

AMERICAN ARBITRATION ASSOCIATION
AAA Case Number 01-23-0002-9037

-----X
In the Matter of the Arbitration between

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 804

-and-

UNITED PARCEL SERVICE, INC.

OPINION

AND

AWARD

Grievance: Use of non-clerks to perform clerk work

-----X
BEFORE: Jay M. Siegel, Esq.
Arbitrator

APPEARANCES: For Teamsters Local 804
Charny & Wheeler, P.C.
By: Nathaniel K. Charny, Esq., of Counsel

For United Parcel Service, Inc.
Epstein Becker & Green
By: Jeremy M. Brown, Esq., Of Counsel

In accordance with the collective bargaining agreement (Joint Exhibit 1) between the parties (UPS or Company and Union), the undersigned Arbitrator was selected to hear a grievance and render a binding determination. Arbitration hearings were conducted at the Hilton Garden Inn in Roslyn, New York, on November 1, 2024, February 20, 2025, March 14, 2025, and July 31, 2025.

The parties were accorded full and fair hearings, including the opportunity to present evidence, examine witnesses, and make arguments in support of their

respective positions. The record was closed on October 16, 2025, after the Arbitrator received the parties' written closing arguments.

ISSUE

The parties submitted different issues for the Arbitrator's review and determination.

The Union proposed the following:

Did the Company violate the collective bargaining agreement (CBA) by asking non-clerks to perform clerk work? If so, what shall be the remedy?

The Company proposed the following:

Did the Company violate clerk seniority by assigning non-clerks to perform tape ups? If so, what shall be the remedy?

The Arbitrator finds the Union's proposed issue to be more appropriate.

Notably, in the approximately 37 grievances filed on this topic, the express complaint is that while clerks are laid off, the Company is assigning clerk work outside of the clerk classification. The Company's proposed issue limits the dispute to tape ups, which is too narrow. Moreover, while the Union's arguments at the panel stage of the grievance process clearly led with the issue of tape ups being performed by non-clerks, its arguments went beyond tape ups. Notably, on page 1 of the Union's arguments at panel, the Union expressly addressed repacking as another aspect of the grievance, stating that there is no practice allowing non-clerks to perform repacking or retaping of boxes. (Joint Exhibit 2).

Notably, the Company's arguments at panel demonstrate that it was aware that the grievances went beyond tape ups. On page 1 of the Company's arguments, it expressly asserted that "...retapes and repacks are a miscellaneous activity for the clerk position..." (Joint Exhibit 3). Thus, the grievance record establishes that the gravamen of the dispute concerns the broad issue of the Company assigning multiple clerk duties to non-clerks. As such, the Arbitrator adopts the Union's proposed issue, namely,

Did the Company violate the collective bargaining agreement (CBA) by asking non-clerks to perform clerk work? If so, what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

NATIONAL MASTER AGREEMENT(NMA), Article 1, Section 2

In addition, effective August 1, 1987, the Employer recognized as bargaining unit members clerks who are assigned to package center operations, hub center operations, and/or air hub operations whose assignment involves the handling and progressing or merchandise, after it has been tendered to United Parcel Service to effectuate delivery. These jobs cover: package return clerks, bad address clerks, post card room clerks, damage clerks, rewrap clerks, and hub and air hub return clerks.

NMA, Article 32

For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services of the kind, nature or type, and including new operations or buildings, covered by, or presently performed, or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned, or conveyed in whole or in part to any other plant, person or non-unit employees unless otherwise provided in this Agreement. The Employer may not subcontract work in any classification for the purpose of avoiding overtime. The Employer may subcontract work in any classification if any employee who normally performs such work is on layoff.

LOCAL SUPPLEMENT, Article 25

The Employer agrees that all terms and conditions of employment relating to wages, hours of work, overtime differential, and general working conditions, as negotiated or agreed upon, shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement except as specifically provided in this Agreement., and the conditions of employment shall be improved wherever specific provisions for improvements are made elsewhere in this Agreement.

FACTS

Clerks have historically worked on fixing package problems. Their activities have included taping loose flaps or seams on otherwise intact boxes. By all accounts, this activity is not exclusive to clerks. In other words, if a pre-loader or other employee comes across a box that looks completely intact except for a loose seam or flap, they will place some tape on the box without referring the box to a supervisor or clerk. Clerks have historically performed more extensive retapes of boxes. This occurs when a box is open and the box needs more than a basic tape job to secure it. Clerks have also historically performed rewraps or repacks, which are packages that are too ripped or missing a side and need to be repackaged in a new box. The Union maintains that these have exclusively been clerk work, whereas the Company disagrees.

Some clerks choose to become certified as damaged materials persons (DMP). Employees performing this work receive special certification on how to handle damaged packages and assess package contents. They receive extra pay for such work. This work is not exclusive to clerks.

The Company contends that more extensive re-wraps or repacks are generally sent to a DMP-certified employee or a clerk. The Union contends that clerks exclusively perform rewraps or repacks unless the box is known to have leaky or other worrisome materials inside, in which case a DMP-certified employee works on the box.

Finally, clerks have historically worked on address problems. In 2008, Arbitrator Elliot Shriftman ruled on a grievance addressing a change in technology regarding labeling and relabeling of packages. As a result of the technology change, the Company assigned relabeling to non-clerks. The Union grieved this change. In finding in favor of the Union, Arbitrator Shriftman held that the CBA “contains the or one of the strongest statements about job integrity and work preservation.” He ultimately held that the new work of generating address labels was clerk work because clerks exclusively handled all work associated with addresses.

Notably, the parties dispute the meaning and import of Arbitrator Shriftman’s award. The Union maintains that Arbitrator Shriftman’s award concluded that address labeling was one of many tasks assigned exclusively to clerks and could not be unilaterally assigned to other employees. The Company maintains that Arbitrator Shriftman’s award stands for the proposition that address work is the only work that is exclusive to clerks.

The Company presented evidence that in an arbitration held in 2009, the Union presented an issue identical to the issue presented in this case, namely,

whether the Company violated the CBA by assigning return clerk taping work to employees in other classifications. The Company contends that, during this arbitration, the Union conceded that tape ups/retapes were not exclusively clerk work. Notably, no tape-related grievances were filed between August 2009 and March 2023. In 2023, the Union withdrew the 2009 grievance.

This grievance arose as a result of a 2023 layoff of clerks in the New York metropolitan area. The Union contends that, since those layoffs, that the Company started assigning retapes and rewraps to all employees, including part-time employees. In March 2023, the Union filed 37 grievances, each alleging a violation of clerk seniority by assigning clerk work to non-clerks while clerks were laid off.

At arbitration, the Union and the Company presented several witnesses with dozens of years of experience who articulated their experiences observing the work performed by clerks.

Luis Lopez, a loader for the Company since 2007 and a past shop steward, unloads, scans, and sorts packages, and sometimes serves as a bulk driver. He testified that he was trained to put aside damaged packages for clerks to handle. He testified that he was once summoned by the Company to a meeting where he was reminded not to tape packages. Mr. Lopez also testified that after the 2023 layoffs, in the Nassau building, where 5 of the 10 clerks were laid off, the Company started directing almost any employee to perform retapes and rewraps.

Dwight Virgo, a shop steward and a pre-loader with more than 30 years of experience, testified that a retape is a box where the tape came off completely or there is not enough tape to keep the box intact. He insisted that he was told by management that these types of boxes go to clerks and that he personally observed clerks exclusively handling retapes and rewraps. This testimony is consistent with Union Exhibit 1, a best practice sheet that has been posted by the Company at facilities for many years. Notably, the posting states that damaged packages should be brought to a clerk or a supervisor. At the same time, Mr. Virgo conceded that taping down a loose flap was shared work performed by employees in a variety of titles.

Luis Triolet, who has worked as a pre-loader and clerk and is a shop steward, testified that the clerk position is coveted because it pays more and does not require loading and unloading. He testified that, for as long as he has been at UPS, he has understood that retapes and rewraps are exclusively clerk work and that the rule has been if a package is open or ripped it should be put aside for the clerk. He testified that the only time he regularly possessed a tape gun was when he served as a return clerk. He explained that this occurred toward the end of 2018, when he was suddenly assigned retapes and rewraps. He was ultimately given credit for time performing clerk work pursuant to Article 13 of the local supplement. In addition to the rewraps, retapes, and address correction issues, Mr. Triolet testified that clerks are exclusively trained on fallouts, i.e., how to handle a

box when items fall out of a package. He stated that only clerks should be reaching into a package because of the Company's strict no tampering rule.

In support of Mr. Triolet's claims, the Union had him discuss several exhibits detailing the work performed by clerks. This included, among other things, training materials clerks receive on damaged packages and fallouts. (Union 3). Mr. Triolet also identified a supervisory checklist used for clerks showing the tasks monitored by UPS supervisors to monitor clerks, which includes retapes, rewraps, repackaging, etc. (Union 4). Finally, Mr. Triolet testified about a grievance the Company sustained where it acknowledged that retapes and rewraps that came down the slide in Yorktown were clerk work.

Joe Forcelli, a bargaining unit member who is a certified DMP and not a clerk, testified that he has been a business agent for the union for decades and is familiar with several UPS facilities. He testified that packages with leaks or that are affected by another leaky package are handled by the DMP. He testified that once the hazard involving the leak was resolved, the package was sent to clerks to rewrap the package. He also testified that, while employees like pre-loaders can slap tape on a loose flap, anything more than a loose flap is a security risk.

Lawrence Grant, a bargaining unit member since 2007 and business agent for the union since 2019, testified that, up until the 2023 layoffs, retapes and rewraps were sent to clerks to be fixed. He testified that after the 2023 layoffs, he observed just about anyone doing retapes and rewraps. He testified that he handled a disciplinary matter in 2022 involving a non-clerk unit member accused of

tampering because he handled a package with an open flap. He explained that the member was given a warning and told not to mess with open packages because that was clerk work.

Finally, Union trustee and 33-year UPS veteran, Scott Damone, testified that since his first day at UPS, retapes and rewraps were exclusively clerk work. He testified that, on hundreds of occasions, he has represented people who got into trouble for putting their hands in packages and that the Company's mantra has always been to send these packages directly to a clerk.

The Company's testimony was different than the Union's in many respects. Warren Pandiscia, the Company's East Region Labor Relations Coordinator, testified that he has worked at UPS since 1991 and worked in labor relations since 2010. Mr. Pandiscia testified that, during the 2009 arbitration for which he was present, the Union conceded that taping a flap or seam was not exclusively clerk work. He testified that the Union was contesting the Company's assertion that DMP work included taping packages, full repacking or taping. He testified that on the third day of that arbitration, counsel for the Union claimed that the only issue was whether DMP work was clerk work. The grievance sat idle for 11 years, being withdrawn by the Union in 2023.

Mr. Pandiscia testified that when he was a pre-loader in the 1990s, tape rolls could be found all over the facility and that he and others would routinely tape up a seam or open flap. He testified that when there was an issue with a package, it would be taken to the DMP area for resolution.

Mr. Pandiscia testified that clerks have exclusively handled issues involving address corrections, labels, and assisting with verifying package contents. Since this work frequently did not fill eight hours per day, clerks assisted with DMP work (if certified), and taped packages, but this work was not exclusive to clerks. He testified that while retapes of a flap or seam were handled by anyone, rewraps or repacks, i.e., part of the box is missing or too damaged to repair, are sent to a DMP employee or a clerk. Finally, he testified that damaged packages, i.e., a package with contents that needed to be validated, are handled by DMP-certified employees who may or may not be clerks.

Thus, Mr. Pandiscia testified that nothing changed after the 2023 clerk layoffs. Tape ups of seams and flaps are handled by any employee. Clerks exclusively handle problems associated with addresses. And rewraps and damaged packages are handled by DMP certified employees who may or may not be clerks.

Tom Dullahan, a 36-year veteran of UPS, who served in a variety of roles on the floor at the beginning of his career all the way to labor relations at the end of his career, testified about his experience in operations. He testified that he has seen employees in a variety of titles, including drivers, pre-loaders, and clerks, taping boxes. He testified that address correction and labels have been understood to be exclusively clerk work. In his view, technology innovations related to address corrections was the reason for many of the 2023 clerk layoffs.

Mr. Dullahan challenged the notion that the Company had the time to set aside packages for clerks to tape up. He explained that under the Company's 24-

hour total service plan, the operation must be constantly moving so it does not throw off dispatch. He said that if packages were constantly set aside for clerks, it would throw off timing.

Finally, Mr. Dullahan testified that, in the case of a damaged package, pre-loaders were told to send the package to the DMP area, where it would either be handled by a clerk or a DMP-certified employee.

Chris Travaglia, a division manager who has worked for the Company for over 30 years, testified that all classifications of employees retape packages. He identified photographs of packages with tears or missing flaps and testified that pre-loaders put such packages to the side to let supervisors determine if the box would be too damaged or need replacing, in which case it would typically be sent to the DMP area.

Bryan Gillen, a UPS manager with over 20 years of experience, testified that all classifications of employees have performed retapes over the years. He testified that when he was a pre-loader, he and his colleagues routinely did retapes, along with rewraps and repacks.

POSITION OF THE UNION

The Union contends that the evidence strongly supports its position that the Company's 2023 clerk layoffs violated the CBA because it led the Company to unilaterally assign work exclusively performed by clerks to non-clerks, something prohibited by the CBA.

The Union begins by emphasizing the remarkably strong provision in the CBA addressing job classification protection. It notes that Article 1, Section 2, of the NMA expressly states that, in 1987, the Company recognized clerks as part of the unit “who are assigned to package center operations...whose assignment involves the handling and progressing of merchandise after it has been tendered to United Parcel Service to effectuate delivery. These jobs cover package room clerks, bad address clerks, post card room clerks, damage clerks, rewrap clerks...”

The Union emphasizes that Arbitrator Shriftman’s 2011 decision acknowledged how remarkably strong this provision was. He held that the body of protected work for bargaining unit clerks embraces assignments involving the handling of merchandise to progress delivery. To the Union, that award, coupled with the express language of the CBA, shows that clerks are the stewards of handling a variety of issues with packages impacting delivery, including damaged boxes, rewrapped boxes, etc.

Equally compelling is the language of Article 32 of the NMA, which not only prohibits the Company from transferring work to those outside the unit, but also protects job opportunities from being poached among bargaining unit members. The language is broad in that it applies to work of any kind, in whole or in part, and mandates that the Company will not transfer such work to non-unit employees and bargaining unit members. This language is bolstered by multiple provisions in the local supplement, including language prohibiting part-time employees from performing return clerk work.

The Union emphasizes that it has been focused on protecting clerk work for dozens of years because the job is coveted. As such, because it is less strenuous than most of the other bargaining unit positions, clerk positions are typically held by senior employees. The clear language of Article 1, coupled with the job protection clause, was clearly violated in 2023 when the Company eliminated many clerk positions and transferred their core functions to part-timers, supervisors and anyone with a tape gun.

The Union's case is even stronger due to Arbitrator Shriftman's prior award addressing the work of clerks. While that case expressly involved the Union's complaint about the Company's unilateral decision to transfer labeling work from clerks to non-clerk bargaining unit members called DCAP, who were part-time employees, Arbitrator Shriftman assessed the key provisions of the CBA as it relates to unilateral transfers of work by the Company. He held that the NMA and local supplement created work classifications for clerks that are nearly unparalleled in the labor-management world. His interpretation of the provisions led him to conclude that only clerks may perform work associated with the handling and progressing of merchandise. His conclusory statement on the topic is notable.

As readily as one tastes a pickle and discerns that it is salty, the Arbitrator acknowledges that of the hundreds of collective bargaining agreements he has perused over his some thirty-three years in the field of labor relations, the one at bar contains the or one of the strongest statements about job integrity and work preservation. It also protects job opportunities and in a number of instances, guarantees that certain titles, including return clerks, will be employed only on a full time basis...The body of protected work for

bargaining unit member clerks, which include more than just return clerks, embraces assignments involving the handling and progressing of merchandise to effectuate delivery.

The Union emphasizes that, just as Arbitrator Shriftman did, this Arbitrator should reject UPS's arguments that efficiency and cost savings allow it to abrogate the aggressive work protections of the CBA.

The Company's claim that Arbitrator Shriftman's determination stands for the proposition that the only exclusive work of clerks is labeling and correcting addresses borders on the absurd. It is true that the case before Arbitrator Shriftman, which involved the Company's transfer of address labeling work to non-clerks due to new technology, did not address retapes and rewraps and focused exclusively on whether the Company's change in this assignment violated the CBA. There is nothing in the opinion and award evincing a finding from Arbitrator Shriftman that this was the only exclusive work of clerks. Rather, he found that this was clerk work that could not be transferred to part-timers in different titles.

In Arbitrator Shriftman's analysis, it is abundantly clear that he was focused on whether this work had been historically performed by clerks as that is exactly what he stated to be the "critical issue" of the case. (see p.32 of Award). In rejecting the titles the Company was assigning this work to, Arbitrator Shriftman noted that they should not be included because employees in those titles "do not actually handle or even see packages..." Arbitrator Shriftman's dicta establishes that he considered clerks the focal point for handling issues with packages and that

his decision did not hold that the only exclusive work to clerks was address correction and labeling.

Arbitrator Richard Adelman's 1986 award also explicitly finds that clerk work is not limited to correcting addresses. He found that counting COD money and COD envelopes is exclusively clerk work. Although Arbitrator Adelman opined that the Company articulated legitimate reasons for changing the assignment, he held it to be a contract violation due to the subcontracting provisions, which existed to preserve work and job opportunities for bargaining unit employees and prohibited the Company from subcontracting work unless it was expressly authorized by the CBA.

Article 25 of the local supplement is a very strong maintenance of standards clause that was violated by the Company's actions in this case. Here the evidence establishes that retapes and rewraps have exclusively been clerk work. This clause obligates the Company to maintain terms and conditions of employment at their highest levels. The Company's actions are exactly what Article 25 was intended to protect.

The Company's claim that the Union waived its right to bring this grievance because it previously brought this dispute to arbitration must be rejected. The Company's evidence lacked specificity and certainly was not specific enough for the Arbitrator to find that waiver is appropriate. Moreover, that grievance was resolved as part of a wholesale effort to clear dozens of grievances in 2022 from the parties' docket. A broad settlement like this was not so explicit as

to foreclose the Union from pursuing this grievance impacting the rights of dozens of senior bargaining unit members.

For remedy, the Union seeks an order requiring the Company to cease and desist from having non-clerks perform retapes and rewraps, with a return of laid off clerks going forward to handle the work that has been theirs for dozens of years. For back pay, the Union urges to do what Arbitrator Shriftman did in 2011, namely, give the parties some time to negotiate a resolution while retaining jurisdiction to resolve the back pay dispute.

POSITION OF UPS

UPS insists that the grievance should be dismissed. It claims that the Union has dramatically shifted its position as this grievance has proceeded. Whereas the initial grievance focused entirely on the baseless claim that tape ups are exclusively clerk work, it now argues that the case is about rewraps, repacks and damaged packages, underscoring how anemic the Union's case is.

UPS begins by emphasizing that all witnesses from both the Union and Company agreed that there are three distinct categories when it comes to fixing packages, namely, (1) tape ups; (2) rewrap/rebox/repack; and (3) damaged packages. The Company maintains that all witnesses agreed to the definitions for all three categories which are: (1) tape ups involve securing an open flap or seam; (2) rewraps involve putting the entire contents of the package in a new box or wrapping the package with a significant amount of tape to secure it; and (3)

damaged packages require a specially trained employee to verify the contents and either repair or replace the package.

The Company asserts that all witnesses agreed that all classifications of employees, including drivers and supervisors, had used tape to secure a seam or flap for as far back as anyone can remember. In the Company's view, the case should end there because tape ups were the only action challenged by the Union in the grievances it filed and at panel.

The Company stresses that the evidence establishes that the Company's instruction to employees on the use of tape and performance of tape ups, rewraps, etc., goes back decades. Despite the Union's claim that the Company's 2023 layoffs changed something, there was no evidence establishing any change to practice or policy. Moreover, the Union's 2009 grievance shows that it was aware that non-clerks performed tape ups since at least that time. Its abandonment of that grievance demonstrates that this grievance should be dismissed with prejudice.

The Company emphasizes that all 37 grievances in this case challenged tape ups, and nothing more, as the work in dispute. An examination of the Union's arguments at Panel show they were focused on tape ups. Tom Dullahan's testimony bolsters the Company's assertion that the grievances were about tape-ups. He testified that he received this grievance directly from Scott Damone, who told him that tape ups could only be performed by clerks. Company witness Bryan Gillen also testified that during his conversation with Union shop steward Louis Lopez, the issue of tape ups was raised for the first time in 2023, with Mr. Lopez

arguing that tape ups could be performed only by clerks. Since tape ups clearly are not exclusively the work of clerks, it is no mystery why the Union has attempted to expand the grievance. Its attempt to expand the grievance should be rejected as it does not comport with the grievance procedure limitations.

The Company maintains that past practice is the best indicator of the parties' agreement where, as here, the CBA is silent on the exclusive work activities of clerks and the Company has a strong provision in Article 17 emphasizing its right to manage its operations. In other words, when there is no express language in the CBA articulating exclusive work opportunities, the Company has the right to manage its operations as it deems fit. Since there is a plethora of consistent evidence from both sides showing that tape ups are not exclusively clerk work, the grievance claiming that tape ups are exclusively clerk work must be denied.

The Union's inaction on a 2009 grievance involving these very same issues is further evidence that the Union was aware that tape ups were performed by non-clerks without objection. Following a clerk layoff, the grievance alleged that non-clerks were doing clerk work in the DNP department. The Company emphasizes that Mr. Pandiscia testified that the arbitration of that grievance involved the very same issue addressed in this case, namely, whether the Company violated the CBA by assigning clerk work to non-clerks in connection to tape-related work. Mr. Pandiscia provided unrebutted testimony that Union counsel at the time expressly stated that the Union was solely arbitrating whether DMP work (i.e., damaged

package handling) was solely clerk work. The grievance history speaks volumes about the fact that the Union was aware since at least 2009 that non-clerks were providing all sorts of tape-related tasks. The Union's failure to object to this practice from 2009 through 2023 is a tacit acknowledgment of the practice.

The evidence presented by the Union failed to establish any violation regarding rewraps and damaged packages. The Company emphasizes that witnesses across the board agreed that when there are rewraps and damaged packages, package contents need to be verified and that the pre-load instruction is to place the loose contents into a tote or bring them to the DMP or clerk area. It was also universally agreed that special training is required to verify package contents, that DMP certification is needed for handling damaged packages, and that hazmat certification is needed when a package is known or suspected to contain hazardous material.

All parties agreed that clerks or DMP-certified employees perform re-wrap work. Notably, all of the Union's witnesses conceded that they had personally observed clerks and DMP-certified employees performing rewraps. Not a single witness testified that he personally observed a non-clerk perform rewraps, which is what the grievance alleges. Since both clerks and DMP-certified employees perform this work, and there is no evidence that such work was assigned to anyone other than employees in these titles, the grievance wholly lacks merit.

The Company emphasizes that, just like 2009, when the Union filed a grievance after a clerk layoff, this case is nothing more than an attempt to expand

what constitutes clerk work in an effort to save clerk positions. This has occurred twice since the 2008 Shriftman award (in 2009 and now in 2023) because Arbitrator Shriftman held that traditional core duties of return clerks relate to modifications of incomplete or incorrect address information.

Arbitrator Shriftman held that work that has historically been exclusively performed by clerks, or work that is of a similar nature or type, is the only kind of work protected by the CBA. Since all witnesses agreed that the core duties of return clerks relate to address correction, something noted in Arbitrator Shriftman's award, the Union's claim that Arbitrator Shriftman's award supports its claims that clerks exclusively perform work beyond address work is simply untrue.

The Company maintains that the Union's claim is based solely on an excerpt from the Company's brief submitted for Arbitrator Shriftman's consideration, which describes the job of return clerk. Notably, the reference to retapes and repacks is found in the miscellaneous tasks for clerks, which are described as tasks clerks may perform in addition to their core duties. The Union's assertion that these tasks are exclusively clerk tasks because they are on the miscellaneous list does not pass muster. The claim is severely undermined by the fact that there are other tasks on the miscellaneous list, i.e., transport packages and workstation restock, that are not exclusively limited to clerks. In addition, Arbitrator Shriftman noted that the core duties of return clerks involve address correction. These facts, coupled with the concessions from the Union that DMP-

certified employees perform re-wraps and everyone performs retapes, makes it abundantly clear that the Union's attempt to expand the exclusive core duties of clerks to include retapes and rewraps should be rejected.

The Union's attempt to claim that employee tampering is relevant to tape ups should be rejected. The Union argued that employees have been disciplined for tampering with packages in an attempt to show that only clerks should perform tape ups. It presented evidence of situations where employees were disciplined for placing their hands in packages. However, while everyone agreed that placing a hand into a package is problematic, the work performed when flaps or seams are taped is entirely different. In these cases, the employee uses his or her eyes to look at the package and then tape it up, something completely different from sticking one's hand in a package.

The grievance should be rejected because the Company has a strongly worded management rights clause reserving its right to manage operations and assign tasks in Article 17 of the local supplement. It provides the Company with the right to make operational decisions like laying off clerks. Technological advancements frequently lead to efficiencies that come at a price for some individuals, as noted by Arbitrator Shriftman in his 2008 award. The Company's changes do not violate any express provisions in the CBA and are supported by the rights it reserved in Article 17 of the local supplement.

The Union's argument that some clerk positions may have been saved from layoff by combining all of the tape ups to fill a day's work is intellectually

dishonest and a logical fallacy. Tape up work can take seconds whenever employees see a need to add tape to a package on the belt. There is no quantifiable time to be added up and it would be absurd for the Company to be required to hamper operations by putting aside all of these boxes for clerks to tape them up. This is precisely why UPS reserved its right to manage operations. To shackle the Company with an onerous requirement that only clerks can perform the ministerial task of slapping a piece of tape on a package would be ruinous to operations.

For all of the reasons above, the Company urges the Arbitrator to deny the grievance in its entirety.

OPINION

After carefully considering the evidence in the record and the arguments of the parties, the Arbitrator finds that the grievance should be sustained. The Company violated the CBA by using non-clerks to perform clerk work for tape ups more extensive than taping damaged flaps or seams, and by having non-clerks, (other than DNP-certified), perform rewraps/repacks of damaged packages.

While the parties' positions differ in many areas, there was general agreement from witnesses on both sides that, historically, employees in many titles and even supervisors slap pieces of tape on loose or open flaps or seams of packages that are otherwise unaltered and undamaged. It is practical for the Company to have employees like pre-loaders and drivers place tape on packages that are otherwise undamaged to quickly shore them up and have them available

for delivery without any unnecessary delays. There is also general agreement that DMP-certified employees, i.e., those employees who receive special certification on handling damaged packages, do not have to be clerks to perform work on damaged packages.

The Arbitrator finds that the record establishes that both clerks and non-clerks who are DMP-certified employees have historically handled rewraps/repacks of damaged packages. In other words, clerks share this work with some non-clerks who are DMP-certified. The Company violated the CBA because its layoff led to non-clerks who are not DMP-certified to handle extensive tape ups beyond taping up flaps or seams as well as rewraps/repacks. This is exclusively clerk work and it cannot be shared with any title other than employees who are DNP-certified.

The Arbitrator's determinations come from the plain language of multiple provisions of the CBA, Arbitrator Shriftman's 2008 award, and from the relevant facts presented during the arbitration. While the Company repeatedly argued that the primary work of clerks involves address correction and that clerks have never had a primary role in handling damaged packages, Article 1, Section 2 of the Master Agreement expressly states otherwise. The second paragraph states that the Company recognizes bargaining unit clerks "...whose assignment involves the handling and progressing of merchandise after it has been tendered to the United Parcel Service to effectuate delivery. These jobs cover package return clerks, bad address clerks, post card room clerks, damage clerks, rewrap clerks and hub and air hub clerks."

This section alone evinces the parties' mutual understanding that clerks perform a variety of tasks involving the handling of packages and that their work includes address work, damaged package work, and rewrap work. Moreover, this notion is strongly bolstered by Arbitrator Shriftman's 2008 award. Notably, in the 2008 award, Arbitrator Shriftman excerpted the Company's brief where the Company affirmed that return clerks perform a number of job functions beyond address correction. The Company then listed more than a dozen tasks, including retape and repack.

Arbitrator Shriftman's award finds that clerk work broadly involves handling of packages to effectuate delivery and is not limited to address correction. While Arbitrator Shriftman found that address correction is one of a clerk's core duties, he did not find it to be their only core duty. He held that "the body of protected work for bargaining unit clerks, which include more than just return clerks, embraces assignments involving the "handling and progressing of merchandise to effectuate delivery." That is a very broad statement on the scope of work assignments."

The Arbitrator addresses this because the Company witnesses testified as if clerks spend most of their time handling address issues and that damaged packages have mostly been sent to the DMP area with DMP-certified employees frequently handling damaged packages and clerks also handling such packages. In stark contrast, Union witnesses all testified that they were trained, told, and observed that damaged packages needing extensive retapes or needing rewrapping have

been sent to the clerk area for dozens of years. Multiple Union witnesses testified that they were always trained to send damaged packages to the clerk area or consult with a supervisor about the package. They also testified that boxes with leaks or other possible hazardous materials were handled by DMP-certified employees who may or may not have been clerks, while clerks handled everything else.

The Union's witness testimony on this point must be credited because it comports with the plain language of the recognition clause and Arbitrator Shriftman's award, both of which state that clerks have a broad role in handling packages to effectuate delivery that includes activities such as address correction, damaged packages, and rewraps.

These findings are also reached because they are consistent with Company documents expressly stating that clerks have a primary role in handling damaged packages and also showing that employees have been directed by the Company for years to consult with clerks when handling damaged packages. For example, Union Exhibit 1 is a UPS document entitled "Damage Reduction Best Practices." Testimony established that this document has been hung on walls in UPS facilities for many years. Among other things, it states that "Any package that is in need of repacking must go to a Clerk or Supervisor." (Union Exhibit 1). The Company's "Preload Responsible Damage Guide" informs employees to never load a damaged package, stating that "all damaged packages need to be inspected by a clerk." (Union Exhibit 7).

In stark contrast, there is no reference in the recognition clause or in any meaningful documents about DNP-certified employees. With these facts in mind, the Arbitrator must conclude that clerks have had a primary role in retapes beyond simple flaps and seams and re-wrapping damaged packages for years. This is modified only by the fact that retapes of seams and flaps is not exclusive clerk work and that, while many DNP-certified employees are clerks, those DNP-certified employees who are not clerks, have been rewrapping damaged packages for years. In other words, the only title other than clerks who should be handling more extensive retapes and rewraps of damaged packages are DNP-certified employees who happen to not be clerks.

The history and practice of the parties is highly relevant because the parties have a very strong provision on job preservation in Article 32 that preserves work for specific titles who historically performed the work. Arbitrator Shriftman found that, after thirty-three years in the field of labor relations, that the job preservation provision in this CBA “contains the or one of the strongest statements about job integrity and work preservation.” The undersigned, who at this moment has about 35 years of experience in labor relations, finds similarly. He finds that Article 32 provides that no work of any kind presently performed by unit employees will be assigned to a non-unit employee. The undersigned notes that Article 32 goes further in that it prohibits work performed by unit employees to be poached even among bargaining unit members, stating that “no work or services of any kind...presently performed or hereafter assigned to the collective bargaining unit

will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other plant, person or non-unit employees unless otherwise provided in this Agreement.” The prohibition on the Company subcontracting to any plant, person, or non-unit employees shows that this provision was intended to prohibit the transfer of work to any other plant or person in the bargaining unit as well as non-unit employees.

The job preservation provision, coupled with Article 25 of the local supplement, persuades the Arbitrator that the Union should prevail. Article 25 is a strong maintenance of standards clause, stating that all conditions of employment shall be maintained except as specifically provided in this Agreement. This provision locks in the work that has historically been performed by clerks, i.e., retapes beyond flaps or seams and all rewraps and repacks being shared among clerks and DNP-certified employees and nobody else.

The Company’s agreement to a strong work preservation clause and a strong maintenance of standards clause is not superseded by the management rights clause. While Article 17 has strong language about its right to direct the work force and to plan, direct, and control operations, this language is expressly limited by any provision not inconsistent with the provisions of the Agreement. In this case, the Arbitrator finds that testimony from the Union and Company cumulatively established that, prior to the 2023 clerk layoffs, it was only clerks and non-clerks who were DNP-certified that handled retapes more extensive than seams or flaps, as well as rewraps and repacks. Article 1 and 32 of the NMA,

when read together, preserve this work for clerks and are inconsistent with the idea that the Company can unilaterally assign these tasks to pre-loaders and others in the shop because Article 17 permits the Company to reassign tasks. The Company cannot reassign these tasks because that would be inconsistent with its commitment in Article 1 and 32 of the NMA, something prohibited by Article 17.

The Company's arguments that the Union waived its right to challenge tape ups because it filed similar grievances in 2009 following a clerk layoff is not persuasive. The evidence established that the prior grievance alleged that the CBA was violated because non-clerk employees were "doing clerk work in the DMP department." Mr. Pandiscia testified that he was present for two of the three arbitration hearings held on this grievance and that the Union conceded that anyone could perform tape ups and that the Union was solely arbitrating whether DMP work was solely clerk work.

While that grievance was clearly similar to the current one, the Arbitrator cannot find it was so identical that a waiver determination is appropriate. First, the Arbitrator observes that the parties have used the term "tape ups" in two different ways. Some folks describe tape ups as the simple ones that can be handled by anyone and involve taping a flap or seam when the package is otherwise in good shape. The Arbitrator's observation is that the parties have also used the word tape ups to be those tape ups that require more extensive taping than flaps or seams. Since it is not clear from the record as to what aspect of tape ups was being challenged or conceded, a waiver finding is not appropriate, particularly because

the 2023 grievances involve a completely different layoff some 14 years later, i.e., there are different facts.

The other aspect of the 2009 grievance that was arguably abandoned concerns what appears to be the Union's objection to the Company using non-clerks who are DNP-certified to perform more extensive tape ups, rewraps, and repacks. That is not an issue the Union is getting relief for in this case because the Company witness testimony shows that there are non-clerks who have historically performed extensive tape ups, rewraps, and repacks i.e., DNP-certified employees. The Arbitrator surmises that 2009 grievance may have been withdrawn because the Union understood that clerks' exclusivity over extensive tape ups and re-wraps was breached by non-clerks who are DNP-certified. Ultimately, the Arbitrator cannot be sure what happened during that grievance procedure or what was intended by the Union's withdrawal of the grievance as there is no transcript from those proceedings or other information to make this dispositive. Waiver is inappropriate for these reasons as well as the fact that these grievances are different, i.e., in this case the Union is objecting to non-clerks who are not DNP-certified performing more extensive tape ups, re-wraps, re-packs

When it is all said and done, what the Arbitrator can conclude is that after the 2023 clerk layoffs, the Company loosened its approach on tape ups and re-wraps by having non-clerks who are not DNP-certified perform some of this work in violation of the CBA. He can also conclude that an appropriate remedy is a cease-and-desist order prohibiting the Company from assigning extensive tape up

and any rewrap work to anyone other than clerks or non-clerks who are DNP-certified.

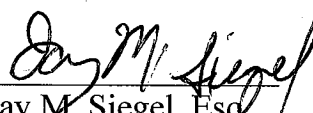
What the Arbitrator cannot be certain of is the extent to which the current complement of clerks after the layoff can handle this work once the cease-and-desist order is implemented. The Arbitrator cannot and will not determine that all clerks should be returned to their jobs as the Arbitrator is aware that efficiencies in operations due to technological advances are constantly leading to diminution of the number of employees needed for existing jobs and there was some testimony from Company employees that technological advances also accounted for the need for fewer clerks. In other words, while the Company may need to rehire some clerks to fill gaps in coverages caused by the cease-and-desist order, the Arbitrator does not find that it stands to reason that all clerks who were laid off will be returned to work. He also finds that, similar to Arbitrator Shriftman's award, a cease-and-desist should be issued for the time being and nothing more. The parties should meet to negotiate a resolution of the issues of who should be returned to work and back pay, with the Arbitrator retaining jurisdiction to resolve both disputes.

Accordingly, and based on the foregoing, I find and make the following:

AWARD

1. The grievance is sustained. The Company violated the CBA by using non-clerks who are not DNP-certified to perform clerk work. As a remedy, the Company shall immediately cease-and-desist from using non-clerks who are not DNP-certified from performing more extensive tape ups, i.e., those beyond taping flaps and seams, and any types of repacks, rewraps, etc. More extensive tape ups and repacks, rewraps, etc. shall only be assigned to clerks or non-clerks who are DNP-certified.
2. The parties are directed to meet to negotiate a resolution to the issues of the number of clerks to be returned to work and back pay. The Arbitrator shall retain jurisdiction solely on the issue of remedy if the parties are unable to resolve the negotiation over these two issues.

Dated: November 14, 2025


Jay M. Siegel, Esq.
Arbitrator

STATE OF NEW YORK)
COUNTY OF PUTNAM)

I, Jay M. Siegel, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument, which is my Opinion and Award.

Dated: November 14, 2025


Jay M. Siegel, Esq.
Arbitrator