) that would be repealed by Section 303 of H.R. 2309 provides that

No variation, addition, or substitution with respect to fringe benefits shall result in a program of fringe benefits which on the whole is less favorable to the officers and employees in effect on the effective date of this section, *and as to officers and employees for whom there is a collective bargaining representative, no such variation, addition, or substitution shall be made except by agreement between the collective bargaining representative and the Postal Service.* (Emphasis supplied.)

¹⁰ H.Rept. 112-363, Pt. I at 53.

¹¹ *Id.* Because government agency employer and employee contribution rates for life and health insurance premiums are set by law, they are not conditions of employment over which bargaining representatives for most federal employees can collectively bargain. *See the President’s Commission Report* at 118, which observed that in 2003, when that report was published, postal employees paid less for health insurance premiums than employees in the private sector and in most federal agencies.

This section would implement a recommendation of the President's Commission Report.¹² It would appear to permit the Postal Service to vary, add to, or substitute fringe benefits which on the whole could be less favorable to officers and employees than those that were in effect in 1971. Moreover, the Postal Service would appear to be able to modify fringe benefits for officers and employees who have a collective bargaining representative without achieving agreement between that representative and the Postal Service.

Section 304, "Applicability of Reduction-in-Force Procedures," would amend 39 U.S.C. Section 1206, which relates to collective bargaining agreements, by adding at the end new subsections (d) through (f). As amended by Section 304, 39 U.S.C. Section 1206(d) would prohibit any provision that would bar reduction-in-force procedures under Title 5 of the United States Code for collective bargaining agreements between the Postal Service and bargaining representatives that are ratified *after* subsection (d) is enacted. For collective bargaining agreements between the Postal Service and bargaining representatives that were ratified *before* the enactment date of H.R. 2309, Section 1206(e), as amended by Section 304, would require renegotiating any provision that restricts applying Title 5 reduction-in-force procedures.

The new Section 1206(f) would provide that if a collective bargaining agreement ratified *after* the enactment date of H.R. 2309 includes reduction-in-force procedures that can be applied in lieu of those in Title 5, the Postal Service may, in its discretion, apply to members of that bargaining unit the alternative procedures or the Title 5 procedures. If procedures for resolving a dispute or impasse are invoked, however, the award of an arbitration board or other resolution reached could not provide for eliminating or substituting any alternative procedures in lieu of Title 5 reduction-in-force procedures.

The intent of Section 304 is to prohibit no-layoff clauses in future collective bargaining agreements and require renegotiating any agreements that currently have them. The President's Commission Report observed that protection from layoffs had been included in collective bargaining agreements since around 1978 and that as of February of 2003, when that report was written, these clauses protected from layoffs an average of about 89% of Postal Service union employees with some variation from union to union.¹³

Referring to collectively bargained restrictions on the Postal Service's ability to use Title 5 reduction-in-force procedures, the House committee report states that, "... postal employees are virtually the only federal workers who enjoy such protections."¹⁴ Title 5 procedures generally take into account tenure of employment including type of appointment (e.g., career or career-conditional); veterans' preference; length of service; and efficiency or performance ratings.¹⁵ The report adds that, "This is no longer tenable, since the Postal Service is now in a position where it is unable to achieve workforce reductions through attrition alone. The bill specifically allows unions to negotiate alternative reduction-in-force methods that achieve needed rightsizing."¹⁶ The report continues that this alternative authority was granted to permit postal unions to negotiate

¹² *President's Commission Report* at 120.

¹³ *Id.* at 120-121.

¹⁴ H.Rept. 112-363, Pt. I at 53. *See also* H.Rept. 112-363, Pt. I at 68 for a description of section 304 of H.R. 2309.

¹⁵ *See* 5 U.S.C. §§3501-3503 and part 351 of Title 5 of the Code of Federal Regulations for reduction-in-force statutes and regulations, respectively.

¹⁶ H.Rept. 112-363, Pt. I at 53.

other forms of reduction-in-force such as retirement conversion as alternatives to the last-in-first-out method prescribed under Title 5.¹⁷

Section 305 of H.R. 2309, “Modifications Relating to Collective Bargaining,” would strike subsections (c) and (d) of 39 U.S.C. Section 1207, which relate to procedures for resolving labor disputes. It would replace them with new subsections (c) and (d) to require neutral arbitrators, impose and/or shorten time limits on mediation and arbitration, and specify factors that arbitration boards must consider.

Subsection (c) would be amended to change the manner of selecting members of each three-member arbitration board which is established if parties cannot resolve a dispute within 30 days after a mediator was appointed or if they decide upon arbitration before that 30-day period expires. The board would consist of one member appointed by the Postal Service and one member appointed by the bargaining representative of employees and a third member who had been appointed as a mediator pursuant to 39 U.S.C. Section 1207(b).¹⁸

Section 1207(c)(1) of current law provides that the Postal Service and the collective bargaining representative of employees each shall select one board member and that the two members who were selected by the parties shall choose the third board member. Currently, these parties are not required to select neutral arbitrators. If either of the parties fails to select a member or if the two parties cannot agree on a third member, however, the Director of the Federal Mediation and Conciliation Service selects a party’s member or third member from a list of nine neutral arbitrators.

While the amendment in Section 305 of H.R. 2309 would retain each party’s opportunity to select one arbitration board member, it would require that the parties select an arbitrator from a list of nine neutral arbitrators provided by the Director rather than anyone each party selects as under current law. This amendment would retain current law regarding the Director’s selection of a party’s board member from that list if a party fails to select a neutral arbitrator from it within seven days after the list is made available. It would change current law by making the mediator who had been selected from that list by the Director pursuant to Section 1207(b) the third arbitration board member. The parties no longer jointly would select the third member.

The President’s Commission Report indicated that by putting the mediator on an arbitration board, progress that had been made during the negotiation and mediation phases would not be lost, arbitrators would be made aware of earlier concessions that each party had made, and the parties would be less likely to revert to earlier bargaining positions. The report said that the entire process would not have to “start from scratch.”¹⁹

¹⁷ *Id.* at 75.

¹⁸ Section 1207(b) of title 39 of the U.S. Code, which is not being amended by H.R. 2309, provides that if parties fail to reach agreement or adopt a procedure for a binding resolution of a dispute by the expiration date of an agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service within 10 days shall appoint a mediator of nationwide reputation and professional nature, who also is a member of the National Academy of Arbitrators. The parties are required to cooperate with the mediator to reach an agreement and to meet and negotiate in good faith at such times and places as the mediator, in consultation with the parties, shall direct.

¹⁹ *President’s Commission Report* at 115.

Pursuant to 39 U.S.C. Section 1207(c)(3), as amended by Section 305 of H.R. 2309, an arbitration board would be required to give the parties a full and fair hearing no more than 40 days after it is established. No more than seven days after the hearing is concluded, each party would have to present two offer packages, each of which would specify the terms of a proposed final agreement. No later than three days after submission of final offer packages, the arbitration board would select one of them as its tentative award. The board, however, could not select a final offer package unless the offer complies with each of the following: (1) it has comparability with the private sector in 39 U.S.C. Sections 101(c) and 1003(a); (2) it takes into account the current financial condition of the Postal Service; and (3) it takes into account the long-term financial condition of the Postal Service.

If the board unanimously determines, based on clear and convincing evidence presented during the hearing, that neither final offer satisfies these three conditions, the board by majority vote would be required to select a tentative award (i.e., the package that best meets these conditions) and modify it to the minimum extent to satisfy them. The parties could negotiate a substitute award to replace the tentative award selected by the arbitration board from the final offers that had been submitted by the parties or rendered by the board after it selects a final offer package that best meets the three conditions and modifies it. If no agreement on a substitute award is reached by the parties within 10 days after the date on which the tentative award is selected or rendered, the tentative award would become final.

If neither party submits a final offer package by the seventh day after a hearing is concluded, the arbitration board would have to develop and issue a final award no later than 20 days after the seventh day. A final award or agreement would be conclusive and binding upon the parties. Costs of the arbitration board and mediation would be shared by the Postal Service and the bargaining representative.

Section 1207(d) of Title 39 of the U.S. Code would be amended by Section 305 of H.R. 2309 to require appointing a mediator if a bargaining unit whose recognized collective bargaining representative does not have a collective bargaining agreement with the Postal Service and if the parties fail to reach agreement on such an agreement within 90 days after bargaining commences. A mediator would have to be appointed unless the parties previously have agreed to another procedure for binding resolution of their differences. If parties fail to reach agreement within 180 days after collective bargaining commences, an arbitration board would be established to provide conclusive and binding arbitration in accordance with subsection (c).

The committee report explains that Section 305

Reforms the collective bargaining process to contain a mediation-arbitration process with a defined timeline model after recommendations of the 2003 President's Commission on the Postal Service. Creates an arbitration board of three neutral individuals. Any arbitration award is required to take into account both pay comparability with the private sector and the financial condition of the Postal Service. Further, once the arbitration stage has been reached, any agreement reached by the Postal Service and a union independent of the arbitration panel must also satisfy these same requirements. If such an agreement fails to do so, the arbitration panel is required to amend the agreement in a manner that does satisfy the requirement.²⁰

²⁰ H.Rept. 112-363, Pt I at 69.

As this excerpt reveals, this mediation-arbitration process is based on recommendations in the 2003 President's Commission on the Postal Service. The commission asserted that the current process took too long and encouraged parties to revert to entrenched positions rather than seek to resolve their differences.²¹

Effects Under the Postal Service Financial Responsibility and Management Assistance Authority During a Control Period

Section 202, "Establishment of the Authority," in Title II of H.R. 2309 would create the Postal Service Financial Responsibility and Management Assistance Authority (the Authority) to assume all authorities and responsibilities of the Postal Service Board of Governors, individual governors, and the Postal Service during a "control period."²² The Authority would be a receiver-like body of five non-salaried members appointed by the President from recommendations made by congressional leaders.²³ According to the committee report, this proposal "... drew on the highly successful D.C. Control Board, formally known as the District of Columbia Financial Responsibility and Management Assistance Authority, ... a receiver-like body put in place during the 1990s in order to restore D.C.'s solvency during a period of financial mismanagement."²⁴

A control period would commence whenever the Postal Service has been in default to the United States Treasury for a period of 30 days. For the first control period, the Authority would operate solely in an advisory capacity. At the end of the second full fiscal year or any year thereafter during the length of a control period if the Postal Service's annual deficit is greater than \$2 billion, however, the Authority would be fully in force. During an advisory period, the Authority could not employ any staff, and any provision that requires it or the Postal Service to take any action only would take effect in the event that the Authority comes into full force. The date that the Authority comes into full force would be considered the commencement date of the control period.

During a control period when fully in force, the Authority would direct the exercise of the Postal Service's powers, including, among other things, "human resource strategies, collective bargaining strategies, negotiation parameters, and collective bargaining agreements, and the compensation structure for nonbargaining employees."²⁵ Section 224(b) of H.R. 2309, "Responsibilities of the Authority," would direct the Postmaster General to submit to the Authority any proposal that has a substantial effect on these quoted items. If the Authority determines that a proposal is consistent with a financial plan and budget, it would notify the Postmaster General that the proposal is approved. If it determines that a proposal significantly is inconsistent with that plan and budget, the Authority would be required to notify the Postmaster General of its finding with an explanation of its reason for that finding and, to the extent it considers appropriate, provide the Postmaster General with recommendations for modifying the proposal. The Authority's failure to notify the Postmaster General of approval or disapproval within a prescribed time would be deemed approval.

²¹ *President's Commission Report* at 114.

²² Section 202(b).

²³ Section 203.

²⁴ H.Rept. 112-363, Pt. I at 52.

²⁵ Section 224(a)(5).

When in full force, the Authority would be empowered to review each contract, including each labor contract entered into through collective bargaining, that the Postal Service proposes to enter into, renew, modify, or extend during a control period. The Postal Service could not enter into such a contract unless the Authority determines that it is consistent with the financial plan and budget for the fiscal year. Other contracts, after execution, including collective bargaining agreements entered into by the Postal Service that are in effect during a control period, would have to be submitted to the Authority when any control period commences and at such other times as it may require. The bill would direct the Authority to review these contracts after execution to determine whether they are consistent with the financial plan and budget for the fiscal year. If the Authority determines that a contract is not consistent, the Authority would have to take such actions that are within its powers to revise it.²⁶

The Authority and its members would not be liable for any obligation or claim against the Postal Service resulting from actions to carry out Title II of H.R. 2309, entitled “Postal Service Financial Responsibility and Management Assistance Authority.”²⁷ The bill expresses the sense of Congress that, in making determinations that affect prior collective bargaining agreements and prior agreements on workforce reduction, any rightsizing effort within the Postal Service that results in a decrease in the number of postal employees should ensure that such employees can receive their full pensions, are fully compensated, and that agreements on workforce reduction which were entered into with the Postal Service be fully honored.²⁸

When fully in force, the Authority could seek judicial enforcement of its Authority to carry out its responsibilities. Any Postal Service officer or employee who, by action or inaction, fails to comply with any Authority directive or other order under Section 226(c) of H.R. 2309, “Recommendations Regarding Financial Stability,” would be subject to appropriate administrative discipline, including suspension from duty without pay or removal from office, by order of either the Postmaster General or the Authority. Whenever a Postal Service officer or employee takes or fails to take any action in a manner which is noncompliant with such a directive or order, the Postmaster General would be required immediately to report to the Authority all pertinent facts, together with a statement of any administrative disciplinary actions that the Postmaster took or proposes to take.²⁹

Section 226(c) would empower the Authority to implement recommendations regarding financial stability that it has submitted to the Postal Service, but that were rejected by the Postal Service. The Authority’s recommendations could include, among others, establishing alternatives to meet obligations to pay for pensions and retirement benefits of current and future Postal Service employees and increasing use of an employee personnel system based upon performance standards. This subsection would apply with respect to Authority recommendations made after the expiration of the six-month period beginning on the date a control period commences.

Section 213(a) of H.R. 2309, “Treatment of Actions Arising Under This Title,” would authorize a person, including the Postal Service, adversely affected or aggrieved by an Authority order or decision to institute proceedings within 30 days after a decision or order becomes final by filing a petition with the Court of Appeals for the District of Columbia. It would direct the court to review

²⁶ Section 224(c).

²⁷ Section 212.

²⁸ Section 211(h).

²⁹ Section 211(f) and (g).

the order or decision in accordance with 5 U.S.C. Section 706 and 28 U.S.C. chapter 158 and Section 2112. This subsection states that, “Judicial review shall be limited to the question of whether the Authority acted in excess of its statutory authority, and determinations of the Authority shall be upheld if based on a permissible construction of the statutory authority.”

The bill would permit Supreme Court review of a D.C. Circuit decision only if a petition for review is filed within 10 days after a decision is entered. No order of any court granting declaratory or injunctive relief against the Authority, including relief that permits or requires obligating, borrowing, or expending funds, could take effect while an action is pending in court, during the time an appeal may be taken, or, if an appeal is taken, during the period before the court has entered its final order disposing of the action. The bill states that the U.S. Court of Appeals for the District of Columbia and the Supreme Court have a duty to advance on the docket and expedite to the greatest possible extent the disposition of any matter brought by an affected or aggrieved person.³⁰

S. 1789: The 21st Century Postal Service Act of 2012

The Senate passed S. 1789 on April 25, 2012, by a vote of 62 to 37.³¹ Section 106, “Arbitration: Labor Disputes,” would amend 39 U.S.C. Section 1207(c)(2), which relates to arbitration proceedings to resolve labor disputes. It would add a requirement that, “In rendering a decision under this paragraph, the arbitration board shall consider such factors as the financial condition of the Postal Service.” It also would add the following language: “Nothing in this section may be construed to limit the relevant factors that the arbitration board may take into consideration in rendering a decision under paragraph (2).”

This Senate-passed language is similar but not identical to language in Section 105 of S. 1789 that was reported to the Senate by the Committee on Homeland Security and Governmental Affairs.³² The committee report observed that two successive Postmasters General requested a statutory amendment requiring arbitration boards to consider the Postal Service’s financial condition and that the Government Accountability Office favored such an amendment, but that some postal union presidents opposed it. This report added that

The Committee decided that, at this period when the Postal Service faces such dire financial difficulties, arbitrators must consider the financial condition of the Postal Service, and S. 1789 should say so explicitly. However, the Committee was determined to include a balanced provision in S. 1789, making it clear that Congress does not believe that the financial condition of the Postal Service, or any other objectives put forward by the Postal Service or one of its unions, are the only factors that arbitrators must consider.³³

Another provision of S. 1789, as passed by the Senate, Section 104, states that consistent with 39 U.S.C. Section 1005(f), which provides that the program of fringe benefits must not be less favorable than the one in effect in 1971, the Postal Service may enter into a joint collective bargaining agreement with bargaining representatives to establish the Postal Service Health

³⁰ Section 213.

³¹ 158 Cong. Rec. S2696, April 25, 2012 (daily ed.).

³² S. 1789 as reported by the Committee on Homeland Security and Governmental Affairs was withdrawn before floor consideration of a substitute amendment numbered 2000. 158 Cong. Rec. S2369 (April 17, 2012).

³³ S.Rept. 112-143 at 7-8 (2012).

Benefits Program as a substitute for the Federal Employees Health Benefits Program. Any dispute in negotiating this program would not be subject to arbitration. Authority for this joint negotiation would extend until September 30, 2012.

During floor consideration of S. 1789, the Senate by a vote of 23 to 76 rejected an amendment offered by Senator Rand Paul to amend Section 1206, “Collective bargaining agreements,” of title 39 of the U.S. Code. This amendment would provide that, “The Postal Service may not enter into any collective bargaining agreement with any labor organization.”³⁴ It also made technical and conforming changes to other sections in chapter 12, “Employee-Management Agreements,” of Title 39 that relate to collective bargaining.

Conclusion

This report has described the scope of Postal Service collective bargaining and authority of Congress to modify employee-management relations by altering the scope of collective bargaining or terms of collective bargaining agreements. It also has summarized changes to collective bargaining proposed in H.R. 2309, the Postal Reform Act of 2011, as reported to the House by the Committee on Oversight and Government Reform, and in S. 1789, 112th Congress, as passed by the Senate

Congress created the United States Postal Service as an instrumentality in the executive branch of the federal government in the Postal Reorganization Act of 1970, P.L. 91-375, to permit it to operate more like a business than a government department or agency. Postal Service employee-management relations were made subject to the National Labor Relations Act, which governs private sector relations, rather than the Federal Labor-Management Relations Statute in chapter 71 of the United States Code, which applies to most federal entities. Congress granted the Postal Service broader authority to bargain collectively over compensation, benefits, and other conditions of employment. Most federal departments and agencies may bargain collectively only over conditions of employment, excluding conditions that are subjects of federal statute such as life insurance and health insurance and position classification.

The Postal Service Reform Act of 2011, H.R. 2309, would modify some provisions of Title 39 of the U.S. Code regarding collective bargaining and employee-management relations. These provisions would seek to broaden the measures of pay comparability between Postal Service officers and employees and private sector employees as well as the overall value of fringe benefit packages by taking into account some benefits that are not widely available in the private sector. They also would reduce the employing agency share that the Postal Service now pays for government life insurance and health insurance premiums for its employees. These changes also would prohibit including no-layoff clauses in collective bargaining agreements not yet ratified when H.R. 2309 is enacted and require renegotiating already ratified agreements that have them, and modify procedures for resolving collective bargaining disputes by requiring parties to appoint neutral arbitrators and by including mediators in arbitration boards.

H.R. 2309 also would create a receiver-like Postal Service Financial Responsibility and Management Assistance Authority to assume all authorities and responsibilities of the Board of Governors of the Postal Service during a control period (i.e., any period when the Postal Service

³⁴ 158 Cong. Rec. S2688 (April 25, 2012).

has been in default to the Treasury of the United States). The Authority would be advisory only during the first two years of a control period, but would become fully in force at the completion of the second full fiscal year or any year thereafter during the length of a control period if the Postal Service's annual deficit is greater than \$2 billion.

When fully in force, the Authority, among other responsibilities, could approve human resources strategies, collective bargaining strategies, negotiation parameters, and collective bargaining agreements. The Postmaster General could not enter into, renew, modify, or extend a contract, including a labor contract entered into through collective bargaining, unless the Authority determined that doing so is consistent with the financial plan and budget for the fiscal year. The Authority also could take such actions within its responsibilities to revise a contract, including a collective bargaining agreement that is in effect during a control period, which it determines to be inconsistent with the financial plan and budget for the fiscal year.

S. 1789, the 21st Century Post Office Act of 2012, as passed the Senate, would amend 39 U.S.C. Section 1207(c) to require an arbitration board to consider the financial condition of the Postal Service when it issues a final decision, but this requirement would not preclude a board from considering any other relevant factors. It also would authorize the Postal Service until September 30, 2013, to enter into a joint collective bargaining agreement with bargaining representatives to establish the Postal Service Health Benefits Program.

During floor consideration of S. 1789, the Senate rejected an amendment to eliminate Postal Service collective bargaining by a vote of 23 to 76.

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